15.110 ALCOHOL AND DRUG TESTING OF DEPARTMENT PERSONNEL

Reference:
Administrative Regulation #52 (07/07)
Manual of Rules and Regulations: 1.01, 1.02, 2.26 A/B, 6.01, 6.02 A/B, 6.03, 6.04, 6.05, 11.03
Public Employees Assistance Program (PEAP)
U.S. Department of Justice, Drug Enforcement Administration: Office of Diversion Control (http://www.deadiversion.usdoj.gov/schedules/)

Definitions:
Abuse - the misuse of.
Alcohol - ethyl alcohol or ethanol.
Drugs - any substance taken into the body other than alcohol, which may impair one's mental faculties and/or physical performance.
Substance - alcohol or drug.
Substance Abuse Professional (SAP) – A person who evaluates employees who have violated drug and alcohol program regulations and makes recommendations concerning education, treatment, follow-up testing, and return-to-duty aftercare. The designated SAP for the City of Cincinnati is the Public Employees Assistance Program (PEAP).

Purpose:
To set uniform guidelines for handling instances where Department personnel may be tested for controlled substances or alcohol during random, transfer, and/or reasonable suspicion testing.

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

Specifically, the policy is designed to:

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

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

Department employees with a substance abuse problem, who voluntarily schedule appointments with PEAP and, while off duty, notify their supervisor(s) of such problem, prior to notification they have been selected for random alcohol and drug testing, will not be subject to the disciplinary process in accordance with Administrative Regulation No. 52 or this procedure. The officer will be returned to duty after successfully completing an alcohol or drug rehabilitation program. The rehabilitation program will include unannounced follow-up alcohol and drug testing.

Department employees who have tested positive after notification they have been selected for random alcohol and drug testing, as well as Department employees who are suspected of substance abuse and have tested positive, will be subject to the disciplinary process. A second violation within three (3) years of first violation will be subject to dismissal in accordance with the Cincinnati Police Department’s Manual of Rules and Regulations and Disciplinary Process and the City’s Administrative Regulation No. 52.

Employees who fail to comply with the evaluation and/or treatment recommendations until successful completion, as determined by the Substance Abuse Professional (SAP), shall be subject to dismissal.

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

**Procedure:**

A. **On-Duty:**

1. In cases of suspected substance abuse, notify the shift officer in charge (OIC) of the district of occurrence.

2. If the member’s unit of assignment is different from the district of occurrence or the incident occurs outside the City limits, notify a supervisor from the member’s unit. The suspected member's immediate supervisor will respond and participate in the investigation.

3. The investigating supervisor(s) will conduct a preliminary investigation. At least one supervisor of higher rank than the suspected employee will be involved in the investigation. They will determine if there is reasonable suspicion of substance abuse and to what extent the member is impaired.
   a. Supervisors will examine bottles, flasks, or other containers they suspect may hold alcohol or drugs.
   b. A second supervisor must confirm the reasonable suspicion of
substance abuse.

4. If the investigating supervisor(s) determines there is reasonable suspicion of substance abuse:
   a. Remove any firearm and Taser from the employee's possession.
   b. Do not allow a member suspected of substance abuse to operate a motor vehicle.
   c. Notify the member's district/section/unit commander.
      1) If on-duty, the commander will respond and participate in the investigation.
      2) If off-duty, the commander may request the on-duty command officer to coordinate the investigation. The district/section/unit commander will respond when there is no on-duty command officer available to participate in the investigation.
   d. Notify the on-duty command officer.
      1) The on-duty command officer will respond and, in the absence of the district/section/unit commander, participate in the investigation.
   e. Contact a member of Internal Investigations Section (IIS) using the Emergency Communications Center (ECC) recall list.
      1) IIS will respond, conduct the investigation and coordinate the drug and/or alcohol testing.
      2) Investigating unit supervisor(s) will assist IIS in the testing and investigative process if requested.

5. Testing for substance abuse
   a. During regular business hours, when a reasonable suspicion exists that a member is under the influence of drugs or alcohol, an IIS investigator will transport the member to a CONCENTRA Medical Center listed below for drug and/or alcohol tests.
      1) CONCENTRA Norwood, located at 4623 Wesley Avenue, Suite C, Cincinnati, Ohio 45212, Monday through Friday, from 0800 hours to 1700 hours.
      2) CONCENTRA Sharonville, located at 2884 East Kemper Road, Cincinnati, Ohio 45241, Monday through Friday, 0800 hours to 1700 hours.
3) CONCENTRA Northern Kentucky, located at 1825 Airport Exchange Boulevard, Erlanger, Kentucky 41048, has extended hours of operation Monday through Friday, 0700 hours to 2100 hours, and Saturdays, 0900 hours to 1500 hours.

b. **After** regular business hours, contact CONCENTRA at (513) 236-2102 to arrange a drug and/or alcohol test. (If you call the number during CONCENTRA’s regular business hours, you will be directed to respond to one of the listed locations). The phone will be answered by ODACS (On-Site Drug and Alcohol Collection Specialists), a CONCENTRA contractor.

1) An ODACS staff member will meet the notifying supervisor and Department member at the employee’s location to collect the drug/breath alcohol sample.

   a) If an employee requires medical treatment, seek treatment first, and then call the after hours number. **Do not** ask the medical facility to test the employee. An ODACS staff member will respond to the hospital to collect the sample.

   c. The medical laboratory will obtain and analyze a urine specimen and send the results to the Employee Health Services (EHS) physician. All records pertaining to the test results will be kept in accordance with the law. Only authorized personnel will have access to the test results.

   1) If the test is positive, the member may select a City approved alternative laboratory and have the sample retested at their own expense.

      a) The officer will coordinate with IIS to schedule a retest of the sample.

      b) For chain of custody purposes, the City’s medical provider will transfer the specimen directly to the alternative laboratory with appropriate entries made on an Evidence Submission Form.

6. If, upon conclusion of the testing and investigation process, the district/section/unit commander or on-duty command officer concludes a member is impaired due to substance abuse he/she will:

   a. Direct the member to submit a Form 17 stating all pertinent information about the incident.

   b. Relieve the member of duty in accordance with Sections 11.01, 11.02, and 11.03 of the Manual of Rules and Regulations.

7. **Duties of the investigating supervisor:**

   a. The investigating supervisor will provide transportation home or to a health care facility for a member relieved of duty. Do not permit the member to operate a motor vehicle.
b. Make a blotter entry in the Records Management System (RMS) for the member’s unit of assignment showing the time the member was relieved of duty.

c. Secure the member’s badge, wreath, firearm, TASER, body worn camera (BWC), school access card and official identification in the district/section/unit’s property room.

d. Place the member in Sick With Pay (SWP) or Sick Without Pay (SWO) status until the recommendations of the SAP are known.

1) Upon receipt of a negative test result following a reasonable suspicion screening, the member will be returned to full duty immediately and the employee’s time restored.

e. IIS, the investigating supervisor(s), and district/section/unit commander or on-duty command officer will prepare and submit all required reports containing all pertinent information about the incident. Include the determination of reasonable suspicion and the physical/mental condition of the member at the time of the infraction. Distribute copies to the following:

1) Police Chief
2) Member’s bureau commander
3) Member’s district/section/unit commander
4) Investigating supervisor’s unit
5) IIS

8. Duties of the command officer:

a. The on-duty command officer will notify the Police Chief. On weekends or holidays the command officer will notify the Night Chief.

b. The Police Chief or acting Police Chief will hold a hearing as soon as possible.

1) IIS will notify the member to attend the hearing.

a) The member will receive a mandatory referral to PEAP unless it is a second violation within three (3) years of first violation.

1] The member will remain in SWP or SWO status until receiving a recommendation from the SAP and approval from the Department to return to duty.

Note: PEAP is the City’s designated SAP

2) The Department will adhere to the City’s Administrative Regulation No. 52’s penalties for substance abuse.
B. Off-Duty:

1. Substance abuse by an off-duty Department member acting in the capacity of or with the authority as a police officer is subject to testing.

   a. Investigating supervisor(s) determining reasonable suspicion of substance abuse which, in their opinion, caused, contributed to, or aggravated an action of misconduct will:

      1) Notify the appropriate command personnel and IIS following the same procedure as in Sections A.4.c., A.4.d., and A.4.e.

      2) If the command officer agrees, the employee will immediately be ordered to paid, on-duty status.

      3) Follow the on-duty procedure as in Section A.

2. If the incident is not related to the capacity of or authority as a police officer, handle the instance of substance abuse according to state law.

   a. Notify the shift OIC of the district of occurrence.

      1) The shift OIC will notify the unit commander of the district of occurrence and the on-duty command officer.

   b. Process off-duty Operating a Vehicle Under the Influence (OVI) offenses according to state law.

   c. Handle incidents involving the possession, preparation for sale, or trafficking of illicit controlled substances according to state law.

C. Random Alcohol and Drug Testing for Sworn Personnel

1. The Police Department designed a random drug urinalysis-screening program to detect the use of dangerous, harmful, and detrimental substances, hallucinogens, and marijuana.

   a. Sworn personnel should not use prescription medication of a family member or coworker. It could result in a positive test.

2. CONCENTRA will conduct a nine panel urine drug screen for the drugs listed below. Testing for additional drugs may also be done.

   a. Cannabinoids (Marijuana, Metabolite)

   b. Benzoylecgonine (Cocaine, Metabolite)

   c. Opiates (Codeine, Morphine, Hydrocodone, Hydromorphone, Oxycodone)

   d. Amphetamines (Amphetamine, Methamphetamine)

   e. Phencyclidine

   f. Barbiturates (Phenobarbital, Secobarbital, Pentobarbital, Butalbital, Amobarbital)
g. Benzodiazepines (Oxazepam, Nordiazepam, Alpha OH-Alprazolam, Temazepam)

h. Propoxyphene

i. Methadone

j. Ecstasy

3. Deep lung air will be tested for Blood Alcohol Concentration (BAC).

4. All sworn personnel are subject to random alcohol and drug testing.

5. An independent computerized probability sampling process known as “Simple Random Selection with Replacement” will select sworn Department personnel for random alcohol and drug testing. The program ensures each sworn employee has an equal probability of selection each time the Department initiates a random test.

a. Twenty percent of personnel chosen from the random sampling will also be chosen for alcohol testing.

6. The Police Chief determines the frequency of testing.

7. All sworn personnel will submit to urinalysis drug testing prior to being assigned or detailed to, and upon leaving, any high risk specialized assignment. Sworn members assigned to high risk specialized assignments will be tested more frequently. This includes the Police Chief, all assistant chiefs and captains, as well as sworn personnel assigned to the following:

a. Narcotics Unit

b. Vice Squad

c. Court Property

d. All District Violent Crimes Squads

1) The supervisor of an officer entering or leaving a district Violent Crimes Squad will notify Inspections Section of the drug test by email and include where the officer is transferred/detailed from and transferred/detailed to. This will include the officer’s name, badge number, and the effective transfer/detail dates to and from the Violent Crimes Squad. Inspections Section will notify shift or unit supervisors and advise the officer when to respond to CONCENTRA for drug testing.

e. Internal Investigations Section

f. Inspections Section

g. Fugitive Apprehension Squad

h. Investigative Support Squad

i. SWAT & Tactical Coordination Unit
j. Canine Officers
k. Gang Enforcement Squad
l. Probationary Police Officers (PPOs)

8. Inspections Section will notify shift or unit supervisors when the computer selects any of their personnel for testing.
   a. Officers utilizing sick time following the notification of alcohol and drug testing will be tested on the date returning to work.
   b. Officers attending training must respond for testing unless training is conducted outside of Hamilton County, Ohio, or Boone County, Kentucky.

9. A supervisor will notify on-duty sworn personnel, randomly selected for alcohol and drug screening, in writing by placing notification in the blotter.
   a. The Inspections Section Commander will provide personnel selected for alcohol and drug screening with a Form 96, Random Drug Testing Notification.
      1) Inspections Section retains the original copy of the Form 96.
      2) The officer will retain a copy of the Form 96.
   b. Off-duty sworn personnel will not be ordered to on-duty status for the purpose of random alcohol and drug testing.

10. Officers will comply with the instructions received from screening personnel at the collection site.
    a. The officer must present their driver’s license and Department ID card to confirm their identity.
    b. The bathroom facility of the testing area is private and secure.
       1) Testing personnel will search the facility before and after the sworn member provides the urine sample to ensure it is free of any foreign substances.
       2) The testing person will place color dye in the toilet bowl water.

11. The officer being tested will remain at the collection site in full view of laboratory personnel, except while providing the sample, until an acceptable urine sample is produced by the employee (maximum of three hours).
    a. Shy Bladder
       1) If the officer is unable to urinate (shy bladder) for the random drug test, the laboratory technician will allow the officer to consume up to 40 ounces of liquid.
       2) When an employee fails to provide a urine sample after being subjected to standard laboratory procedures, the employee shall
immediately undergo a medical evaluation, by EHS during standard working hours (or the physician at the designated collection site during hours EHS is closed). If both EHS and the designated collecting site’s physician are unavailable, the employee can be evaluated the next business day by EHS as long as the employee does not report back to work.

If the EHS physician, or the collection site physician, reports that no physical condition exists that would have prevented the employee from providing a specimen, the employee shall be deemed to have refused the test.

b. Shy Lung

1) When an employee fails to provide an adequate breath sample after being subjected to standard laboratory procedures, the employee shall immediately undergo a medical evaluation, the EHS during standard working hours (or by the physician at the designated collection site during hours EHS is closed). If both EHS and the designated collecting site’s physician are unavailable, the employee can be evaluated the next business day by EHS as long as the employee does not report back to work.

If the EHS physician, or the collection site physician, reports that no physical condition exists that would have prevented the employee from providing a specimen, the employee shall be deemed to have refused the test.

12. Method of Testing for Alcohol

a. Deep lung air will be tested for Blood Alcohol Concentration (BAC).

b. Any officer giving a completed breath test that is considered to be a positive test will be retested in 15 minutes. The result of the second test is final.

1) A completed breath test result below .02 BAC will be considered a negative test.

2) A completed breath test result .02 BAC to .039 BAC will be considered a negative test except that the officer will be placed in SWP or SWO status for twenty-four (24) hours following.

a) The investigating supervisor will make a management referral to PEAP for evaluation.

b) The officer will not be permitted to drive and will be transported to their residence by another officer.

c) The officer will not be subject to disciplinary action.

3) A completed breath test result of .04 BAC or higher will be considered a positive test. After alcohol and drug testing, the
employee will be transported home and placed in a SWP or SWO status.

a) The on-duty command officer will notify the Police Chief. On weekends or holidays the command officer will notify the Night Chief.

b) The Police Chief or acting Police Chief will hold a hearing as soon as possible.

1) IIS will notify the employee to attend the hearing.

a] The member will receive a mandatory referral to PEAP unless it is a second violation within three (3) years of first violation.

- The member will remain in SWP or SWO status until receiving a recommendation from the SAP and approval from the Department to return to duty.

Note: PEAP is the City’s designated SAP

2] The Department will adhere to the City’s Administrative Regulation No. 52’s penalties for substance abuse.

3] The Police Chief will determine discipline, including whether to suspend the member, pending a hearing.

4) A completed breath test of .08 or above will be considered a positive test. The officer will immediately be relieved of his/her official identification, badge, wreath, Department firearm, ammunition, BWC, school access card and TASER. After drug/alcohol testing, the employee will be transported home and placed in a SWP or SWO status.

a) The on-duty command officer will notify the Police Chief. On weekends or holidays the command officer will notify the Night Chief.

b) The Police Chief or acting Police Chief will hold a hearing as soon as possible.

1] IIS will notify the member to attend the hearing.

a] The member will receive a mandatory referral to PEAP unless it is a second violation within three (3) years of first violation.

- The member will remain in SWP or SWO status until receiving a recommendation from the SAP and approval from the Department to return to duty.
Note: PEAP is the City’s designated SAP

2] The Department will adhere to the City’s Administrative Regulation No. 52’s penalties for substance abuse.

3] The Police Chief will determine discipline, including whether to suspend the member, pending a hearing.

c) Prior to returning to duty, an officer with a positive breath test of .04 BAC or above, shall submit to an alcohol test. The officer may return to duty once the SAP has recommended the officer’s return to duty and a negative alcohol test has been obtained.

13. Method of Testing for Drugs

a. The urine sample will be split into two portions for testing purposes.

b. The initial drug test will be an Enzyme Multiple Immunoassay Testing (EMIT) procedure performed on one of the specimen portions. This is a Substance Abuse Mental Health Services Administration (SAMHSA) certified method of testing.

1) The second portion will be held for additional testing as outlined in Section C.15.

c. If the initial drug screen test indicated a positive result, the laboratory will ensure a confirmation test is completed. The confirmation test will be a Gas Chromatography/Mass Spectrometry (GC/MS) procedure. This is also a SAMHSA certified method of testing.

d. The Medical Review Officer (MRO) will contact the officer regarding the confirmed positive prescription drug test. The officer will have the opportunity to provide the MRO with a current prescription drug container, prescribed to the officer, and the identity of the prescribing/dispensing physician or health care provider for confirmation. No other City employee or agent will be informed of the confirmed positive test until the verification is held.

1) The MRO will contact the testing laboratory in an effort to verify that the prescription drug presented by the officer matches the drug identified in the confirmed positive drug screen test.

2) If the prescription drug and the drug identified in the confirmed positive drug screen test match, the drug screen test will be considered a negative drug screen test result.

e. All records relating to the negative drug screen test will become part of the officer’s medical record and remain confidential and restricted at EHS.

f. The testing laboratory will forward all test results only to the EHS physician in an envelope marked “Personal and Confidential.”

g. The EHS physician will determine the duty status of the officer using
14. Positive Drug Screen Test Result

a. The drug screen test will be considered a positive drug screen test result if:

1) The prescription drug and the drug identified in the confirmed positive drug screen test do not match, OR

2) The officer is unable or refuses to provide the MRO with a current prescription or prescription drug container, prescribed to the officer, and the identity of the prescribing/dispensing physician or health care provider for confirmation, OR

3) The drug identified in the confirmed positive drug screen test is included on the U.S. Department of Justice DEA list of controlled substances.

b. EHS will immediately notify the Inspections Section commander and IIS commander on all confirmed and verified positive drug screen results. Inspections Section, via chain of command, will notify the Police Chief or acting Police Chief.

c. IIS personnel will attempt to make contact with the officer to conduct a preliminary, fact finding investigation.

1) If the officer is on duty when the preliminary investigation is conducted, IIS personnel will determine if there is reasonable suspicion of substance abuse and to what extent the member is impaired.

a) If IIS determines the officer is impaired, the officer will be placed in SWP or SWO status.

1] The officer will respond to the IIS office to be interviewed when instructed by the IIS investigator.

2] The officer will receive a mandatory PEAP referral unless it is a second violation within three (3) years of first violation.

b) Once IIS has conferred with the SAP for recommendations, Sections A.5.a. and A.5.b. of this procedure will be followed.
d. The Police Chief or acting Police Chief will determine the duty status of the officer based upon the results of the IIS investigation.

1) If the Police Chief or acting Police Chief determines the officer’s police powers will be suspended, IIS personnel will notify the officer of the change in duty status and retrieve department property as required by the suspension process.

e. When the results of the subsequent drug test are received, IIS will complete the investigation and provide its findings to the Police Chief for review and disciplinary action.

f. In addition to any discipline received, the officer will be subject to unannounced follow-up testing in accordance with Administrative Regulation No. 52.

1) The SAP will recommend the frequency and duration of the additional drug screen testing and the hearing officer will note the SAP’s recommendation on his/her report.

2) The Inspections Section Commander will determine the schedule of additional testing as outlined by the Inspections Section SOP.

15. A sworn member whose drug screen test result is confirmed and verified positive may demand the second portion of the split urine specimen be tested by a SAMHSA certified laboratory of the officer’s choosing.

a. The officer must submit a written demand for a second test to the SAMHSA certified laboratory which processed the random drug screen sample and issued the positive test result within ten working days following the date on which the officer received notification of the positive test.

b. The SAMHSA certified laboratory that issued the positive test result will send the second portion of the split urine sample to the SAMHSA certified laboratory chosen by the employee for the second drug screen test after receiving the written demand.

c. Appropriate chain of custody procedures, mutually approved by the City and the FOP, will be closely followed in all cases.

d. The officer will pay the re-testing expenses related to the second drug screen test. If the drug screen test from the laboratory chosen by the employee is negative, the City will fully reimburse the officer for the cost of the second drug screen test.

D. Civilian Employees

a. Civilian employees are not covered by this random drug testing policy.

b. Civilian employees are subject to the Substance Abuse Policy approved by the City Manager.