JOPLIN POLICE DEPARTMENT	3-04 STANDARD OPERATING GUIDELINE
SUBJECT: Drug Testing	**REVIEW DATE: Annually - March**
EFFECTIVE DATE: November 3, 2015	**ACTION DATE:**
AMENDS/SUPERSEDES: 3-04 April 3, 2012	**AMEND DATE: February 22, 2023**
ACCREDITATION INDEX: 26.1.1	**APPROVED:** Richard A. Pearson **Chief of Police**

I. POLICY (26.1.1)

The department does not tolerate employees' use of illegal drugs nor the abuse of legally and commercially available ones. The courts have ruled that the threat to public safety by law-enforcement officers who use drugs or abuse alcohol is a legitimate reason for mandating drug/alcohol testing.

Drug abuse is a medical condition: employees shall seek medical assistance if they perceive a problem. Similarly, supervisors should know the working habits of their subordinates in order to observe behavior that might indicate substance abuse. Supervisors are responsible to instruct, guide, and counsel their subordinates, and to the department to ensure high standards of performance. Whenever possible, the department will assist employees to get help. The primary method for ensuring a drug-free workplace, however, shall be the proper performance of duties under proper supervision. The department must maintain a professional image before the community and shall relieve employees afflicted by substance abuse from their law enforcement duties, either temporarily or permanently. Law enforcement officers who are drug abusers threaten the community. Illegal drug use breaks the law: employees who experiment with or routinely use illegal drugs have no place in law enforcement.

II. PURPOSE

The purpose of this general order is to offer guidelines to ensure an employee's drug-free status as a condition of employment, to ensure drug/alcohol tests are ordered for employees based on reasonable suspicion, and to provide procedures for drug/alcohol testing and the handling of cases of suspected drug abuse within the department.

III. DEFINITIONS

A. Drug abuse

Illegal use of controlled substances (as defined by state and federal laws, encompassing the use of narcotic and non-narcotic drugs, prescription drugs used abusively), and over-the-counter substances if they impair job performance.

B. Drug test

An oral swab test to detect drugs, administered under approved medical conditions and procedures.

C. Employee

Any person employed by the department.

D. Reasonable suspicion

A ground for belief linked to articulable, objective observable facts or circumstances to believe that a controlled substance or alcohol use is adversely affecting an employee's job performance or that the employee has violated policy. Reasonable suspicion must be documented before testing.

IV. PROCEDURES

A. General guidelines (26.1.1)

1. Department employees shall not take any controlled substances unless prescribed by a person licensed to prescribe them.

   a. Employees who take any drugs (prescriptions or over-the-counter), which may impair job performance, must disclose this information to their immediate supervisor.

   b. Any illegal use of drugs by an employee, whether on or off duty, is prohibited.

   c. Employees shall report evidence of suspected drug abuse by another employee to their own supervisors.

2. All property belonging to the department may be inspected under certain circumstances. Personnel have a reasonable expectation of privacy in their desks, lockers, and offices.

   a. If the department develops a reasonable suspicion that a search of an employee's workplace (or locker) will reveal evidence of work-related misconduct, the department may conduct a search related in scope to the reasonable suspicion.

   b. Workplace searches may occur:

      i. To secure department property.

      ii. To retrieve a file or agency documents.

      iii. To seize evidence of work-related misconduct or poor performance.

      iv. To gather evidence of criminal misconduct. In all cases, the searches must be reasonable. Any searches undertaken for reasons iii and iv require a reasonable suspicion of misconduct.

   c. Workplace searches, conducted under reasonable suspicion, will take place upon reasonable notice to the employee, who may be present at the time of the search.

B. Legal issues

1. Fourth Amendment (searches and seizures)

   The threat to public safety posed by law-enforcement employees who are drug or alcohol abusers is a legitimate factor in determining the reasonableness of an oral swab test. The Fourth Amendment to the Constitution does not prohibit an oral swab test. A reasonable suspicion to require drug testing, however, is based on below factors, which **do not** completely outweigh employees' Fourth Amendment rights:

   a. Public safety.

   b. Public trust and integrity.

c. Potential for corruption.

d. Presentation of credible testimony.

e. Co-worker morale and safety.

f. Loss of productivity.

g. Civil liability (negligent hiring and retention).

2. Fourteenth Amendment (due process)

The City observes the due process rights of employees as guaranteed by the Fourteenth Amendment to the Constitution in the drug/alcohol-testing program. The City uses adequate safeguards to include the following:

a. Employee notification.

b. Reliable tests.

c. Chain of custody of specimen.

d. Confidentiality of test results.

e. The right to appeal the findings.

i. Any employee who questions the results of a required oral swab drug test under this or the City's policy may request that an additional test be conducted. The second test will be conducted pursuant to the rules outlined in the City of Joplin's Employee Manual.

3. Federal Rehabilitation Act

Under this statute, drug abuse is considered a handicap, but employees are protected only if the current use of drugs/alcohol does not impair job performance. It does not include any person whose alcohol/drug abuse constitutes a threat to the property or safety of others. Drug abusers who are neither rehabilitated nor in treatment are not handicapped persons within the meaning of this act.

C. Required drug tests

1. Pre-employment testing

a. Applicants will be tested routinely for drug and alcohol abuse as a part of their pre-employment physical exam after a conditional offer of employment has been given.

i. The results of drug tests shall be kept confidential. Employees who breach confidentiality of testing information may be disciplined up to and including dismissal.

A. Refusal to take the test or a positive test result shall disqualify an applicant from appointment to employment for a period of at least 120 days (see City of Joplin Employee Manual).

B. If the applicant admits to prior involvement with drugs, the department shall ascertain the type and extent of drug abuse before making an employment decision.

2. Promotional testing

Current civilian employees hired as police trainees will be drug tested. For purposes of the City's drug policy, this promotion to police trainee shall be considered as if the application was for original entry into service (see City of Joplin Employee Manual).

3. Reasonable suspicion testing

a. When there are objective observable reasons to believe that a controlled substance or alcohol use is adversely affecting an employee's job performance, reasonable suspicion testing shall be used to determine fitness for duty.

i. Reasonable suspicion observations and reports can only be made by supervisory or management personnel who are trained to detect the signs and symptoms of controlled substance and alcohol use and who may reasonably conclude that an employee may be adversely affected or impaired in the employee's work performance due to the use of the controlled substance or alcohol.

ii. These observations made by the supervisory or management personnel must be documented.

b. If another member of the department reports evidence of drug/alcohol abuse or makes an allegation of suspected drug abuse to a supervisor, that supervisor shall attempt to substantiate the allegations.

i. The supervisor shall obtain a written statement from the employee alleging drug or alcohol abuse including all circumstances surrounding the complaint. If the supervisor can substantiate the allegations, he/she shall also document his/her observations.

ii. The supervisor shall forward the reports to the Office of Internal Affairs for an internal investigation.

c. Following the above, the supervisor, with the chief's permission, shall order the employee to undergo an oral swab test. He/she shall transport the employee to the City's designated testing location, if available, or to the nearest emergency medical treatment center.

i. Reasonable suspicion testing shall be required and completed whenever possible within (2) hours of the observation, but in any case, no later than (8) hours after the observation for breath alcohol testing and (32) hours for controlled substance testing.

4. Random testing

Random testing shall be conducted on all persons covered by the drug testing policy of the City of Joplin. Random testing shall be unannounced and conducted with unpredictable frequency throughout the year as per the City of Joplin's drug testing policy.

5. Post Motor Vehicle Crash testing

a. A post-accident test of the employee will be conducted if a motor vehicle crash results in one or more vehicles disabled.

b. The employee involved in the crash will be driven to the testing facility by another employee, preferably a supervisor, not involved in the traffic crash.

c. Failure to report within two hours of the crash will result in disciplinary action, up to and including termination from the City of Joplin.

d. An employee who is subject to post accident testing who fails to remain readily available for such testing, including notifying the supervisor of their location if they leave the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

e. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

f. In the rare event that the City of Joplin is unable to perform a drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), City of Joplin may use drug and alcohol post-accident test results administered by local law enforcement officials in lieu of the test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

6. Post Use of Force incident testing

a. Every officer who fires his/her weapon in the line of duty (except for training or when killing an injured or dangerous animal) or uses any means of deadly force shall submit to a breath alcohol test and an oral swab drug test.

b. Post incident testing shall be required and completed whenever possible within two (2) hours of the occurrence, but in any case, no later than eight (8) hours after the incident for breath alcohol testing and thirty-two (32) hours for controlled substance testing.

c. An employee involved in a use of deadly force shall refrain from alcohol consumption for eight (8) hours following the incident.

7. Return to work testing

a. Return to work oral swab drug and alcohol testing for all safety-sensitive employees covered by the City of Joplin Employee Manual shall be required for all employees who previously tested positive on a controlled substance or alcohol test.

b. See “Return to Work Testing” in the City of Joplin Employee Manual.

8. Follow-up testing

a. Follow-up testing will be administered to safety-sensitive employees who return to work following a previous positive test to alcohol and/or drugs. The employee will

be subjected to frequent unannounced random oral swab drug and breath testing for at least six (6) times in the following twelve (12) months after return to work. This random testing may be continued for a period of up to sixty (60) months from the employee's return to work date.

b. See "Follow-up Testing" in the City of Joplin Employee Manual.

D. Employee drug/alcohol testing process

1. Oral swab is the primary method for the screening of drug abuse in employees and a breath test is the primary method for the screening of prohibited alcohol amounts in employees.

a. The Human Resources department will notify a supervisor within the police department with paperwork for the random testing of a department employee. That supervisor will ensure that the employee is notified as soon as the employee reports to work. If the employee is on duty at the time, the supervisor will notify the employee as soon as practical. If the employee is not to report to work on that day, the Human Resource department will be advised.

i. If the employee to be tested is on duty, the employee will report to the testing facility contracted by the City and the Supervisor will notify the Human Resources that they are sending the employee.

ii. If the employee will not be on duty between the hours of 8:00 A.M. to 5:00 P.M., the paperwork to be signed and the form to accompany the officer to the testing facility will be forwarded to the employee's supervisor. The supervisor will do the following:

A. Place the time that the employee is notified on both forms and initial them.

B. On the appropriate form, have the employee sign, date and enter the time he/she received notification.

C. Send the employee, with the other form, to Freeman Hospital's ER where the test is to be administered.

D. The employee is to report to the ER without delay as soon as the employee is notified of the random drug screen.

E. Forward all paperwork back to the Human Resources Department.

E. Disciplinary issues

The City of Joplin policies related to disciplinary action shall be followed when imposing discipline for violations of the alcohol and controlled substance testing policy.

F. Drug abuse training

The City of Joplin shall develop and provide training for all supervisors and managers who are responsible for the administration and enforcement of the City's alcohol and controlled substance testing policy.

V. COORDINATION WITH CITY POLICY

This policy shall be administered in compliance with related policies of the City of Joplin. In the case of apparent conflicts between this policy and the City's policy, the City's policy shall take precedence. The City of Joplin's *Alcohol and Controlled Substance Testing Policy* (8.3 of the City of Joplin Employee Manual) shall be enforced in its entirety. The department policy is a capsulation of the city's policy with some additional clarification and only one additional requirement (see IV. C. 6.).

VI. COMPLIANCE

Violations of this policy, or portions thereof, may result in disciplinary action as described in the City of Joplin's Personnel Rules or the Joplin Police Department's Rules and Regulations and General Orders. Members of the Joplin Police Department, while assigned to or assisting other agencies shall comply with this policy.

VII. APPLICATION

This document constitutes department policy, is for internal use only, and does not enlarge an employee's civil or criminal liability in any way. It shall not be construed as the creation of a higher legal standard of safety or care in an evidentiary sense, with respect to third party claims insofar as the employee's legal duty as imposed by law. Violations of this policy, if proven, can only form a basis of a complaint by this department, and then only in a non-judicial administrative setting.