


NEW JERSEY DEPARTMENT OF THE TREASURY DIVISION OF TAXATION OFFICE OF CRIMINAL INVESTIGATION STANDARD OPERATING PROCEDURE			
DRUG TESTING POLICY			
<i>DISTRIBUTION:</i> All Special Agents			
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<i>REFERENCE:</i> AG Directive 2018-2 Statewide Mandatory Drug Testing; AG Law Enforcement Drug Testing Policy; New Jersey Cannabis Regulatory Commission Guidance on “Workplace Impairment”			

I. PURPOSE

The purpose of this Standard Operating Procedure (SOP) is to establish the Office of Criminal Investigation’s (OCI) policy on mandatory random drug testing and reasonable suspicion drug testing of special agents in accordance to the New Jersey Attorney General’s (AG) Law Enforcement Drug Testing Policy and AG Law Enforcement Directive No. 2018-2 Statewide Mandatory Random Drug Testing. The goal of the policy is to deter illegal drug use by special agents. The policy provides OCI with a mechanism to identify and remove those special agents engaged in the illegal use of drugs. Because illegal drug use is inconsistent with the duties, obligations, and responsibilities of special agents, the policy mandates that special agents who test positive shall be terminated from employment.

The policy seeks to ensure that the employment rights of individual special agents are safeguarded consistent with legal principles. As a result, the policy sets forth procedures for the uniform collection, submission and analysis of drug test specimens. The procedure further seeks to ensure the accuracy and reliability of the drug testing process.

II. APPLICABILITY

A. Personnel

1. Applicants for a position as a special agent who, if appointed, will be responsible for the enforcement of the criminal laws of this State and will be authorized to carry a firearm under N.J.S.A. 2C:39-6.
2. Special agent trainees subject to the Police Training Act while they attend a mandatory basic training course.

3. Sworn special agents who are responsible for the enforcement of the criminal laws of this State or who come under the jurisdiction of the Police Training Act and are authorized to carry a firearm under N.J.S.A. 2C:39-6.
4. The Law Enforcement Drug Testing Policy does not apply to civilian employees of OCI.

B. Employment Status

Drug testing may be categorized by the employment status of the individual being tested and the method by which the individual was selected for testing. These methods include special agent applicant testing, special agent trainee testing, and special agent testing. Testing is required of all special agent applicants and trainees. AG Directive 2018-2 requires OCI to implement a random drug-testing program for all sworn special agents. Further, OCI has an independent obligation to undertake drug testing of individual special agents and special agent trainees when there is a reasonable suspicion to believe that the special agent or special agent trainee is illegally using drugs or is under the influence of a controlled dangerous substance or cannabis during work hours.

1. Applicant Testing

OCI recognizes that drug testing is an important component of a pre-employment background investigation. Thus, prospective employees are tested as a condition of employment. Testing can occur at any point during the pre-employment process.

In addition, applicants for employment may be tested as many times as OCI deems necessary to ensure that the applicants are not engaged in the illegal use of drugs. For example, applicants who have been tested as part of the application process may be tested again if a significant amount of time has elapsed since the previous step in the employment process.

During the pre-employment process, OCI must ensure that it complies with the provisions of the Americans with Disabilities Act (ADA) by refraining from making any medical inquiries. Therefore, the Drug Testing Medication Information form should not be used at the applicant stage, unless a positive test result requires an explanation by the prospective employee. The Drug Testing Medication Information form shall be used if a conditional offer of employment has been made to the applicant.

2. Trainee Testing

Individuals who are hired as special agents who are required to attend and successfully complete a mandatory basic training course approved by the Police Training Commission are subject to drug testing during their attendance at an academy. Trainees will be required to submit one or more urine specimens for testing while they attend a mandatory basic training course. The drug testing of

special agent trainees will be conducted by the academy staff under rules and regulations adopted by the Police Training Commission.

Individual special agent trainees shall also be required to submit a urine specimen for testing when there exists reasonable suspicion to believe that the trainee is illegally using drugs or is under the influence of a controlled dangerous substance or cannabis during work/training hours. A trainee shall be ordered to submit to a drug test based on reasonable suspicion only with the approval of the Supervising Special Agent of OCI and the academy director.

3. Special Agent Testing

Sworn special agents shall be ordered to submit a urine specimen for testing when they have been randomly selected to submit a drug test. Random selection shall be defined as a method of selection in which each and every sworn member of OCI, regardless of rank or assignment, has an equal chance to be selected for drug testing each and every time a selection is conducted.

Sworn special agents shall also be required to submit a urine specimen for testing when there exists reasonable suspicion to believe that the special agent is illegally using drugs or is under the influence of a controlled dangerous substance or cannabis during work hours. A special agent shall be ordered to submit to a drug test based on reasonable suspicion only with the approval of the Supervising Special Agent of OCI.

C. Types of Testing

1. Random Testing

Random drug testing of all state, county, and local sworn law enforcement officers is required by AG Directive 2018-2. Random selection is defined as a method of selecting employees for drug testing in which every member of the agency, regardless of rank or assignment, has an equal chance of being selected each and every time a selection is made. The number of special agents to be selected each time a random test is conducted shall be less than the total number of special agents employed by OCI. AG Directive 2018-2 requires a minimum of ten percent of sworn special agents within OCI be randomly tested each time. OCI must perform the random test at least twice in every calendar year.

OCI is required to choose a method of random selection which ensures that every sworn special agent in OCI has an equal chance of being selected each and every time a selection takes place. In other words, a special agent who has been selected on one or more previous occasions for a random drug test is not excused from future tests. OCI's mechanism for selecting special agents is by computer program.

The random selection process will be verified and documented. OCI will permit representatives of the affected collective bargaining units to witness the selection process. Everyone present at the time of the selection, however, must understand that anyone who discloses the identity of a special agent selected for random

testing, or the fact that a random selection is scheduled to take place prior to the collection of urine specimens, will be subject to discipline.

2. Reasonable Suspicion

OCI must undertake drug testing when there is reasonable suspicion to believe a special agent is engaged in the illegal use of a controlled dangerous substance, or is under the influence of a controlled dangerous substance, including unregulated marijuana, or cannabis during work hours. Reasonable suspicion “requires objective facts which, with inferences, would lead a reasonable person to conclude that drug-related activity is taking or has taken place and that a particular individual is involved in that drug activity”.

The reasonable suspicion standard is “less demanding” than the probable cause standard in two ways. First, the amount of evidence needed to satisfy the reasonable suspicion standard is less than that needed to satisfy the probable cause standard. Second, the type of information used to satisfy the reasonable suspicion standard may be “less reliable than that required to show probable cause”. The following factors should be evaluated to determine the quality and relevance of the information acquired by OCI:

- a. The nature and source of the information;
- b. Whether the information constitutes direct evidence or is hearsay in nature;
- c. The reliability of the informant or source;
- d. Whether corroborating information exists and the degree to which it corroborates the accusation; and
- e. Whether and to what extent the information may be stale.

Before the Supervising Special Agent may order an individual special agent to undergo reasonable suspicion testing, a written report documenting the basis for the test shall be prepared. Under emergent circumstances, approval may be given for a reasonable suspicion test on the basis of a verbal report. Supervising Special Agent(s) who wish to discuss whether the information they possess is sufficient to conduct reasonable suspicion testing should contact the New Jersey Attorney General’s office for advice.

3. Reasonable Suspicion Testing for Cannabis Use

Consuming or being under the influence of cannabis while at work or during work hours is strictly prohibited. Special agents shall be tested for cannabis in the following situations:

- a. Upon reasonable suspicion of the special agent’s use of a cannabis item while engaged in the performance of the special agent’s duties, or
- b. Upon a finding of observable signs of intoxication related to the use of a cannabis item while engaged in the performance of the special agent’s duties.

In the above situations, the drug test shall include a physical evaluation by a Workplace Recognition Expert (WIRE) to determine the special agent's state of impairment and a urinalysis. Until the WIRE is established, OCI will rely on the interim guidance provided by the Cannabis Regulatory Commission.

III. NOTIFICATION OF DRUG TESTING PROCEDURES

A. Applicants

OCI must notify applicants for special agent positions that the pre-employment process will include drug testing. The notification will also indicate that a negative result is a condition of employment and that a positive result will: a) result in the applicant being dropped from consideration for employment; b) cause the applicant's name to be reported to the central drug registry maintained by the Division of State Police; and c) preclude the applicant from being considered for future law enforcement employment for a period of two years from the date of the drug test. In addition, the notification will indicate that if the applicant is currently employed by another agency as a sworn law enforcement officer and the officer tests positive for illegal drug use, the officer's employing agency will be notified of the test results and the officer will be terminated from employment and permanently barred from future law enforcement employment in New Jersey. Applicants shall be further informed that their refusal to submit to a drug test shall result in their no longer being considered for law enforcement employment in New Jersey.

B. Trainees

All newly appointed special agents shall be informed that drug testing is mandatory during basic training. Newly appointed special agents shall also be informed that a negative result is a condition of employment and that a positive result will result in: a) the trainee being dismissed from basic training; b) the trainee's termination from employment; c) inclusion of the trainee's name in the central drug registry maintained by the Division of State Police; and d) the trainee being permanently barred from future law enforcement employment in New Jersey.

Newly appointed special agents shall be further informed that the refusal to submit to a drug test shall result in their dismissal from employment and a permanent ban from future law enforcement employment in New Jersey and inclusion of the trainee's name in the central drug registry maintained by the Division of State Police. Each academy shall include in its rules and regulations a provision implementing drug testing during basic training.

C. Sworn Special Agents

Individual special agents will be ordered to submit to a drug test when there is a reasonable suspicion to believe that the special agent is illegally using drugs or is under the influence of a controlled dangerous substance or cannabis during work hours. Additionally, special agents are subject to mandatory random drug testing pursuant to AG Directive 2018-2.

A negative test result is a condition of employment as a special agent and a positive test result for an illegal substance will result in the following: a) the special agent's termination from employment; b) inclusion of the special agent's name in the central drug registry

maintained by the Division of State Police; and c) the special agent being permanently barred from future law enforcement employment in New Jersey.

Special agents who refuse to submit to a drug test based on reasonable suspicion or random drug testing after being lawfully ordered to do so are subject to the same penalties as those special agents who test positive for the illegal use of drugs. A sworn special agent who resigns or retires after receiving a lawful order to submit a urine specimen for drug testing and who does not provide the specimen shall be deemed to have refused to submit to the drug test.

IV. SPECIMEN ACQUISITION PROCEDURES

A. Preliminary acquisition procedures

1. OCI designates the Internal Affairs (IA) investigator to serve as monitor of the specimen acquisition process. The monitor shall always be of the same gender as the individual being tested (the donor). In the event the IA investigator is not of the same gender, the IA investigator will designate a monitor of the same gender as the donor.
2. Prior to the submission of a specimen, an applicant for a special agent position shall execute a form consenting to the collection and analysis of their urine for illegal drugs (Attachment A). The form shall also advise the applicant that a negative result is a condition of employment and that a positive result will result in the consequences outlined in Section III A of this policy. Applicants are not required to complete a Drug Testing Medication Information form at this time, unless a positive test result requires an explanation by the prospective employee. The Drug Testing Medication Information form shall be used if a conditional offer of employment has been made to the applicant.
3. Prior to the submission of a urine specimen, a trainee enrolled in a basic training course shall execute a form (Attachment B) advising the trainee that a negative result is a condition of employment and that a positive result will result in the consequences outlined in Section III B of this policy. The form shall also advise the trainee that the refusal to participate in the test process carries the same penalties as testing positive. Trainees shall complete a Drug Testing Medication Information form (Attachment D) listing all prescription medication, non-prescription (over-the-counter) medication, dietary supplements, and nutritional supplements that were ingested by the trainee during the past 14 days. The Drug Testing Medication Information form shall be placed in an envelope which is sealed by the donor. The donor shall date and initial the seal, and write their unique identifier (Donor ID) on the envelope.
4. Prior to the submission of a urine specimen, a special agent shall execute a form (Attachment C) advising the special agent that a negative result is a condition of employment and that a positive result will result in the consequences outlined in Section III C of this policy. The form shall also advise the special agent that the refusal to participate in the test process carries the same penalties as testing positive. Sworn special agents shall complete the Drug Testing Medication Information form

(Attachment D) listing all prescription medication, non-prescription (over-the-counter) medication, dietary supplements, and nutritional supplements that were ingested by the special agent during the past 14 days. The Drug Testing Medication Information form shall be placed in an envelope which is sealed by the donor. The donor shall date and initial the seal, and write their unique identifier (Donor ID) on the envelope.

B. Monitor's Responsibilities

1. The monitor of the specimen acquisition process shall be responsible for the following:
 - a. Ensuring that all documentation is fully and accurately completed by the individual submitting the specimen (the donor).
 - b. Collecting specimens in a manner that provides for individual privacy while ensuring the integrity of the specimen. Individual specimens and forms shall be identified throughout the process by the use of donor identification numbers (Donor ID). At no time shall a name appear on any form or specimen container sent to the laboratory.
 - c. Complying with chain of custody procedures established by the laboratory for the collection and submission for analysis of urine specimens.
 - d. Specimens shall be collected utilizing split collection kits supplied by the laboratory. Under no circumstances shall a specimen be collected and submitted for analysis in a specimen container that has not been approved by the New Jersey State Medical Examiner Toxicology Laboratory. It is the responsibility of the IA investigator to contact the laboratory to obtain the Split Specimen Kits and Forensic Urine Drug Testing Custody and Submission Forms (CSF).
 - e. Collecting and submitting urine specimens in accordance with procedures established by the laboratory.
2. In order to ensure the accuracy and integrity of the collection process a monitor may:
 - a. Direct and individual special agent who has been selected for drug testing to remove outer clothing (jackets, sweaters, etc.), empty their pockets, and wash their hands under running water, before they produce a specimen.
 - b. Add tinting agents to the toilet water and secure the area where the specimens are to be collected prior to specimen collection.
3. If the monitor has reason to believe that an individual special agent will attempt to adulterate or contaminate a specimen, substitute another substance or liquid for their specimen, or compromise the integrity of the test process, the monitor may conduct a direct observation of the individual special agent. If a monitor concludes that direct observation is necessary, he or she must document the facts supporting the belief that the special agent will attempt to compromise the integrity of the test process before there can be direct observation.

C. Urine Specimen Collection Procedure

1. Unless otherwise noted, all steps must be completed by the donor in the presence of the monitor.
2. The monitor completes the agency information, donor information, and test information sections of the Custody and Submission Form (CSF).
3. The monitor allows the donor to select one New Jersey Medical Examiner State Toxicology Laboratory issued sealed split specimen collection kit.
4. The donor unseals the split specimen collection kit, removes the specimen bag and specimen containers from the specimen collection container, and places all items on a clean surface.
 - a. The specimen containers shall be kept closed/unsealed at this time.
 - b. The specimen collection container and specimen containers should be kept within view of both the donor and the monitor.
5. The monitor instructs the donor to void a specimen of *at least* 45 mL into the specimen collection container, to not flush the toilet, and return with the specimen container immediately after the specimen is produced.
6. The monitor checks the specimen for adequate volume and the temperature indicator strip on the specimen container within 4 minutes.
 - a. A color change between 90° and 100°F indicates an acceptable specimen temperature. The monitor indicates if the temperature is acceptable by marking either the “Yes” or “No” box in the specimen collection section of the CSF. If a temperature strip does not indicate the acceptable temperature, the monitor must consider the possibility that the special agent attempted to tamper with the collection.
 - b. The monitor must follow the “shy bladder” procedure for donors that initially are unable to produce an adequate amount or urine (see Section D, “Shy Bladder” Procedure).
7. The monitor instructs the donor to split the collected specimen into the specimen containers.
 - a. The donor opens both specimen containers and pours *at least* 30 mL of urine from the collection container in the primary specimen container and *at least* 15 mL of urine from the collection container in the secondary specimen container.
 - b. The donor secures both the specimen containers by placing and securing the lids/caps on the specimen containers.
8. The monitor instructs the donor to seal the specimen containers with the tamper-evidence seals from the CSF.

- a. The donor carefully removes the Bottle A Specimen Container Security Seal from the CSF and places it over the lid/cap and down the sides of the primary specimen container with the greater volume of urine (30mL).
 - b. The donor carefully removes the Bottle B (SPLIT) Specimen Container Security Seal from the CSF and places it over the lid/cap and down the sides of the secondary specimen container with the lesser volume of urine (15mL).
 - c. After the seals are placed on the specimen containers, the donor writes the collection date and his or her initials in the space provided on the security seals to certify that the specimen containers contain the specimen that he or she provided.
9. The monitor prints his/her name, signs and dates the monitor/agency acknowledgment section of the CSF.
 10. The monitor instructs the donor to place both specimens in the front pouch of the specimen bag that contains the absorbent pad.
 11. The monitor separates the white laboratory copy of the CSF, folds it, and places it in the rear pouch of the specimen bag along with the sealed medication information sheet, if provided.
 12. The monitor seals the specimen bag by removing the release liner from the flap and folding the blue adhesive flap to cover the crosshatch slit opening.
 13. Any remaining urine and the specimen collection container may be discarded.
 14. The monitor will take possession of the sealed specimen bag and ensure that it is delivered to the New Jersey State Medical Examiner Toxicology Laboratory in a timely manner (See Section V. Submission of Specimens for Analysis below).

D. "Shy Bladder" Procedure

1. When a donor initially produces an inadequate amount of urine, the monitor must take the following steps:
 - a. Advise the donor to remain on the premises and under the supervision of the test monitor until the monitor is satisfied that the donor cannot produce a specimen.
 - b. While the donor is under supervision, allow the donor to drink up to 40 ounces of fluids distributed reasonably over a period of up to three hours in an attempt to induce the production of a specimen. The monitor shall not direct the donor to ingest more the 40 ounces of fluid.
 - c. Under no circumstances should multiple voids be combined to produce an adequate sample volume.
2. If the donor remains unable to provide a specimen after a reasonable period of time, the monitor may have the donor examined by a doctor to determine whether the

inability to produce a specimen was the result of a medical or physical infirmity or constituted a refusal to cooperate with the drug testing process.

E. Split Specimen

1. A donor whose specimen tested positive may only challenge the positive test result by having the split specimen independently tested by an accredited laboratory. The first specimen will not be retested.
2. The split specimen will be maintained at the laboratory for a minimum of one year following the receipt of a positive drug test result from the laboratory by the submitting agency.
3. The split specimen will be released by the laboratory under the following circumstances:
 - a. The agency is notified by the laboratory that the first specimen tested positive for a controlled substance;
 - b. The agency notifies the donor that the first specimen tested positive for a controlled substance; and
 - c. The agency is informed by the donor whose specimen tested positive that he/she wishes to challenge the positive test result.
4. A representative of the second test laboratory may, in person, take possession of the second sample in accordance with accepted chain of custody procedures of the sample may be sent to the second test laboratory by commercial courier also following accepted chain of custody procedures.
5. Following testing of the split specimen, the independent laboratory will report the result of the split specimen drug test to the donor, to the submitting agency, and to the New Jersey Medical Examiner Toxicology Laboratory medical review officer.

V. SUBMISSION OF SPECIMENS TO THE LABORATORY

- A. The New Jersey State Medical Examiner Toxicology Laboratory is the only facility approved for the analysis of law enforcement drug tests conducted under the Law Enforcement Drug Testing Policy. OCI is not permitted to use any other facility or laboratory for the purpose of analyzing urine specimens for illegal drug use by special agents.
- B. Urine specimens should be submitted to the laboratory as soon as possible after their collection. In the event specimens cannot be submitted to the laboratory within one working day of collection, OCI shall store the specimens in a controlled access refrigerated storage area until submission to the laboratory (Attachment E).
- C. Specimens may be submitted to the laboratory by commercial courier using “next day delivery” or in person (appointments only).

- D. The laboratory will inspect all documentation to ensure that it has been properly completed. Failure to include the appropriate documentation with each submission will cause the laboratory to delay conducting an analysis of the specimen or specimens until the missing documentation is submitted.
- E. In addition to ensuring that the appropriate documentation has been completed and submitted for each specimen, the laboratory shall inspect each specimen for damage and evidence of tampering.
1. The laboratory may reject any specimen it has reason to believe has been tampered with or is damaged; and
 2. Notify OCI in writing with the reason for rejection clearly stated.

VI. ANALYSIS OF SPECIMENS

- A. The analysis of the first specimen shall be done in accordance with currently accepted procedures adopted by the laboratory. These procedures shall include but not be limited to security of the test specimens, chain of custody, initial screening and confirmation testing, parent drug and metabolite cut-off levels and the issuance of final reports. In addition to the controlled substances listed below, the Supervising Special Agent may request that specimens be analyzed for the presence of steroids.
- B. The laboratory's drug testing procedures will screen specimens for the following controlled substance:
- Amphetamines
 - Barbiturates
 - Benzodiazepines
 - Cocaine
 - Methadone
 - Opiates
 - Oxycodone/Oxymorphone
 - Phencyclidine
 - Marijuana/Cannabis (**only** to be included in the testing process when: the special agent is assigned to a federal task force; the special agent holds a federally regulated license, which requires testing (e.g. pilot or commercial driver's license); OCI is specifically required to test by the terms of a federal contract or federal grant; or as outlined in the reasonable suspicion sections II.C.2 and II.C.3. herein)
- C. The laboratory utilizes a two-stage procedure to analyze specimens.
1. In the first stage, all specimens will undergo an initial screening. The initial screening determines whether one or more of the nine substances listed and/or their metabolites are present at or above a designated cutoff. All presumptive positive specimens will undergo a second and more specific type of testing.

2. The second type of testing will employ mass spectrometry detection for the definitive identification and quantitation of drugs and/or metabolites presumptively identified by the initial screen.
- D. When a specimen tests positive at both the initial stage and the second stage, a medical review officer assigned to the laboratory will review the test results together with the medication information form submitted for the specimen. The medical review officer will seek to determine whether any of the substances listed on the form would explain the positive test result. The medical review officer may direct the agency that collected the sample to obtain further information from the individual being tested concerning the medications listed on the medication information form. The medical review office will then issue a report indicating whether or not the sample tested positive due to a listed medication on the medication information form.
 - E. Applicants for law enforcement employment are not required to submit a Drug Testing Medication Information form with their specimen. Therefore, if an applicant tests positive, OCI, following notification from the laboratory, must have the candidate complete the Drug Testing Medication Information form (Attachment D) listing all prescription medication, non-prescription (over-the-counter) medication, dietary supplements, and nutritional supplements that were ingested by the donor during the 14 days prior to the specimen collection. The Drug Testing Medication Information form shall be placed in an envelope which is sealed by the donor. The donor shall date and initial the seal, and write their Donor ID on the envelope. OCI is responsible for submitting the envelope to the laboratory. A review of the form will be conducted by the medical review officer as outlined above.
 - F. In addition to the testing outlined above, specimens submitted to the laboratory may be tested for additional substances at the request of OCI. The laboratory has the ability through its own facilities, as well as facilities employed as references laboratories, to arrange drug testing for steroid abuse, as well as other currently abused substances.

VII. DRUG TEST RESULTS

- A. The laboratory will provide written test results for every specimen submitted for analysis. All efforts will be made to deliver these reports within 15 working days of the submission. Reports will be addressed to the IA investigator listed on the specimen submission record. Positive test results will be sent to the IA investigator by certified mail.
- B. In some cases, the laboratory will report that a specimen tested positive for a particular substance and that the information on the Drug Testing Medication Information form explains the test result. For example, the laboratory may report that a specimen tested positive for barbiturates and a prescription for that barbiturate was listed on the form by the special agent. At this point, it is the responsibility of OCI to determine whether the special agent, trainee, or applicant had a valid prescription for that drug. Special agents who do not have a valid prescription are subject to disciplinary action including termination by OCI.

- C. Under no circumstances will the laboratory provide OCI with verbal reports of drug test results. In addition, no individual or OCI may ask the laboratory to conduct a second analysis of a specimen that has already been analyzed.

VIII. CONSEQUENCES OF A POSITIVE TEST RESULT

- A. When an applicant tests positive for illegal drug use:
 - 1. The applicant shall be immediately removed from consideration for employment by OCI.
 - 2. The applicant shall be reported to the Central Drug Registry maintained by the Division of State Police by OCI.
 - 3. The applicant shall be precluded from consideration for future law enforcement employment by any law enforcement agency in New Jersey for a period of two years.
 - 4. Where the applicant is currently employed by another agency as a sworn law enforcement officer, the officer's current employer shall be notified of the positive test result. Under these circumstances, the officer's current employer is required to dismiss the officer from employment and also report his or her name to the Central Drug Registry maintained by the Division of State Police.

- B. When a trainee tests positive for illegal drug use, or is found to have been consuming or being under the influence of cannabis or marijuana while at work/training or during work/training hours, subject to rules adopted by the Police Training Commission:
 - 1. The trainee shall be immediately dismissed from basic training subject to rules adopted by the Police Training Commission and suspended from employment by OCI.
 - 2. Upon final disciplinary action by OCI, the trainee shall be terminated from employment as a special agent.
 - 3. The trainee shall be reported to the Central Drug Registry maintained by the Division of State Police.
 - 4. The trainee shall be permanently barred from future law enforcement employment in New Jersey.

- C. When a special agent tests positive for illegal drug use, or is found to have been consuming or being under the influence of cannabis or marijuana while at work or during work hours:
 - 1. The special agent shall be immediately suspended from all duties.

2. The special agent shall be administratively charged and, upon final disciplinary action, terminate from employment as a special agent.
3. The special agent shall be reported by OCI to the Central Drug Registry maintained by the Division of State Police.
4. The special agent shall be permanently barred from future law enforcement employment in New Jersey.

IX. CONSEQUENCES OF A REFUSAL TO SUBMIT TO A DRUG TEST

- A. Applicants who refuse to submit to a drug test during the pre-employment process shall be immediately removed from consideration for law enforcement employment and barred from consideration for future law enforcement employment for a period of two years from the date of the refusal. In addition, OCI shall forward the applicant's name to the Central Drug Registry and note that the individual refused to submit to a drug test.
- B. Trainees who refuse to submit to a drug test during basic training shall be immediately removed from the academy and immediately suspended from employment. Upon a finding that the trainee did in fact refuse to submit a sample, the trainee shall be terminate from law enforcement employment and permanently barred from future law enforcement employment in New Jersey. In addition, OCI shall forward the trainee's name to the Central Drug Registry and not that the individual refused to submit to a drug test.
- C. Sworn special agents who refuse to submit to a drug test ordered in response to reasonable suspicion or random selection shall be immediately suspended from employment. Upon a finding that the special agent did in fact refuse to submit a sample, the special agent shall be terminated from law enforcement employment and permanently barred from future law enforcement employment in New Jersey. In addition, OCI shall forward the special agent's name to the Central Drug Registry and not that the individual refused to submit to a drug test. Please note that if there is no valid reason why a special agent cannot produce a specimen, the special agent's actions will be treated as a refusal. In addition, a sworn special agent who resigns or retires after receiving a lawful order to submit a urine specimen for drug testing and who does not provide the specimen shall be deemed to have refused to submit to the drug test.

X. RESIGNATION/RETIREMENT IN LIEU OF DISCIPLINARY ACTION

A sworn special agent who tests positive for illegal drug use or refuses to submit to a drug test, and who resigns or retires in lieu of disciplinary action or prior to the completion of final disciplinary action, shall be reported by OCI to the Central Drug Registry and shall be permanently barred from future law enforcement employment in New Jersey.

XI. RECORD KEEPING

- A. OCI's Internal Affairs investigator shall maintain all records relating to the drug testing of applicants, trainees, and special agents.

B. OCI's drug testing records shall include but not be limited to:

1. All drug testing:

- a. the identity of those ordered to submit urine samples;
- b. the reason for that order;
- c. the date the urine was collected;
- d. the monitor of the collection process;
- e. the chain of custody of the urine sample from the time it was collected until the time it was received by the laboratory
- f. the results of the drug testing;
- g. copies of notifications to the subject;
- h. for any positive result, documentation from the special agent's physician that the medication was lawfully prescribed and does not render the special agent unfit for duty;
- i. for any positive result or refusal, appropriate documentation of disciplinary action.

2. Random drug testing, the records shall also include the following information:

- a. a description of the process used to randomly select special agents for drug testing;
- b. the date selection was made;
- c. a copy of the document listing the identities of those selected for drug testing;
- d. a list of those who were actually tested; and
- e. the date(s) those special agents were tested.

C. Drug testing records shall be maintained with the level of confidentiality required for internal affairs files pursuant to the New Jersey Internal Affairs Policy and Procedures.

XII. CENTRAL DRUG REGISTRY

A. OCI shall notify the Central Drug Registry maintained by the Division of State Police of the identity of applicants, trainees and sworn special agents who test positive for the illegal use of drugs; are found to have been consuming or being under the influence of cannabis while at work/training or during work/training hours; or refuse an order to submit to a drug test (Attachment F).

B. A sworn special agent who tests positive for illegal drug use; is found to have been consuming or being under the influence of cannabis or marijuana while at work or during work hours; or refuses to submit to a drug test, and who resigns or retires in lieu of disciplinary action or prior to the completion of final disciplinary action, shall be reported by OCI to the Central Drug Registry and shall be permanently barred from future law enforcement employment in New Jersey.

- C. Notifications to the Central Drug Registry shall include the following information as to each individual:
1. Name and address of OCI, and IA investigator;
 2. Name of the individual who tested positive;
 3. Last known address of the individual;
 4. Date of birth;
 5. Social security number;
 6. SBI number (if known);
 7. Gender;
 8. Race;
 9. Eye color;
 10. Substance the individual tested positive for, the circumstances of the special agent being found to have been consuming or being under the influence of cannabis or marijuana while at work or during work hours, or circumstances of the refusal to submit a urine sample;
 11. Date of the drug test or refusal;
 12. Date of final dismissal or separation from OCI; and
 13. Whether the individual was an applicant, trainee or sworn special agent.
- D. The certification section of the notification form must be completed by the Supervising Special Agent, and notarized with a raised seal.
- E. Notifications to the central registry shall be sent to:
- Division of State Police
State Bureau of Identification
Central Drug Registry
P.O. Box 7068
West Trenton, New Jersey 08628-0068
- F. Information contained in the central registry may be released by the Division of State Police only under the following circumstances:
1. In response to an inquiry from a criminal justice agency as part of the background investigation process for prospective or new personnel; and
 2. In response to a court order.

XIII. NOTICE TO ATTORNEY GENERAL

- A. In the event of (1) a positive drug test by a special agent, (2) a refusal by a special agent to take the drug test, or (3) administration of a reasonable suspicion drug test to a special agent, the Supervising Special Agent or a designee shall provide a confidential written notice to the Attorney General, through the Division of Criminal Justice's Prosecutor's Supervision and Training Bureau within 10 days. Upon completion of an disciplinary action, OCI shall report the discipline to the Attorney General.

- B. By January 31st of each year, OCI shall provide written notice to the Attorney General of the dates testing was conducted during the prior year, the total number of sworn special agents employed by OCI, the total number of sworn special agents tested, and the total number of sworn special agents who tested positive.

XIV. PUBLIC ACCESSIBILITY AND CONFIDENTIALITY

- A. All random drug testing policies adopted by OCI shall be made available to the public upon request and shall be posted on OCI's website. Annual reports to the Attorney General also shall be made available to the public upon request and shall be posted on OCI's website.
- B. All written reports created or submitted pursuant to Attorney General Directed 2018-2 that identify specific special agents are confidential and not subject to public disclosure.

XV. ADDENDUMS

- A. Attorney General Law Enforcement Directive No. 2018-2 Statewide Mandatory Drug Testing
- B. Attorney General's Law Enforcement Drug Testing Policy
- C. Attachment A – Drug Testing Applicant Notice and Acknowledgment
- D. Attachment B – Drug Testing Trainee Notice and Acknowledgment
- E. Attachment C – Drug Testing Office Notice and Acknowledgment
- F. Attachment D – Drug Testing Medication Information
- G. Attachment E – Directions to the State Toxicology Laboratory
- H. Attachment F – Notification to the Central Drug Registry
- I. New Jersey Cannabis Regulatory Commission Guidance on "Workplace Impairment"
- J. New Jersey Cannabis Regulatory Commission Reasonable Suspicion Observed Behavior Report



State of New Jersey

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
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GURBIR S. GREWAL
Attorney General

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2018-2

TO: All Law Enforcement Chief Executives
FROM: Gurbir S. Grewal, Attorney General
DATE: March 20, 2018
SUBJECT: **Statewide Mandatory Random Drug Testing**

I. Background

The Attorney General is responsible for ensuring that law enforcement provides the highest level of service to the public, and that all officers have the physical and mental capacity to perform their duties safely and effectively. An officer's life, the lives of fellow officers, and the lives of the public depend on the officer's alertness and ability to make rational decisions unaffected by illegal drug use.

Testing of law enforcement officers in New Jersey for illegal drug use is governed by the *Attorney General's Law Enforcement Drug Testing Policy* (hereinafter "AG Testing Policy"). Established in 1986, the AG Testing Policy has been reviewed and updated regularly over the years since its issuance. The AG Testing Policy already requires the testing of applicants and trainees for law enforcement positions. It further requires all law enforcement officers be tested if reasonable suspicion exists that they are using drugs illegally.

For the past 20 years, the AG Testing Policy has encouraged, but not required, law enforcement agencies to adopt a random drug testing component to departmental drug testing policies. Because illicit drug use can be hidden, random drug testing provides an objective procedure to test for violations of a department's drug policy. At the same time, the AG Testing Policy recognizes the importance of working with unions and governing bodies to ensure that privacy and collective bargaining interests are protected when implementing a random drug testing process.

Some County Prosecutors already mandate random drug testing in each police department within their jurisdiction and a significant number of police departments in New Jersey presently conduct random drug testing of their officers. To ensure that all law enforcement agencies are employing random drug testing and doing so in a consistent manner,



this Directive establishes a uniform policy requiring that all law enforcement agencies statewide conduct mandatory random drug testing of all sworn officers.

Therefore, pursuant to the authority granted to me under the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, I, Gurbir S. Grewal, hereby DIRECT all law enforcement and prosecuting agencies operating under the authority of the laws of the State of New Jersey to implement and comply with the following policies, procedures, standards, and practices.

II. Implementation

A. Applicability

This Directive shall apply to all state, county, and municipal law enforcement agencies and sworn officers who are responsible for enforcing the criminal laws in New Jersey, come under the jurisdiction of the Police Training Act, and are authorized to carry a firearm under N.J.S.A. 2C:39-6. Applicants for a position as a law enforcement officer and law enforcement trainees shall continue to be subject to drug testing, as set forth in the AG Testing Policy.

B. Establishment of Random Drug Testing Policy

All state, county, and municipal law enforcement agencies shall adopt and/or revise their existing drug testing policies, consistent with this Directive, either by rule, regulation, or standard operating procedure (“SOP”), as required by state law.

C. Frequency and Number of Officers to be Tested

Each agency in its policy shall delineate the frequency and number of officers to be selected for random drug testing. At a minimum, random drug testing shall be conducted at least once in the remainder of 2018 and at least twice in every subsequent calendar year. At least 10 percent of the total number of sworn officers within an agency shall be randomly tested each time.

D. Notification of Random Drug Testing Policy

Each agency shall notify all sworn officers of the implementation of a random drug testing policy. The notification shall indicate that, upon an initial positive result, the officer shall be suspended immediately from all duties. The notification also shall indicate that, upon final disciplinary action, the officer shall be terminated from employment as a law enforcement officer, the officer shall be reported to the *Central Drug Registry* maintained by the State Police, and the officer shall be permanently barred from future law enforcement employment in New Jersey.

E. Continuation of AG Testing Policy Procedures

Each agency shall ensure that its random drug testing policy is consistent with the procedures set forth in the AG Testing Policy including:

1. Specimen Acquisition Procedures (Section IV);
2. Submission of Specimens for Analysis (Section V);
3. Analysis of Specimens (Section VI);
4. Drug Test Results (Section VII);
5. Consequences of a Positive Test Result (Section VIII);
6. Consequences of a Refusal to Submit to a Drug Test (Section IX);
7. Resignation/Retirement in lieu of Disciplinary Action (Section X);
8. Record Keeping (Section XI); and
9. Central Drug Registry (Section XII).

F. Notification to County Prosecutor

In the event of (1) a positive drug test by an officer, (2) a refusal by an officer to take the drug test, or (3) administration of a reasonable suspicion drug test to an officer, the law enforcement agency's chief executive or a designee shall provide a confidential written notice to their County Prosecutor or his/her designee within 10 days. Upon completion of any disciplinary action, each agency shall report the discipline to the County Prosecutor or designee.

By December 31st of each year, every law enforcement agency shall provide written notice to their County Prosecutor or his/her designee of the dates of testing conducted during the prior year, the total number of sworn officers employed by the agency, the total number of sworn officers tested, and the total number of sworn officers who tested positive.

G. Annual Report to Attorney General

By January 31st of each year, each County Prosecutor shall submit a report to the Attorney General, through the Division of Criminal Justice's Prosecutors' Supervision and Training Bureau. This summary shall include a statement indicating those agencies under the County Prosecutor's supervision that are in compliance with this Directive and those that are not. The summary shall not reveal any subject officer's identity.

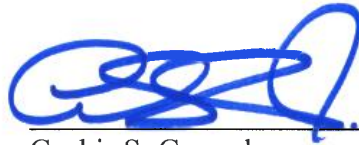
III. Public Accessibility and Confidentiality

All random drug testing policies adopted by law enforcement agencies shall be made available to the public upon request and shall be posted on the agency's website. Annual reports from the County Prosecutors to the Attorney General (as required by Section II.G, above) also shall be made available to the public upon request and shall be posted on the agency's website.

All written reports created or submitted pursuant to this Directive that identify specific officers are confidential and not subject to public disclosure.

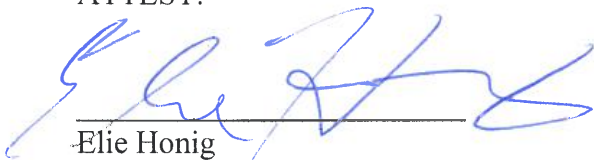
IV. Effective Date

This Directive shall take effect immediately upon issuance. All drug testing policies shall be adopted and/or revised in accordance with this Directive within 30 days. The AG Testing Policy will be updated to conform with this Directive within 30 days.



Gurbir S. Grewal
Attorney General

ATTEST:



Elie Honig
Director, Division of Criminal Justice

Issued on: March 20, 2018

Attorney General's Law Enforcement Drug Testing Policy



Revised February 2023

DRUG TESTING

Attorney General's Law Enforcement Drug Testing Policy

Revised February 2023

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DRUG TESTING

Attorney General's Law Enforcement Drug Testing Policy

Revised February 2023

I. INTRODUCTION

As the chief law enforcement officer of the State, the Attorney General is duty bound to ensure that the citizens of New Jersey receive police services from law enforcement officers whose competency and integrity are beyond question. The Attorney General is responsible for ensuring that the illegal use of drugs by individual law enforcement officers does not undermine the integrity of law enforcement agencies or threaten the safety and morale of other law enforcement officers.

This policy supersedes the *New Jersey Law Enforcement Drug Testing Manual (7/15/01)* as well as prior versions of the *Attorney General's Law Enforcement Drug Testing Policy* (rev. April 2018 and Dec. 2020). The December 2020 revisions were intended to implement the New Jersey State Medical Examiner Toxicology Laboratory's transition to updated urine specimen collection kits and the necessary related procedures. In the April 2018 revision, the Policy was revised in accordance with Attorney General Directive 2018-2 requiring the implementation of a random drug testing policy by all state, county, and municipal law enforcement agencies under the legal authority of the Attorney General. It also required the drug testing of law enforcement applicants as a condition of employment.

In February 2021, the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA), N.J.S.A. 24:6I-31 et seq., was enacted, and in April 2022, the Cannabis Regulatory Commission approved applications from Alternative Treatment Centers to expand into recreational cannabis sales, marking the opening of the regulated cannabis market in New Jersey. Due to the complex nature of the law, and in order to provide uniformity in State employee drug testing as it pertains to the use of cannabis, it is necessary to revise this policy.

The Division of Criminal Justice together with the New Jersey State Medical Examiner Toxicology Laboratory (the Laboratory) shall continue to be responsible for coordinating the New Jersey law enforcement drug testing program. Information concerning the program may be found at the Division's website www.njdci.org.

The goal of the policy is deterring illegal drug use, including unregulated marijuana, by law enforcement officers. The policy provides law enforcement agencies with a mechanism to identify and remove those law enforcement officers engaged in the illegal use of drugs. Because illegal drug use is inconsistent with the duties, obligations and responsibilities of sworn law enforcement officers, the policy mandates that officers who test positive shall be terminated from employment.

The policy sets forth uniform methods and procedures for implementing and administering law enforcement drug testing. The policy further outlines the duties and responsibilities of the State's law enforcement agencies and chief executive officers with respect to the drug testing process. Every law enforcement agency under the authority of the Attorney General must implement a drug testing program consistent with this policy.

The policy seeks to ensure that the employment rights of individual law enforcement officers are safeguarded consistent with legal principles. As a result, the policy sets forth procedures for the

uniform collection, submission and analysis of drug test specimens. The procedure further seeks to ensure the accuracy and reliability of the drug testing process. Every law enforcement agency must administer its drug testing program in a way that is fundamentally fair to individual law enforcement officers and is consistent with due process requirements and the laws of this State.

II. APPLICABILITY

A. Personnel

1. Applicants for a position as a law enforcement officer who, if appointed, will be responsible for the enforcement of the criminal laws of this State and will be authorized to carry a firearm under N.J.S.A. 2C:39-6.
2. Law enforcement officer trainees subject to the Police Training Act or in the pre-service training program of the New Jersey State Police, while they attend a mandatory basic training course.
3. Sworn law enforcement officers who are responsible for the enforcement of the criminal laws of this State, come under the jurisdiction of the Police Training Act or are members of the New Jersey State Police and are authorized to carry a firearm under N.J.S.A. 2C:39-6.
4. The Law Enforcement Drug Testing Policy does not apply to civilian employees of a law enforcement agency. Agencies that wish to drug test civilian employees should consult with legal counsel to establish drug testing policies and procedures consistent with human resource policy and/or collective bargaining rights.

B. Employment Status

Drug testing may be categorized by the employment status of the individual being tested and the method by which the individual was selected for testing. These methods include applicant testing, trainee testing, and officer testing. Testing is required of all police applicants and trainees. Pursuant to AG Directive 2018-2, law enforcement agencies are required to implement a random drug testing program for all sworn officers in their departments. Further, law enforcement agencies have an independent obligation to undertake drug testing of individual officers and trainees when there is reasonable suspicion to believe that the officer or trainee is illegally using drugs or is under the influence of a controlled dangerous substance or cannabis during work hours.

1. Applicant Testing

The Law Enforcement Drug Testing Policy recognizes that drug testing is an important component of a pre-employment background investigation. Thus, prospective employees should be drug tested as a condition of employment. The policy requires law enforcement agencies engaged in the hiring process to drug test prospective employees at any point during the pre-employment process.

In addition, applicants for employment may be tested as many times as the law enforcement agency deems necessary to ensure that the applicants are not engaged in the illegal use of drugs. For example, applicants who have been drug tested as part of the application process may be tested again if a significant amount of time has elapsed since the previous step in the employment process.

During the pre-employment process, the agency must ensure that it complies with the provisions of the Americans with Disabilities Act (ADA) by refraining from making any medical inquiries. Therefore, the Drug Testing Medication Information form should not be used at the applicant stage, unless a positive test result requires an explanation by the prospective employee. The Drug Testing Medication Information form shall be used if a conditional offer of employment has been made to the applicant.

2. Trainee Testing

Individuals hired as law enforcement officers who are required to attend and successfully complete a mandatory basic training course approved by the Police Training Commission or the New Jersey State Police are subject to drug testing during their attendance at a police academy. Trainees will be required to submit one or more urine specimens for testing while they attend a mandatory basic training course. The drug testing of law enforcement trainees will be conducted by the police academy staff under rules and regulations adopted by the Police Training Commission or the New Jersey State Police.

Individual trainees shall also be required to submit a urine specimen for testing when there exists reasonable suspicion to believe that the trainee is illegally using drugs or is under the influence of a controlled dangerous substance or cannabis during work/training hours. A trainee shall be ordered to submit to a drug test based on reasonable suspicion only with the approval of the county prosecutor, the chief executive officer of the trainee's agency, or the academy director.

3. Officer Testing

Sworn law enforcement officers shall be ordered to submit a urine specimen for testing when they have been randomly selected to submit to a drug test. Random selection shall be defined as a method of selection in which each and every sworn member of the law enforcement agency, regardless of rank or assignment, has an equal chance to be selected for drug testing each and every time a selection is conducted.

Sworn law enforcement officers shall also be required to submit a urine specimen for testing when there exists reasonable suspicion to believe that the officer is illegally using drugs or is under the influence of a controlled dangerous substance or cannabis during work hours. An officer shall be ordered to submit to a drug test based on reasonable suspicion only with the approval of the county prosecutor or the chief executive officer of the officer's agency.

Urine specimens may also be collected from law enforcement officers during a regularly scheduled and announced medical examination or a fitness for duty examination. However, the collection and analysis of these specimens are not governed by this policy.

C. Types of Testing

1. Random Testing

Random drug testing of all state, county, and local sworn law enforcement officers is required by AG Directive 2018-2. Random selection is defined as a method of selecting employees for drug testing in which every member of the agency, regardless of rank or

assignment, has an equal chance of being selected each and every time a selection is made.¹ The number of officers to be selected each time a random test is conducted shall be less than the total number of sworn officers employed by the agency. AG Directive 2018-2 requires a minimum of ten percent of the sworn officers within an agency be randomly tested each time. Each agency must perform the random test at least twice in every calendar year.

Agencies must establish a random drug testing program by rule, regulation or procedure. A municipal police department should have the appropriate authority adopt a rule or regulation as defined by N.J.S.A. 40A:14-118 mandating random drug testing. County, State, or campus police agencies should have the appropriate administrative, executive, or law enforcement official adopt a policy or procedure mandating random drug testing. Random drug testing cannot be implemented until the rule, regulation or procedure has been in effect for a minimum of 60 days.

The agency must choose a method of random selection which ensures that every sworn officer in the agency has an equal chance of being selected each and every time a selection takes place. In other words, an officer who has been selected on one or more previous occasions for a random drug test is not excused from future tests. The mechanism for selecting officers can be as simple and inexpensive as placing names in a hat, or as complex and expensive as a custom computer program.

The random selection process should be verified and documented. The agency should permit representatives of the affected collective bargaining units to witness the selection process. Everyone present at the time of the selection, however, must understand that anyone who discloses the identity of an officer selected for random testing, or the fact that a random selection is scheduled to take place prior to the collection of urine specimens, will be subject to discipline.

2. Reasonable Suspicion

Agencies must undertake drug testing when there is reasonable suspicion to believe a law enforcement officer is engaged in the illegal use of a controlled dangerous substance, or is under the influence of a controlled dangerous substance, including unregulated marijuana, or cannabis during work hours. Reasonable suspicion "requires objective facts which, with inferences, would lead a reasonable person to conclude that drug-related activity is taking or has taken place and that a particular individual is involved in that drug activity."²

The reasonable suspicion standard is "less demanding" than the probable cause standard in two ways.³ First, the amount of evidence needed to satisfy the reasonable suspicion standard is less than that needed to satisfy the probable cause standard.⁴ Second, the type of information used to satisfy the reasonable suspicion standard may be "less reliable than that required to show probable cause."⁵ The following factors

¹ New Jersey Transit PBA Local 304 v. New Jersey Transit Comp., 290 N.J. Super 406, 432 (App. Div. 1996)

² Caldwell v. New Jersey Department of Corrections, 250 N. J. Super. 592, (App. Div. 1991) certif. denied, 127 N.J. 555(1991)

³ Drake v. County of Essex, 275 N.J. Super. 592, 609 (App. Div. 1994)

⁴ Id.

⁵ Id.

should be evaluated to determine the quality and relevance of the information acquired by the law enforcement agency:

- a. The nature and source of the information;
- b. Whether the information constitutes direct evidence or is hearsay in nature;
- c. The reliability of the informant or source;
- d. Whether corroborating information exists and the degree to which it corroborates the accusation; and
- e. Whether and to what extent the information may be stale.

Every law enforcement agency subject to the jurisdiction of the Attorney General must include in its rules and regulations a provision governing reasonable suspicion drug testing. Before a law enforcement executive may order an individual officer to undergo reasonable suspicion testing, the agency shall prepare a written report documenting the basis for the test. Under emergent circumstances, approval may be given for a reasonable suspicion test on the basis of a verbal report. Law enforcement executives who wish to discuss whether the information they possess is sufficient to conduct reasonable suspicion testing should contact their county prosecutor's office for advice.

3. Reasonable Suspicion Testing for Cannabis Use

Consuming or being under the influence of cannabis while at work or during work hours is strictly prohibited. Officers shall be tested for cannabis in the following situations:

- a. Upon reasonable suspicion of the officer's use of a cannabis item while engaged in the performance of the officer's duties, or
- b. Upon a finding of observable signs of intoxication related to the use of a cannabis item while engaged in the performance of the officer's duties.

In the above situations, the drug test shall include a physical evaluation by a Workplace Recognition Expert (WIRE)⁶ to determine the officer's state of impairment and a urinalysis.

III. NOTIFICATION OF DRUG TESTING PROCEDURES

A. Applicants

Agencies must notify applicants for law enforcement positions that the pre-employment process will include drug testing. The notification will also indicate that a negative result is a condition of employment and that a positive result will: a) result in the applicant being dropped from consideration for employment; b) cause the applicant's name to be reported to the central drug registry maintained by the Division of State Police; and c) preclude the applicant from being considered for future law enforcement employment for a period of two years from the date of the drug test. In addition, the notification will indicate that if the applicant is currently employed by another agency as a sworn law enforcement officer and the officer tests positive

⁶ Until such time as the WIRE program is developed and WIREs are implemented in the respective police agencies, law enforcement shall refer to the interim guidance for reasonable suspicion testing for cannabis issued by the Cannabis Regulatory Commission. Available at: <https://www.nj.gov/cannabis/about/news-events/approved/20220907.shtml>.

for illegal drug use, the officer's employing agency will be notified of the test results and the officer will be terminated from employment and permanently barred from future law enforcement employment in New Jersey. Applicants shall be further informed that their refusal to submit to a drug test shall result in their no longer being considered for law enforcement employment in New Jersey.

B. Trainees

All newly appointed law enforcement officers shall be informed that drug testing is mandatory during basic training. Newly appointed officers shall also be informed that a negative result is a condition of employment and that a positive result will result in: a) the trainee being dismissed from basic training; b) the trainee's termination from employment; c) inclusion of the trainee's name in the central drug registry maintained by the Division of State Police; and d) the trainee being permanently barred from future law enforcement employment in New Jersey.

Newly appointed officers shall be further informed that the refusal to submit to a drug test shall result in their dismissal from employment and a permanent ban from future law enforcement employment in New Jersey and inclusion of the trainee's name in the central drug registry maintained by the Division of State Police. Each police academy shall include in its rules and regulations a provision implementing drug testing during basic training.

C. Sworn Law Enforcement Officers

Each municipal law enforcement agency shall include in its rules and regulations as defined in N.J.S.A. 40A:14-118, and every county and state law enforcement agency shall include in appropriate standard operating procedures, a provision that individual law enforcement officers will be ordered to submit to a drug test when there is a reasonable suspicion to believe that the officer is illegally using drugs or is under the influence of a controlled dangerous substance or cannabis during work hours, as well as a provision that officers are subject to mandatory random drug testing pursuant to AG Directive 2018-2.

The agency's rules and regulations or appropriate standard operating procedures shall also provide that a negative result is a condition of employment as a sworn officer and that a positive result for an illegal substance will result in the following: a) the officer's termination from employment; b) inclusion of the officer's name in the central drug registry maintained by the Division of State Police; and c) the officer being permanently barred from future law enforcement employment in New Jersey.

The agency's rules and regulations or appropriate standard operating procedures shall further provide that officers who refuse to submit to a drug test based on reasonable suspicion or random drug testing after being lawfully ordered to do so are subject to the same penalties as those officers who test positive for the illegal use of drugs. A sworn law enforcement officer who resigns or retires after receiving a lawful order to submit a urine specimen for drug testing and who does not provide the specimen shall be deemed to have refused to submit to the drug test.

IV. SPECIMEN ACQUISITION PROCEDURES

A. Preliminary acquisition procedures

1. The law enforcement agency shall designate a member of its staff to serve as monitor of the specimen acquisition process. The monitor shall always be of the same gender as the individual being tested (the donor). In the event there is no member of the same gender available from the agency collecting the specimens, the agency may request that a member of the same gender from another law enforcement agency serve as monitor of the process.
2. Prior to the submission of a specimen, an applicant for a law enforcement position shall execute a form consenting to the collection and analysis of their urine for illegal drugs (Attachment A). The form shall also advise the applicant that a negative result is a condition of employment and that a positive result will result in the consequences outlined in Section III A of this policy. Applicants are not required to complete a Drug Testing Medication Information form at this time, unless a positive test result requires an explanation by the prospective employee. The Drug Testing Medication Information form shall be used if a conditional offer of employment has been made to the applicant.
3. Prior to the submission of a urine specimen, a trainee enrolled in a basic training course shall execute a form (Attachment B) advising the trainee that a negative result is a condition of employment and that a positive result will result in the consequences outlined in Section III B of this policy. The form shall also advise the trainee that the refusal to participate in the test process carries the same penalties as testing positive. Trainees shall complete a Drug Testing Medication Information form (Attachment D) listing all prescription medication, non-prescription (over-the-counter) medication, dietary supplements, and nutritional supplements that were ingested by the officer during the past 14 days. The Drug Testing Medication Information form shall be placed in an envelope which is sealed by the donor. The donor shall date and initial the seal, and write their unique identifier (Donor ID) on the envelope.
4. Prior to the submission of a urine specimen, an officer shall execute a form (Attachment C) advising the officer that a negative result is a condition of employment and that a positive result will result in the consequences outlined in Section III C of this policy. The form shall also advise the officer that the refusal to participate in the test process carries the same penalties as testing positive. Sworn officers shall complete the Drug Testing Medication Information form (Attachment D) listing all prescription medication, non-prescription (over-the-counter) medication, dietary supplements, and nutritional supplements that were ingested by the officer during the past 14 days. The Drug Testing Medication Information form shall be placed in an envelope which is sealed by the donor. The donor shall date and initial the seal, and write their unique identifier (Donor ID) on the envelope.

B. Monitor's Responsibilities

1. The monitor of the specimen acquisition process shall be responsible for the following:

- a. Ensuring that all documentation is fully and accurately completed by the individual submitting the specimen (the donor).
 - b. Collecting specimens in a manner that provides for individual privacy while ensuring the integrity of the specimen. Individual specimens and forms shall be identified throughout the process by the use of donor identification numbers (Donor ID). At no time shall a name appear on any form or specimen container sent to the Laboratory.
 - c. Complying with chain of custody procedures established by the Laboratory for the collection and submission for analysis of urine specimens.
 - d. Specimens shall be collected utilizing split collection kits supplied by the Laboratory. Under no circumstances shall a specimen be collected and submitted for analysis in a specimen container that has not been approved by the NJ State Medical Examiner Toxicology Laboratory. It is the responsibility of each agency to contact the Laboratory to obtain the Split Specimen Kits and Forensic Urine Drug Testing Custody and Submission Forms (CSF).
 - e. Collecting and submitting urine specimens in accordance with procedures established by the Laboratory.
2. In order to ensure the accuracy and integrity of the collection process a monitor may:
 - a. Direct an individual officer who has been selected for drug testing to remove outer clothing (jackets, sweaters, etc.), empty their pockets, and wash their hands under running water, before they produce a specimen.
 - b. Add tinting agents to toilet water and secure the area where the specimens are to be collected prior to specimen collection.
 3. If the monitor has reason to believe that an individual officer will attempt to adulterate or contaminate a specimen, substitute another substance or liquid for their specimen, or compromise the integrity of the test process, the monitor may conduct a direct observation of the individual officer. If a monitor concludes that direct observation is necessary, he or she must document the facts supporting the belief that the officer will attempt to compromise the integrity of the test process before there can be direct observation.

C. Urine Specimen Collection Procedure

1. Unless otherwise noted, all steps must be completed by the donor in the presence of the monitor.
2. The monitor completes the agency information, donor identification, and test information sections of the Custody and Submission Form (CSF).
3. The monitor allows the donor to select one NJ Medical Examiner State Toxicology Laboratory issued sealed split specimen collection kit.

4. The donor unseals the split specimen collection kit, removes the specimen bag and specimen containers from the specimen collection container, and places all items on a clean surface.
 - a. The specimen containers shall be kept closed/unsealed at this time.
 - b. The specimen collection container and specimen containers should be kept within view of both the donor and the monitor.
5. The monitor instructs the donor to void a specimen of **at least** 45 mL into the specimen collection container, to not flush the toilet, and return with the specimen container immediately after the specimen is produced.
6. The monitor checks the specimen for adequate volume and the temperature indicator strip on the specimen container within 4 minutes.
 - a. A color change between 90° and 100°F indicates an acceptable specimen temperature. The monitor indicates if the temperature is acceptable by marking either the “Yes” or “No” box in the specimen collection section of the CSF. If a temperature strip does not indicate the acceptable temperature, the monitor must consider the possibility that the officer attempted to tamper with the collection.
 - b. The monitor must follow the “shy bladder” procedure for donors that initially are unable to produce an adequate amount of urine (See Section D, “Shy Bladder” Procedure).
7. The monitor instructs the donor to split the collected specimen into the specimen containers.
 - a. The donor opens both specimen containers and pours **at least** 30 mL of urine from the collection container in the primary specimen container and **at least** 15 mL of urine from the collection container in the secondary specimen container.
 - b. The donor secures both specimen containers by placing and securing the lids/caps on the specimen containers.
8. The monitor instructs the donor to seal the specimen containers with tamper-evidence seals from the CSF.
 - a. The donor carefully removes the Bottle A Specimen Container Security Seal from the CSF and places it over the lid/cap and down the sides of the primary specimen container with the greater volume of urine (30 mL).
 - b. The donor carefully removes the Bottle B (SPLIT) Specimen Container Security Seal from the CSF and places it over the lid/cap and down the sides of the secondary specimen container with the lesser volume of urine (15 mL).

c. After the seals are placed on the specimen containers, the donor writes the collection date and his or her initials in the space provided on the security seals to certify that the specimen containers contain the specimen that he or she provided.

9. The monitor prints his/her name, signs and dates the monitor/agency acknowledgement section of the CSF.
10. The monitor instructs the donor to place both specimens in the front pouch of the specimen bag that contains the absorbent pad.
11. The monitor separates the white laboratory copy of the CSF, folds it, and places it in the rear pouch of the specimen bag along with the sealed medication information sheet, if provided.
12. The monitor seals the specimen bag by removing the release liner from the flap and folding the blue adhesive flap to cover the cross hatch slit opening.
13. Any remaining urine and the specimen collection container may be discarded.
14. The monitor will take possession of the sealed specimen bag and ensure that it is delivered to the NJ State Medical Examiner Toxicology Laboratory in a timely manner (See Section V. Submission of Specimens for Analysis below).

D. "Shy Bladder" Procedure

1. When a donor initially produces an inadequate amount of urine, the monitor must take the following steps:
 - a. Advise the donor to remain on the premises and under the supervision of the test monitor until the monitor is satisfied that the donor cannot produce a specimen.
 - b. While the donor is under supervision, allow the donor to drink up to 40 ounces of fluids distributed reasonably over a period of up to three hours in an attempt to induce the production of a specimen. The monitor shall not direct the donor to ingest more than 40 ounces of fluid.
 - c. Under no circumstances, should multiple voids be combined to produce an adequate sample volume.
2. If the donor remains unable to provide a specimen after a reasonable period of time, the monitor may have the donor examined by a doctor to determine whether the inability to produce a specimen was the result of a medical or physical infirmity or constituted a refusal to cooperate with the drug testing process.

E. Split Specimen

1. A donor whose specimen tested positive may only challenge the positive test result by having the split specimen independently tested by an accredited laboratory. The first specimen will not be retested.

2. The split specimen will be maintained at the Laboratory for a minimum of one year following the receipt of a positive drug test result from the Laboratory by the submitting agency.
3. The split specimen will be released by the Laboratory under the following circumstances:
 - a. The agency is notified by the Laboratory that the first specimen tested positive for a controlled substance;
 - b. The agency notifies the donor that the first specimen tested positive for a controlled substance; and
 - c. The agency is informed by the donor whose specimen tested positive that he/she wishes to challenge the positive test result.
4. A representative of the second test laboratory may, in person, take possession of the second sample in accordance with accepted chain of custody procedures or the sample may be sent to the second test laboratory by commercial courier also following accepted chain of custody procedures.
5. Following testing of the split specimen, the independent laboratory will report the result of the split specimen drug test to the donor, to the submitting agency, and to the NJ State Medical Examiner Toxicology Laboratory medical review officer.

V. SUBMISSION OF SPECIMENS TO THE LABORATORY

- A. The NJ State Medical Examiner Toxicology Laboratory is the only facility approved for the analysis of law enforcement drug tests conducted under the Law Enforcement Drug Testing Policy. Law enforcement agencies are not permitted to use any other facility or laboratory for the purpose of analyzing urine specimens for illegal drug use by law enforcement officers.
- B. Urine specimens should be submitted to the Laboratory as soon as possible after their collection. In the event specimens cannot be submitted to the Laboratory within one working day of collection, the law enforcement agency shall store the specimens in a controlled access refrigerated storage area until submission to the Laboratory (Attachment E).
- C. Specimens may be submitted to the Laboratory by commercial courier using “next day delivery” or in person (appointments only).
- D. The Laboratory will inspect all documentation to ensure that it has been properly completed. Failure to include the appropriate documentation with each submission will cause the Laboratory to delay conducting an analysis of the specimen or specimens until the missing documentation is submitted.
- E. In addition to ensuring that the appropriate documentation has been completed and submitted for each specimen, the Laboratory shall inspect each specimen for damage and evidence of tampering.
 1. The Laboratory may reject any specimen it has reason to believe has been tampered with or is damaged; and
 2. Notify the submitting agency in writing with the reason for rejection clearly stated.

VI. ANALYSIS OF SPECIMENS

- A. The analysis of the first specimen shall be done in accordance with currently accepted procedures adopted by the Laboratory. These procedures shall include but not be limited to security of the test specimens, chain of custody, initial screening and confirmation testing, parent drug and metabolite cut-off levels and the issuance of final reports. In addition to the controlled substances listed below, every Law Enforcement Executive may request that specimens be analyzed for the presence of steroids.
- B. The Laboratory's drug testing procedures will screen specimens for the following controlled substances:
- Amphetamines
 - Barbiturates
 - Benzodiazepines
 - Cocaine
 - Methadone
 - Opiates
 - Oxycodone/Oxymorphone
 - Phencyclidine
 - Marijuana/Cannabis (**only** to be included in the testing process when: the officer is assigned to a federal task force; the officer holds a federally regulated license, which requires testing (e.g. pilot or commercial driver's license); the law enforcement agency is specifically required to test by the terms of a federal contract or federal grant; or as outlined in the reasonable suspicion sections II.C.2 and II.C.3 herein)⁷
- C. The Laboratory utilizes a two-stage procedure to analyze specimens.
1. In the first stage, all specimens will undergo an initial screening. The initial screening determines whether one or more of the nine substances listed and/or their metabolites are present at or above a designated cutoff. All presumptive positive specimens will undergo a second and more specific type of testing.
 2. The second type of testing will employ mass spectrometry detection for the definitive identification and quantitation of drugs and/or metabolites presumptively identified by the initial screen.
- D. When a specimen tests positive at both the initial stage and the second stage, a medical review officer assigned to the Laboratory will review the test results together with the medication information form submitted for the specimen. The medical review officer will seek to determine whether any of the substances listed on the form would explain the positive test result. The medical review officer may direct the agency that collected the sample to obtain further information from the individual being tested concerning the medications listed on the medical information form. The medical review officer will then issue a report indicating whether or not the sample tested positive due to a listed medication on the medication information form.
- E. Applicants for law enforcement employment are not required to submit a Drug Testing Medication Information form with their specimen. Therefore, if an applicant tests positive,

⁷ The agency shall treat a positive test result in these instances consistent with Sections VII and VIII.

the law enforcement agency, following notification from the Laboratory, must have the candidate complete the Drug Testing Medication Information form (Attachment D) listing all prescription medication, non-prescription (over-the-counter) medication, dietary supplements, and nutritional supplements that were ingested by the donor during the 14 days prior to the specimen collection. The Drug Testing Medication Information form shall be placed in an envelope which is sealed by the donor. The donor shall date and initial the seal, and write their Donor ID on the envelope. The agency is responsible for submitting the envelope to the Laboratory. A review of the form will be conducted by the medical review officer as outlined above.

- F. In addition to the testing outlined above, specimens submitted to the Laboratory may be tested for additional substances at the request of the law enforcement agency submitting the specimen. The Laboratory has the ability through its own facilities, as well as facilities employed as references laboratories, to arrange drug testing for steroid abuse, as well as other currently abused substances.

VII. DRUG TEST RESULTS

- A. The Laboratory will provide written test results for every specimen submitted for analysis. All efforts will be made to deliver these reports within 15 working days of the submission. Reports will be addressed to the contact person listed on the specimen submission record. Positive test results will be sent to the contact person by certified mail.
- B. In some cases, the Laboratory will report that a specimen tested positive for a particular substance and that the information on the Drug Testing Medication Information form explains the test result. For example, the Laboratory may report that a specimen tested positive for barbiturates and a prescription for that barbiturate was listed on the form by the officer. At this point, it is the responsibility of the submitting agency to determine whether the officer, trainee, or applicant had a valid prescription for that drug. Officers who do not have a valid prescription are subject to disciplinary action including termination by the agency.
- C. Under no circumstances will the Laboratory provide law enforcement agencies with verbal reports of drug test results. In addition, no individual or agency may ask the Laboratory to conduct a second analysis of a specimen that has already been analyzed.

VIII. CONSEQUENCES OF A POSITIVE TEST RESULT

- A. When an applicant tests positive for illegal drug use:
 - 1. The applicant shall be immediately removed from consideration for employment by the agency.
 - 2. The applicant shall be reported to the Central Drug Registry maintained by the Division of State Police by the law enforcement agency to which the individual applied.
 - 3. The applicant shall be precluded from consideration for future law enforcement employment by any law enforcement agency in New Jersey for a period of two years.
 - 4. Where the applicant is currently employed by another agency as a sworn law enforcement officer, the officer's current employer shall be notified of the positive test result. Under these circumstances, the officer's current employer is required to

dismiss the officer from employment and also report his or her name to the Central Drug Registry maintained by the Division of State Police.

- B. When a trainee tests positive for illegal drug use, or is found to have been consuming or being under the influence of cannabis or marijuana while at work/training or during work/training hours, subject to rules adopted by the Police Training Commission or New Jersey State Police:
 - 1. The trainee shall be immediately dismissed from basic training subject to rules adopted by the Police Training Commission or New Jersey State Police and suspended from employment by his or her appointing authority.
 - 2. Upon final disciplinary action by the appointing authority, the trainee shall be terminated from employment as a law enforcement officer.
 - 3. The trainee shall be reported to the Central Drug Registry maintained by the Division of State Police.
 - 4. The trainee shall be permanently barred from future law enforcement employment in New Jersey.
- C. When a sworn law enforcement officer tests positive for illegal drug use, or is found to have been consuming or being under the influence of cannabis or marijuana while at work or during work hours:
 - 1. The officer shall be immediately suspended from all duties.
 - 2. The officer shall be administratively charged and, upon final disciplinary action, terminated from employment as a law enforcement officer.
 - 3. The officer shall be reported by his or her employer to Central Drug Registry maintained by the Division of State Police.
 - 4. The officer shall be permanently barred from future law enforcement employment in New Jersey.

IX. CONSEQUENCES OF A REFUSAL TO SUBMIT TO A DRUG TEST

- A. Applicants who refuse to submit to a drug test during the pre-employment process shall be immediately removed from consideration for law enforcement employment and barred from consideration for future law enforcement employment for period of two years from the date of the refusal. In addition, the appointing authority shall forward the applicant's name to the Central Drug Registry and note that the individual refused to submit to a drug test.
- B. Trainees who refuse to submit to a drug test during basic training shall be immediately removed from the academy and immediately suspended from employment. Upon a finding that the trainee did in fact refuse to submit a sample, the trainee shall be terminated from law enforcement employment and permanently barred from future law enforcement employment in New Jersey. In addition, the appointing authority shall forward the trainee's name to the Central Drug Registry and note that the individual refused to submit to a drug test.
- C. Sworn law enforcement officers who refuse to submit to a drug test ordered in response to reasonable suspicion or random selection shall be immediately suspended from employment. Upon a finding that the officer did in fact refuse to submit a sample, the

officer shall be terminated from law enforcement employment and permanently barred from future law enforcement employment in New Jersey. In addition, the appointing authority shall forward the officer's name to the Central Drug Registry and note that the individual refused to submit to a drug test. Please note that if there is no valid reason why an officer cannot produce a specimen, the officer's actions will be treated as a refusal. In addition, a sworn law enforcement officer who resigns or retires after receiving a lawful order to submit a urine specimen for drug testing and who does not provide the specimen shall be deemed to have refused to submit to the drug test.

X. RESIGNATION/RETIREMENT IN LIEU OF DISCIPLINARY ACTION

A sworn law enforcement officer who tests positive for illegal drug use or refuses to submit to a drug test, and who resigns or retires in lieu of disciplinary action or prior to the completion of final disciplinary action, shall be reported by his or her employer to Central Drug Registry and shall be permanently barred from future law enforcement employment in New Jersey.

XI. RECORD KEEPING

A. Each law enforcement agency's Internal Affairs Unit shall maintain all records relating to the drug testing of applicants, trainees and law enforcement officers.

B. Each agency's drug testing records shall include but not be limited to:

1. All drug testing:

- a. the identity of those ordered to submit urine samples;
- b. the reason for that order;
- c. the date the urine was collected;
- d. the monitor of the collection process;
- e. the chain of custody of the urine sample from the time it was collected until the time it was received by the Laboratory;
- f. the results of the drug testing;
- g. copies of notifications to the subject;
- h. for any positive result, documentation from the officer's physician that the medication was lawfully prescribed and does not render the officer unfit for duty;
- i. for any positive result or refusal, appropriate documentation of disciplinary action.

2. Random drug testing, the records shall also include the following information:

- a. a description of the process used to randomly select officers for drug testing;
- b. the date selection was made;
- c. a copy of the document listing the identities of those selected for drug testing;
- d. a list of those who were actually tested; and

- e. the date(s) those officers were tested.
- C. Drug testing records shall be maintained with the level of confidentiality required for internal affairs files pursuant to the New Jersey Internal Affairs Policy and Procedures.

XII. CENTRAL DRUG REGISTRY

- A. Every law enforcement agency shall notify the Central Drug Registry maintained by the Division of State Police of the identity of applicants, trainees and sworn law enforcement officers who test positive for the illegal use of drugs; are found to have been consuming or being under the influence of cannabis while at work/training or during work/training hours; or refuse an order to submit to a drug test (Attachment F).
- B. A sworn law enforcement officer who tests positive for illegal drug use; is found to have been consuming or being under the influence of cannabis or marijuana while at work or during work hours; or refuses to submit to a drug test, and who resigns or retires in lieu of disciplinary action or prior to the completion of final disciplinary action, shall be reported by his or her employer to Central Drug Registry and shall be permanently barred from future law enforcement employment in New Jersey.
- C. Notifications to the Central Drug Registry shall include the following information as to each individual:
 - 1. Name and address of the submitting agency, and contact person;
 - 2. Name of the individual who tested positive;
 - 3. Last known address of the individual;
 - 4. Date of birth;
 - 5. Social security number;
 - 6. SBI number (if known);
 - 7. Gender;
 - 8. Race;
 - 9. Eye color;
 - 10. Substance the individual tested positive for, the circumstances of the officer being found to have been consuming or being under the influence of cannabis or marijuana while at work or during work hours, or circumstances of the refusal to submit a urine sample;
 - 11. Date of the drug test or refusal;
 - 12. Date of final dismissal or separation from the agency; and
 - 13. Whether the individual was an applicant, trainee or sworn law enforcement officer.
- D. The certification section of the notification form must be completed by the chief or director, and notarized with a raised seal.
- E. Notifications to the central registry shall be sent to:

Division of State Police
State Bureau of Identification

Central Drug Registry
P.O. Box 7068
West Trenton, New Jersey 08628-0068

- F. Information contained in the central registry may be released by the Division of State Police only under the following circumstances:
1. In response to an inquiry from a criminal justice agency as part of the background investigation process for prospective or new personnel; and
 2. In response to a court order.

ATTACHMENT A

DRUG TESTING

APPLICANT NOTICE AND ACKNOWLEDGMENT

I, _____, understand that as part of the pre-employment process, the _____ will conduct a comprehensive background investigation to determine my suitability for the position for which I have applied.

I understand that as part of this process, I will undergo drug testing through urinalysis. I understand that a negative drug test result is a condition of employment. I understand that if I refuse to undergo the testing, I will be rejected from employment.

I understand that if I produce a positive test result for illegal drug use, I will be rejected for employment.

I understand that if I produce a positive test result for illegal drug use or refuse to take the test, that information will be forwarded to the Central Drug Registry maintained by the Division of State Police. Information from that registry can be made available by court order or as part of a confidential investigation relating to employment with a criminal justice agency.

I understand that if I produce a positive test result for illegal drug use and am not currently employed as a sworn law enforcement officer, I will be barred from future law enforcement employment in New Jersey for two years from the date of the test. After this two-year period, the positive test result may be considered in evaluating my fitness for future criminal justice employment.

I understand that if I am currently employed as a sworn law enforcement officer and I produce a positive test result for illegal drug use, my current law enforcement employer will be notified of the positive test result. In addition, I will be dismissed from my law enforcement position and I will be permanently barred from law enforcement employment.

I have read and understand the information contained on this "Applicant Notice and Acknowledgment" form. I agree to undergo drug testing through urinalysis as part of the pre-employment process.

Signature of Applicant Date

Signature of Witness Date

ATTACHMENT B

DRUG TESTING

TRAINEE NOTICE AND ACKNOWLEDGMENT

I, _____, understand that as part of the program of training at the _____, I will undergo unannounced drug testing by urinalysis either through a random drug testing procedure or where there is reasonable suspicion to believe I am illegally using drugs or am under the influence of a controlled dangerous substance or cannabis during work/training hours.

I understand that a negative drug test result is a condition of my continued attendance at the above listed training program. I understand that if I refuse to undergo the testing, I will be dismissed from the training program and from my law enforcement position.

I understand that if I produce a positive test result for illegal drug use, I will be dismissed from the academy.

I understand that if I produce a positive test result for illegal drug use, the academy will notify my employer of the positive test result. In addition, I will be permanently dismissed from my law enforcement position.

I understand that if I produce a positive test result for illegal drug use or refuse to take the test, that information will be forwarded to the Central Drug Registry maintained by the Division of State Police. Information from that registry can be made available by court order or as part of a confidential investigation relating to employment with a criminal justice agency.

I understand that if I produce a positive test result for illegal drug use, I will be permanently barred from serving as a law enforcement officer in New Jersey.

I have read and understand the information contained on this "Trainee Notice and Acknowledgment" form. I agree to undergo drug testing through urinalysis as part of the academy training program.

Signature of Trainee Date

Signature of Witness Date

ATTACHMENT C

DRUG TESTING

OFFICER NOTICE AND ACKNOWLEDGMENT

I, _____, understand that as part of my employment with _____, I am required to undergo unannounced drug testing by urinalysis either through a random drug testing procedure or where there is reasonable suspicion to believe I am illegally using drugs or am under the influence of a controlled dangerous substance or cannabis during work hours.

I understand that a negative drug test result is a condition of my continued employment as a sworn officer at the above listed department.

I understand that if I produce a positive test result for illegal drug use, it will result in my termination from employment.

I understand that if I refuse to undergo testing, it will result in the same penalties as a positive test for the illegal use of drugs.

I understand that if I produce a positive test result for illegal drug use or refuse to take the test, the information will be forwarded to the Central Drug Registry maintained by the Division of State Police. Information from that registry can be made available by court order or as part of a confidential investigation relating to my employment with a criminal justice agency.

I understand that if I produce a positive test result for illegal drug use, I will be permanently barred from future employment as a law enforcement officer in New Jersey.

I understand that if I resign or retire after receiving a lawful order to submit a urine specimen for drug testing and do not provide the specimen, I shall be deemed to have refused to submit to the drug test.

I have read and understand the information contained on this "Officer Notice and Acknowledgment" form. I agree to undergo drug testing through urinalysis as a condition of my continued employment as required by law.

Signature of Officer Date

Signature of Witness Date

ATTACHMENT D

DRUG TESTING MEDICATION INFORMATION

As part of the drug testing process, it is essential that you inform us of all medications you have taken in the last fourteen (14) days. Please *carefully* complete the information below.

Check all that apply:

___ A. During the past 14 days I have taken the following medication prescribed by a physician:

	Name of Medication	Prescribing Physician	Date Last Taken
1			
2			
3			

___ B. During the past 14 days, I have taken the following non-prescription medications (cough medicine, cold tablets, aspirin, diet medication, nutritional supplements, etc.)

	Name of Medication	Date Last Taken
1		
2		
3		

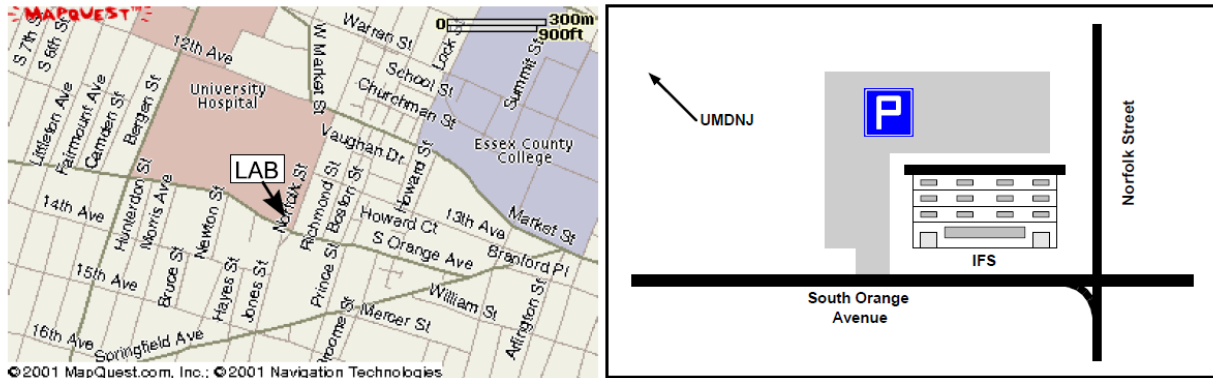
___ C. During the past 14 days, I have taken NO prescription or non-prescription medications.

_____ Donor ID and Initials

_____ Date

ATTACHMENT E

Directions to



**State Toxicology Laboratory
Edwin H. Albano Institute of Forensic Science (IFS)**
325 Norfolk Street
Newark, New Jersey
973-648-3915

From Garden State Parkway North:

1. Take Exit 144, South Orange Avenue.
2. Make a right on South Orange Avenue.
3. Continue about 25 blocks to intersection at Bergen Street (UMDNJ campus is on left.)
4. Continue down South Orange Avenue past traffic light to driveway on left before two story brick building (IFS).

From Garden State Parkway South:

1. Take Exit 145, East Orange.
2. Take 1-280 East to first exit (Newark).
3. Make a right on First Street. This becomes Bergen Street.
4. Continue to fifth traffic light at South Orange Avenue.
5. Make a left.
6. Continue down South Orange Avenue past traffic light to driveway on left before two story brick building (IFS).

From New Jersey Turnpike North:

1. Take Exit 14, Newark.
2. After toll plaza, take 1-78 West (express or local).
3. Take Exit 56, Hillside Avenue.
4. Continue on Hillside Avenue to end at Avon Avenue.
5. Make left on Avon Avenue.
6. Continue one block to traffic light on Irvine Turner Blvd.
7. Make right on Irvine Turner Blvd. (which becomes Jones St.) and continue to traffic light at South Orange Avenue.
8. Turn left and enter first driveway on right behind two story brick building (IFS).

From New Jersey Turnpike South:

1. Take Exit 15W to 1-280 West to Exit 14B, Clifton Avenue.
2. At the traffic light, make a left.
3. Continue on Clifton Avenue to eighth traffic light at South Orange Avenue and Norfolk Street.
4. Turn right and enter first driveway on right behind two story brick building (IFS).

NEW JERSEY CANNABIS REGULATORY COMMISSION GUIDANCE ON “WORKPLACE IMPAIRMENT”



Pursuant to N.J.S.A. 24:6I-52a(2)(a), the New Jersey Cannabis Regulatory Commission (“NJ-CRC”) is charged with prescribing standards for a Workplace Impairment Recognition Expert (“WIRE”) certification, to be issued to full- or part-time employees, or others contracted to perform services on behalf of an employer, based on education and training in detecting and identifying an employee’s usage of, or impairment from, a cannabis item or other intoxicating substance, and for assisting in the investigation of workplace accidents.

This document is intended to serve as guidance until the NJ-CRC formulates and approves standards for WIRE certifications. Additionally, a template “Reasonable Suspicion” Observation Report Form is included for download and use. Please note that the sample form is not cannabis-specific.

Cannabis is a drug that can remain in the bodily fluids of users for a long period of time and although tests are improving in accuracy there is no perfect test for detecting present cannabis impairment. Therefore, best practice has been for employers to establish evidence-based protocols for documenting observed behavior and physical signs of impairment to develop reasonable suspicion, and then to utilize a drug test to verify whether or not an individual has used an impairing substance in recent history.

Although N.J.S.A. 24:6I-52 provides that Workplace Impairment Recognition Experts can be certified and assist in the documentation of the physical and behavioral signs of intoxication, the statute does not impede the ability of employers to continue to utilize established protocols for developing reasonable suspicion of impairment and using that documentation, paired with other evidence, like a drug test, to make the determination that an individual violated a drug free workplace policy. In some industries, these protocols are federally mandated.

ALL EMPLOYERS, whether operating in the cannabis industry or otherwise, shall be guided accordingly:

Pursuant to N.J.S.A. 24:6I-52a(1), and in accordance with all state and federal laws, an employee shall not be subject to any adverse action by an employer solely due to the presence of cannabinoid metabolites in the employee’s bodily fluid as a result of engaging in conduct permitted under N.J.S.A. 24:6I-31 *et al.* However:

- Employers have the right to maintain a drug free workplace consistent with the requirements of N.J.S.A. 24:6I-52; and
- Employers may require an employee to undergo a drug test upon reasonable suspicion of an employee’s usage of cannabis or cannabis products while engaged in the performance of the employee’s work responsibilities, or upon finding any observable signs of impairment related to usage of cannabis or cannabis products, or as part of a random drug test program, or following a work-related accident subject to investigation by the employer.

A scientifically reliable objective testing method that indicates the presence of cannabinoid metabolites in the employee’s bodily fluid alone is insufficient to support an adverse employment action. However, such a test combined with evidence-based documentation of physical signs or other evidence of impairment during an employee’s prescribed work hours may be sufficient to support an adverse employment action.

In order to demonstrate physical signs or other evidence of impairment sufficient to support an adverse employment action against an employee for suspected cannabis use or impairment during an employee’s prescribed work hours employers may:

- Designate an interim staff member to assist with making determinations of suspected cannabis use during an employee’s prescribed work hours. This employee:

- Should be sufficiently trained to determine impairment and qualified to complete the Reasonable Suspicion Observation Report; and
- May be a third-party contractor.
- Utilize a uniform “Reasonable Suspicion” Observation Report (see below) that documents the behavior, physical signs, and evidence that support the employer’s determination that an employee is reasonably suspected of being under the influence during an employee’s prescribed work hours. The employer should establish a Standard Operating Procedure for completing such a report that includes:
 - the employee’s manager or supervisor or an employee at the manager or supervisor level; and
 - an interim staff member that has been designated to assist with determining whether an employee is reasonably suspected of being impaired during an employee’s prescribed work hours, or a second manager or supervisor.
- An example form is attached to this guidance, however, if employers already utilize a Reasonable Suspicion Observation Report to determine when drug testing is necessary, they may continue to do so.
- An employer may use a cognitive impairment test, a scientifically valid, objective, consistently repeatable, standardized automated test of an employee’s impairment, and/or an ocular scan, as physical signs or evidence to establish reasonable suspicion of cannabis use or impairment at work.

Note on Federal Contracts: N.J.S.A. 24:6I-52b(1)(b) specifically provides that if it is determined that any of the provisions set forth in that section of the law result in a provable adverse impact on an employer subject to the requirements of a federal contract, then the employer may revise their employee prohibitions to be consistent with federal law, rules, and regulations. As such, employers may be required by federal contract or law to follow specific protocols related to determining reasonable suspicion and drug testing and are permitted under N.J.S.A. 24:6I-52 to continue to do so.

DISCLAIMER: The purpose of this guidance is to clarify and explain the NJ-CRC’s understanding of the existing legal requirements under the governing law. This guidance does not impose any additional requirements that are not included in the law and does not establish additional rights for any person or entity. Please note, however, that adverse employment actions may impact employees’ protected rights under various laws including, but not limited to, state and federal anti-discrimination laws. When incorporating this guidance, employers should ensure compliance with all state and federal employment laws.

Issued: September 9, 2022



Jeff Brown
Executive Director
New Jersey Cannabis Regulatory Commission

REASONABLE SUSPICION OBSERVED BEHAVIOR REPORT

Behavior that provides reasonable suspicion supporting a test for controlled substances or alcohol use must be observed and documented by a supervisor. If possible, the behavior should be observed and documented by two supervisors. The documentation of the employee's conduct shall be prepared by the observing supervisor(s) within 24 hours of the observed behavior or before the results of the tests are released, whichever is earlier. Distribute this report to appropriate authorities based on agency policy and procedures while maintaining employee confidentiality.

Employee Name _____ Employee ID Number _____

Employee Job Title _____ Agency _____

Employee is reporting for duty _____

Employee is already on duty _____

Behavioral observation timeline:

From (date/time) _____ / _____ am/pm To (date/time) _____ / _____ am/pm

Site or Location where observation(s) occurred:

Street Address _____

City _____

Zip Code _____

CAUSE FOR REASONABLE SUSPICION

NOTE: A manager or supervisor must complete this form. A combination of one or more observable signs and symptoms of drug or alcohol use must be observed to establish reasonable suspicion. Determination of reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, body odors or speech (ABBS) of the employee. The observations may include indications of the chronic and withdrawal effects of controlled substances. In making a determination of reasonable suspicion, additional factors may include, but are not limited to the following:

- Pattern of unsatisfactory job performance or work habits;
- Occurrence of a serious or potentially serious work-related accident that may have been caused by human error or flagrant violations of safety, security, or other operating procedures;
- Evidence of illegal substance use, possession, sale, or delivery while on duty and/or possession of drug paraphernalia;
- Information provided by either a reliable or credible source independently corroborated or having corroborative evidence from a supervisor;

Physical Signs or Symptoms (CIRCLE ALL THAT APPLY)

Flush/pale/sweaty face
 Profuse/excessive sweating
 Red/bloodshot eyes
 Glassy/watery eyes
 Closed eyes
 Droopy eyelids
 Dilated/constricted pupils

Dry mouth/lip smacking
 Vomiting/excessive belching
 Shaking hands/body tremors/twitching
 Disheveled appearance
 Needle tracks or puncture marks
 Frequent sniffing
 Shortness of breath/difficulty breathing
 Runny nose/sores around nostrils

Odor of alcohol
 Odor of marijuana
 Odor of chemicals

Behavioral Indicators (CIRCLE ALL THAT APPLY)

Agitated/insulting speech
 Combative/threatening speech
 Incoherent/slurred/slow speech
 Rapid/rambling/repetitive speech
 Delayed/mumbling speech
 Shouting/whispering/silent
 Uncharacteristically talkative

Irritable/angry/impulsive
 Use of profanity/argumentative
 Swaying/stumbling/staggering
 Lack of coordination
 Disoriented/confused
 Euphoric
 Tearful
 Impaired judgment
 Sleepy/stupor

Sad, depressed, withdrawn
 Anxious/fearful
 Cannot control machinery/equipment
 Excessive yawning/fatigue/lethargy
 Unaccounted time/extended breaks
 Loss of inhibition
 Inappropriate wearing of sunglasses
 Falling down/reaching for support
 In appropriate wearing of outerwear



Description of actions or behaviors Provide a detailed description of the behaviors or indicators you observed.
Apply BOAS - Describe Behavior, O odors, Apppearance, Speech when documenting observations.

Post Accident (Complete if applicable) Specify indicators of drug or alcohol use as a potential factor in this accident:

Employee Interview Ask employee, "Explain the behaviors we have observed" and provide employee response:

Checklist Answer the following questions to establish reasonable cause for testing. Consult with your Human Resources Business Partner, Human Resources Representative, Appointing Authority or designee to determine appropriateness of testing upon answering the following questions.

1. Has impairment been displayed by the employee in their workplace appearance, actions and/or performance?
 Yes No
2. Could the impairment result from the possible use of drugs and/or alcohol?
 Yes No
3. Is the impairment current?
 Yes No
4. Did you personally witness the situation and/or the concerning appearance, actions, behavior or performance?
 Yes No
5. Are observers able to (and/or have they) document(ed) facts about the situation?
 Yes No

Observer Information (Must be a manager or supervisor)

Supervisor/Manager Name: _____

Title: _____ **Date/Time:** _____

IMPORTANT NOTE: SECONDARY OBSERVER must complete a separate, original form. Always seek a secondary observation from another supervisor, manager, or team lead.



Additional Documentation

SAMPLE