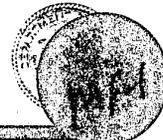


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Issues and Practices

Police Drug Testing

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Police Drug Testing

by

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May 1987

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Chapter 1

Introduction and methodology

Introduction

A growing number of police agencies are now requiring their officers to submit to urine tests to determine illegal drug usage. Many departments are concerned about widespread drug use among young people, and have begun testing applicants. Other departments began testing tenured employees after one or more officers were involved in drug-related incidents. These departments saw drug testing as one way to prevent similar incidents and to assure the public that most officers were drug-free.

Police drug testing programs vary in scope from tests based on reasonable suspicion to mandatory random tests of all officers. Disciplinary policies range from providing opportunities for rehabilitation to recommending termination for any drug violation.

Purpose of this report

This Issues and Practices report is geared to law enforcement agencies that are now planning drug testing programs or are researching the issues. It is also intended to assist departments that have already started drug testing, but are thinking of expanding or modifying their programs.

Making informed decisions about drug testing means digesting volumes of conflicting technical information and legal opinions. Developing equitable policies means balancing the interests of the department as an employer with the rights of officers to privacy, due process, and respect.

This report combines information about technical, legal, and policy issues of concern to police agencies with practical advice from five major departments that are operating drug testing programs. Specific examples of policies and procedures are included. These discussions and materials are aimed at helping readers make informed choices as they design programs to meet the particular needs of their own departments.

Contents

The remainder of Chapter 1 explains the methodology used in preparing this report, and presents a brief overview of the drug testing programs in five departments visited by the authors. Chapter 2 discusses some of the prob-

lems created when police officers use drugs, and lists the major benefits and limitations of drug testing programs.

Chapter 3 explains several types of urine tests for drugs of abuse, presents guidelines for controlling the chain of custody of urine samples, and includes a checklist for selecting a laboratory.

Chapter 4 presents an overview of drug testing policy initiatives on the Federal, State, and local levels. It also lists the various situations in which five police agencies are now testing for drug use. Chapter 5 focuses on testing police applicants and probationary officers, and discusses specific procedures used in four departments. Chapter 6 addresses issues involved in testing tenured officers, including testing based on reasonable suspicion, testing officers in sensitive jobs, testing during medical examinations, and random testing.

Chapter 7 focuses on the role of employee-assistance programs in addressing drug problems. Chapter 8 discusses police union positions on drug testing, with an emphasis on the issues raised by union leaders interviewed for this report. Chapter 9 presents a legal analysis of the major issues related to drug testing in law enforcement agencies. Finally, Chapter 10 offers policy direction for police drug testing programs.

Background and methodology

Preliminary survey and literature review

In March 1986, the National Institute of Justice sponsored a telephone survey of 33 major police departments to learn more about their views on employee drug testing and to determine the policies in place in these agencies.¹

There were several important findings from the survey:

- Of these departments 73 percent tested applicants for drug use.
- Almost all of the departments had written policies and procedures for testing officers suspected of using illegal drugs.
- Twenty-one percent were considering mandatory testing of all officers.

o Twenty-four percent said they would consider treatment rather than dismissal in some situations for officers with positive drug test results.

Throughout 1986, public discussion of workplace drug testing escalated. The National Institute of Justice received an overwhelming number of requests from law enforcement organizations for detailed information on drug testing policies and procedures. This Issues and Practices report was prepared by Research Management Associates, Inc., with assistance from the Police Executive Research Forum, in response to the demand from police practitioners for information and guidance.

Professional journals, legal cases, public documents, books, articles, and other literature were carefully reviewed for this report. In addition, the authors examined relevant policies, procedures, union agreements, and other documents from many public and private organizations, including more than 25 law enforcement agencies. All documents were analyzed for their applicability to drug testing in the public sector, particularly in the law enforcement environment. To gather current information from nationally recognized experts, the authors also participated in national seminars on drug testing sponsored by the John Jay College of Criminal Justice of the City University of New York, the Bureau of National Affairs in Washington, D.C., and the Police Executive Research Forum.

Focused field interviews

In addition to an extensive review of the literature, the authors conducted focused field interviews with key personnel at five major police departments and a large commercial laboratory.²

The five departments selected for onsite study were chosen to represent differences in geographical area, approach to policy development, program characteristics, and degree of experience in drug testing. All of these departments have policies for conducting urine tests of officers suspected of drug use. Other key features of their programs are highlighted below:

o The Metropolitan Police Department of the District of Columbia began its first drug testing program in 1971. Since 1982, the department's Police and Fire Clinic has operated its own in-house drug-screening program. The department tests applicants twice and usually tests probationary officers three times during their first year. It also tests undercover officers, and tests all veteran officers as part of their physical examinations and after leaves of absence.

o The Chicago Police Department has conducted urine tests for drug use since 1983. In 1985, the department expanded its policies to include

tests of applicants and probationary officers. It currently tests officers before all transfers and promotions and as part of all required medical examinations.

o The Honolulu Police Department in 1986, after 2 years of planning and meetings with union representatives, announced a mandatory and random drug testing program. Most officers under the proposed plan will be tested an average of twice a year, while officers in sensitive and high-risk jobs can be tested more frequently. Policies include an opportunity for rehabilitation for a first drug-use violation.

o The Miami Police Department began testing applicants in 1984, and in 1985 expanded its program to include tests of officers during physical examinations. These policies were negotiated as part of the collective bargaining process with the Fraternal Order of Police. Recently, the union agreed to the random selection of officers for annual physicals, which include a drug test.

o The Louisville Police Department has a limited drug testing program. It reserves the right to test applicants but is currently satisfied with other procedures to screen them for drug use. However, vice and narcotics officers are ordered to take drug tests at their supervisor's discretion.

Site visits to these departments averaged 3 days and included interviews with more than 50 officers and others involved in the drug testing programs, including personnel in the following positions:

- o Chief of police or command staff member responsible for administering the drug testing program.
- o Command staff member and officers who developed drug testing policies and procedures.
- o Police union representatives.
- o Personnel directors.
- o Legal advisors.
- o Laboratory directors and technicians.
- o Personnel responsible for monitoring chain of custody.
- o Employee assistance program director and counseling staff.
- o Narcotics enforcement personnel.

Expert review panel

The final step in preparing this report was a thorough review by a panel of experts in the

law, medicine and toxicology, police operations, and labor management relations. The authors gratefully acknowledge the assistance and guidance provided by Dr. J. Michael Walsh, Director, Office of Workplace Initiatives, National Institute on Drug Abuse; Jeffrey Higgenbotham, Legal Division, FBI Training Academy; Edward J. Imwinkelried, School of Law, University of California, Davis; J. Thomas McEwen, President, Research Management Associates, Inc.; Hugh Nugent, Esquire; and John Spevacek, National Institute of Justice Project Monitor.

Interpreting the report

The authors have tried to give a balanced view of the issues surrounding the use of drug tests in police agencies. Of course, all five departments that agreed to participate in the study had already made some degree of commitment to using these tests. As a result, the opinions of departments that have decided against the use of chemical drug tests may be underrepresented.

Every effort has been made to include accurate descriptions of the policies in effect in early 1987. However, many legal issues, particularly those related to mandatory and random testing of

tenured employees, remain to be decided in the courts. The descriptions of current policies and the discussions of legal issues should in no way be used as a substitute for obtaining appropriate legal counsel and technical advice when operating a drug testing program.

The authors and the National Institute of Justice do not endorse or favor any specific commercial product or commodity. Trade names and suppliers' names are used in this report only because they are considered essential in the context of the subject matter presented.

Notes

1. The survey was conducted by Research Management Associates, Inc., in cooperation with the Police Executive Research Forum (PERF). Other findings from this survey have been reported in J. Thomas McEwen, Barbara Manili, and Edward Connors, "Employee Drug Testing Policies in Police Departments," National Institute of Justice Research in Brief, September 1986.
2. CompuChem Laboratories, Research Triangle Park, North Carolina.

Chapter 2

The problem of drug use by police employees

Defining the problem

Drug use and veteran officers

Most of the police administrators interviewed for this report¹ were asked how they would describe the extent of drug use² by officers in their departments. The majority said drug use was "minimal"--not an overall problem, and not as great as the drug use problem in society as a whole. Other administrators were somewhat more specific:

It's not very widespread, and limited to marijuana . . . maybe one or two percent of the employees.

There is no widespread problem with sale or use. There probably is some off-duty smoking of marijuana.

Still others, although they were in the minority, said they thought the problem was more extensive. A few estimated that 10 to 15 percent of the officers in their departments used drugs. One internal affairs officer felt that if random testing were instituted, administrative hearings for drug violations would quadruple. Another officer noted an increase in the past 3 years in cocaine-related incidents in a department where, previously, almost all of the drug problems involved marijuana. Several administrators said they believed drug use was reduced after the department began drug testing.

All five departments visited for this report dealt with adverse publicity over the past few years for drug-related incidents involving police officers. The drugs in question included marijuana, cocaine, and heroin. Sanctions against the officers ranged from dismissal from the force to the filing of criminal charges for attempted murder. There are no statistics available on the extent of drug use by police nationwide, but anyone who reads the newspaper--whether it is USA Today, Law Enforcement News, or the hometown daily--knows that these departments are not unique in their vulnerability.

Drug use and applicants

Even departments that do not have widespread problems with officers using drugs are concerned about drug use among young people. In 1962 (when current 25-year veterans joined the force), only 4 percent of Americans ages 18 to 25 had ever used marijuana; by 1979, that figure

was 68 percent.³ The most recent (1985) National Survey on Drug Abuse indicates that the use of marijuana and most other illicit drugs among the 18 to 25 year age group has not declined significantly.⁴ Another study sponsored by the National Institute on Drug Abuse showed that 17 percent of all high school seniors in 1985 had tried cocaine. Moreover, cocaine was the only illicit drug to show an active increase in use with age. In 1976, only 10 percent of the high school seniors surveyed had tried cocaine; but a 1985 follow-up survey showed that 40 percent of this group's members had tried cocaine by the time they were 27.⁵

It would be interesting to know whether police applicants have the same drug use patterns as others in their age group. Statistics from law enforcement agencies that use applicant drug tests could be informative, but these data have not yet been compiled. We do know that in Chicago,⁶ Baltimore County, Maryland,⁷ and the District of Columbia, for example, from 20 to 25 percent of applicants have been rejected in the past for positive results on urine tests for illegal drugs.

Unique police responsibilities

There are several compelling reasons why police officers may be treated differently from other workers with regard to even one incident of on-duty or off-duty drug use. These reasons are discussed briefly below and are explored in greater detail in Chapter 9 on legal issues.

The police agency and the public trust

While no responsible employer wants workers who abuse drugs, police agencies hold a special public trust to ensure that their employees are drug free.

Obviously, not all drugs which can cause problems on the job are illegal. Many prescription drugs, and some over-the-counter preparations, have side effects which can make an officer temporarily unfit for duty, and it would be difficult to deny that the effects of alcohol can be just as debilitating as certain illegal drugs.

Nevertheless, the overriding consideration for most departments is the fact that illegal drugs are just that--illegal. Officers involved with illegal drugs are breaking the law at the same time they are paid, and trusted, to uphold it.

Drug-related crimes--Police agencies are especially sensitive to the fact that even the one-time use of marijuana feeds into a vast network of criminal activity. Someone--the user or someone close to the user--at a minimum must have made an illegal purchase. Frequent use or dependency is often the road to selling drugs and may lead to theft of evidence, commission of other serious crimes, association with criminals, corruption, and involvement with organized crime.

Unreliable witnesses--Another issue of concern is the fact that a police officer who has used or abused drugs can be easily discredited as a witness in a criminal case. Louisville police, for example, attribute the loss of nearly 100 potential narcotics cases several years ago (the cases were never prosecuted) to an undercover officer's use of cocaine. Departments that do not terminate or remove police powers from officers who have committed drug-policy violations, and departments in which drug-using officers have not been detected, may have to face a similar situation.

Morale and the loss of public trust--Many of the police departments which now have drug testing policies and procedures did not establish or expand their programs until after an officer(s) came into the public eye for drug use or drug-related crimes.⁸ These incidents can present a difficult morale problem for the vast majority of officers who have earned the public's trust, but must now face speculation about their integrity and about the willingness of the police agency to police its own.

Safety and liability issues--Law enforcement officers have a number of responsibilities which set them apart from employees of other organizations, including other public safety agencies:

- They are entrusted with firearms and may be required to carry them off-duty.
- They operate vehicles, sometimes under emergency conditions.
- They have the authority to deprive others of their liberty.
- They provide backup support on short notice to other officers in dangerous and sometimes life-threatening situations.
- They are often on 24-hour call.

The chief executive of a police agency has a responsibility and a legal duty to prevent an employee from causing an unreasonable risk of harm to others. A department may be held legally liable if it knew, or should have known, that an officer was unable to execute his or her work responsibilities in a careful and proper manner. The department has a duty, therefore, to dis-

cover all types of employee problems which might affect job performance, including psychological problems, physical impairments, and the use of alcohol and other drugs.⁹

A person injured by an officer with a drug problem may sue the department and the city or county for negligent appointment (hiring someone it should have known had a drug problem), negligent retention (failing to fire an officer with a known drug problem), negligent entrustment (for example, entrustment with a firearm), negligent supervision, negligent training, and other negligence.¹⁰

The potential for department liability alone may not be enough to justify a departmentwide mandatory drug testing program. But it does underscore the importance of committing to writing the department's policies and procedures for discovering and handling employees with drug problems.

Benefits and limitations of drug testing

Police management and police unions agree on the importance of having a drug-free workforce. The use of urine tests for drugs as a means for achieving this goal is not always a matter of agreement. It should be emphasized, however, that police administrators are not unanimously in favor of testing,¹¹ nor are police unions and other employee organizations consistently opposed to it.¹²

Benefits of urine testing--Listed below are some of the major reasons why many police administrators indicate that they are interested in drug testing:

- Urine testing methods have improved in recent years and can produce more specific and accurate results than in the past.
- Urine testing can be less expensive than more labor-intensive screening methods such as background investigations.
- Other police agencies, private industry, and the military are reporting successes with their drug testing programs. It is now possible to learn from their experiences.
- A testing program may discourage people with drug problems from applying to the department.
- Urine tests may reduce liability for failure to detect employees with drug problems.
- Starting a testing program may be a way to restore public confidence in the department after a drug-related incident occurs.
- Drug abusers, like alcoholics, typically deny they have a problem. Testing may be a way to make them face up to their problem and get help.

• A drug testing program may set a leadership example for the community in moving toward a drug-free workplace.

Limitations and precautions--What constitutes a legally and publicly acceptable police drug testing program? The legal and constitutional implications of police drug testing are discussed in Chapter 9. However, it is important to recognize here that for every potential benefit listed in the preceding section, there are disadvantages or qualifications that must also be considered.

• Urine tests can prove only recent drug use; they cannot prove intoxication or impairment.

• Urine test results are accurate only when reliable assays are used, lab personnel are well qualified and competent, manufacturer-recommended procedures are followed, and the chain of custody of the urine sample is strictly maintained and documented.

• To ensure accurate results, and to survive administrative and court challenges, drug-screening tests must be confirmed with a second, more expensive test.

• Although other police departments and other public and private agencies have drug testing programs, many of these programs are being challenged in the courts.

• The question of drug testing as a matter for collective bargaining remains to be decided in the courts; but departments which have excluded the rank and file from policy development can expect those policies to be challenged.

• A urine testing program can evoke the resentment of responsible employees who feel they are being "assumed guilty until proven innocent."

• Unless unannounced random testing is done, the prevalence of the problem cannot be determined, and a program's deterrent value for tenured officers is questionable. Legally, however, the random approach is the most difficult to justify.

• When the penalty for drug use can be termination, officers may not seek help from a department-sponsored assistance program unless it is perceived as highly confidential.

A checklist for planning a drug-testing program

Deciding whether the benefits of drug testing outweigh the potential drawbacks requires each department to define its own problems and establish specific objectives of preventing and detecting employee drug use. The list that fol-

lows includes examples of questions departments will need to address. Each department should refine or expand the list to meet its own needs.

1. Is drug use a significant problem for this department? Are too many applicants using drugs? Are a significant number of veteran officers using illegal drugs? How many officers are involved? Is it a problem across the board, or is it limited to officers in special jobs or assignments?

2. Is drug testing needed to identify these applicants and officers, or are other screening and management techniques equally effective?

3. What disciplinary action will be taken against officers who test positive for drugs? Will treatment be an option?

If it seems at this point that drug testing may be warranted, further questions still must be answered:

4. Who should be tested?

5. When, and under what circumstances, should they be tested?

6. What testing methods should be used?

7. What will the total testing program cost? Have any hidden costs been overlooked?

8. How can the department be sure the lab it uses is providing quality services?

9. What specific departmental procedures need to be established to prevent sample tampering and mix-ups?

10. What role will the rank and file play in policy development?

Finally, the proposed testing program must be reviewed with an eye to its legality:

11. Does the program comply with all applicable laws? Are the department's policies and procedures in proper balance with employees' expectations of privacy and rights to due process? Are all policies and procedures, and the rationale for establishing the program, articulated in writing?

12. Is the police department's proposed policy on drug testing consistent with the policies of other departments in the jurisdiction, consistent with the collective bargaining agreement, and consistent with the State Police Officer's Bill of Rights, if applicable?

Notes

1. Telephone interviews with 24 police departments conducted for NIJ by RMA, Inc., and PERF, Inc., February-March 1986; field interviews with police officers in Miami, Chicago, the District of Columbia, Louisville, and Honolulu.
2. "Drug use" throughout this report, unless otherwise qualified, refers either to the illegal use of controlled substances or the misuse of prescription and over-the-counter medications. The authors recognize that alcohol is a drug and that its use and abuse by employees may also be a problem.
3. Robert L. DuPont, M.D., Urine Testing for Marijuana Use: Implications for a Variety of Settings, (Rockville, MD: The American Council for Drug Education, 1981), p. 15.
4. Highlights from the National Survey on Drug Abuse: 1985, National Institute on Drug Abuse, 1986.
5. Lloyd D. Johnston, Ph.D., Patrick M. O'Malley, Ph.D., and Jerald G. Bachman, Ph.D., Drug Use Among American High School Students, College Students, and Other Young Americans, University of Michigan Institute for Social Research, (Washington, D.C.: National Institute on Drug Abuse, 1986).
6. Dennis E. Nowicki, "Police Officer Drug Abuse: An Issue of Public Safety," paper presented to the International Association of Chiefs of Police 92nd Annual Conference, October 14, 1985, p. 8.
7. Roger Twigg, "Drug Use Slows Hiring of Police," The Baltimore Sun, April 6, 1986.
8. "Drug Use by Cops Seen as Growing Problem," Law Enforcement News, September 23, 1985.
9. J. Thomas McEwen, Barbara Manili, and Edward Connors, "Employee Drug Testing Policies in Police Departments," National Institute of Justice Research in Brief, September 1986.
10. Many personal injury lawsuits against the police are filed under State negligence or tort claims acts or in Federal court under 42 U.S.C. Section 1983. Under Section 1983, local governments may be held liable for police actions if the government has tolerated a "custom" which has caused the wrong. See Monell v. Department of Social Services, 436 U.S. 658, 98 S. Ct. 2018 (1978); City of Oklahoma City v. Tuttle, 105 S. Ct. 2427 (1985).
11. Bruce W. Cameron, "The Drug Question: To Test . . . Or Not To Test," Law and Order, June 1986. In this editorial, Cameron notes that 58 percent of the police chiefs responding to the magazine's annual survey said they were in favor of testing officers for drug use on a regular basis, and 42 percent were not.
12. Jennifer Nislow, Law Enforcement News. Interview with Richard Boyd, National President of the Fraternal Order of Police, December 30, 1986. In Boyd's view, "We [members of the Fraternal Order of Police] are not against drug testing, but we are for maintenance of constitutional rights."

Chapter 3

Drug testing methods

Introduction

Urine testing is the method most commonly used by employers for determining drug use by their employees and applicants. In this chapter, several different types of urine tests are explained and compared with regard to their accuracy, costs, and other factors.

Even when the most sophisticated testing methods are selected, results will not be reliable unless the chain of custody of urine samples is strictly controlled from the time the sample is collected until results are reported. This chapter discusses some of the most important chain-of-custody issues. The Appendix includes procedures and forms used by experienced departments.

An increasing number of companies are entering the urine testing marketplace, selling everything from at-home and workplace drug screening systems to complete laboratory services.¹ What criteria should be used to select a laboratory? A checklist for decisionmaking is included at the end of the chapter.

What can urine tests reveal?

To develop a meaningful urine testing program, it is essential to first understand what urinalysis can and cannot reveal about drug use.

Urine test results can indicate recent drug use; but even the results of the most sophisticated urine tests cannot prove when the drug was taken or how much was used. They cannot prove intoxication, nor can they prove that performance was impaired as a result of consuming the drug.

There are several reasons for these limitations. When drugs are ingested, they are broken down by enzymes in the body into their components, or metabolites. The metabolites of a drug may be detected in the urine for only a few hours, or for several weeks, depending on such factors as the type of drug, the amount used, the sensitivity of the tests, and the differing ways in which each person's system metabolizes the drug. Except for ethyl alcohol, there have been no valid studies correlating impairment with urine drug (or drug metabolite) findings.

When developing drug testing policies and procedures, these limitations must be considered. A urine test after an accident, for example, may

indicate that the person used an illicit drug at some time in the past. But it cannot prove that the individual was impaired by or under the influence of the drug at the time of the accident. In this situation, the urine test is an investigative tool, but is not a way to prove dysfunction.²

Screening and confirmation tests

There are considerable differences among the types of urine tests available. These include differences in sensitivity, reliability, cost, the training needed to conduct them, and their acceptance by the courts as a basis for decisionmaking.

Because the most accurate urine tests are also the most expensive, an initial drug screening test is usually conducted using one of the following methods:

- Thin layer chromatography (TLC).
- Enzyme immunoassay (for example, EMIT^R)³.
- Radioimmunoassay (for example, Abuscreen^R)⁴.

As explained later in the chapter, the results of these screening tests should not be considered "positive" for drugs until they are confirmed by a second test that uses a different, more sensitive, and more specific method.

It is essential that the confirmation test be based on a different chemical principle from the initial screening test. For example, a second EMIT cannot legitimately be used to confirm an EMIT screening test. Also, there are commercially available radioimmunoassay (RIA) kits that are more sensitive and specific than enzyme immunoassay (EIA). But these RIA tests should not be used to verify EIA tests because both are immunochemical in principle and are subject to many of the same limitations.

Gas chromatography combined with mass spectrometry (GC/MS) is the method preferred by most experts for confirmation testing.⁵ GC/MS is explained later in this chapter in the section on confirmation tests.

Screening tests: How they work

This section provides general descriptions of how thin layer chromatography and immunoassay tests determine the presence of drug metabolites in urine.

Thin layer chromatography (TLC)

Thin layer chromatography is a method in which special solvents are used to separate drugs present in a drop of urine. The isolated drugs migrate on a plate coated with a film of silica gel or alumina. Their locations are determined by applying a series of color-producing chemical sprays. A technician then compares the location and color of the spots on the plate to a card showing a set of known reference drugs that were treated the same way as the urine specimens being tested.

TLC is one of the least expensive drug screening methods, and can identify certain drugs that the immunoassay tests cannot. For example, TLC can distinguish amphetamine from amphetamine-like substances. However, there are considerable drawbacks with this method.

TLC is not considered as sensitive as the immunoassays, which can often detect smaller amounts of drugs. Although TLC permits the detection of many drugs simultaneously, it fails to uncover the presence of important substances such as benzodiazepine tranquilizers. Also, unless special procedures are used, it will not detect the major metabolite of marijuana.

TLC must be performed in a laboratory by trained technicians. They must make determinations quickly because the dye used in this process fades in a few minutes. Although semi-automated TLC systems are now available, the accuracy and reliability of this method depends on the expertise of the lab technicians. In addition, there is no permanent record of the test unless a photograph is taken, and photographs of TLC plates are generally of poor quality. For these reasons, TLC is rapidly being replaced by immunoassay tests for screening urine, particularly in workplace drug testing programs.

Immunoassay tests

Two analytic methods widely used in screening urine for the presence of drugs are based on immunochemical principles. One of these methods, enzyme immunoassay (EIA), depends on changes in enzyme activity when a drug is present. The other, radioimmunoassay (RIA), measures changes in the intensity of low-level gamma radiation given off in the presence of the drug. Both the EIA and RIA methods rely on the attraction between a drug and its antibody.

Immunoassay tests have been called semi-quantitative⁶ or presumptive.⁷ That is, they indicate results that are "positive" or "negative" compared to a known standard, but do not measure the amount of drug present. They are also considered semi-specific, because substances that are closely related in structure to the drug in question may give positive readings (this is discussed later in the chapter under

"Cross-reactivity"). These limitations do not diminish the usefulness of immunoassay tests when they are used properly as initial screening tests.

Differences between RIA and EIA tests

Abuscreen is a commercially available RIA system. In this process, a sample of the urine in question is mixed in a test tube with various reagents (test mixtures designed by the manufacturer). After centrifugal force is applied, a small pellet forms at the bottom of the tube. The tube is placed in an automated gamma counter and the results are printed out in units of counts per minute. Readings are compared with those of previously tested calibrators to determine whether the urine is "negative" or "positive" for the drug in question. A typical gamma counter will accommodate 100 or more tubes in a conveyor belt that automatically delivers each specimen in turn to the counting chamber.

Because the radiation levels are so low, no unusual precautions need to be taken other than good laboratory practices of care and cleanliness. The Nuclear Regulatory Commission no longer licenses laboratories for this kind of work, but most States do require that labs register with radiologic oversight agencies.

EMIT, an acronym for Enzyme Multiplied Immunoassay Technique, is a commercially available EIA system. The manufacturer's reagents are mixed with the urine in question, and color changes occur as a result of changes in enzyme activity. These changes are monitored by a sensing device known as a spectrophotometer. A microprocessing unit compares the urine readings to a previously tested set of calibrators and finally prints out the results as "negative" or "positive" for the drug in question.

The equipment used to conduct EIA tests such as EMIT comes in several sizes, including a small portable unit which fits on a desk top; a "carousel" model used by some clinics and laboratories; and a larger, more stationary system generally found in high-volume commercial laboratories.

The EMIT drug screening systems have aroused the interest of employers, in part because they make it possible to conduct tests at the worksite. However, the National Institute on Drug Abuse encourages the use of professional technicians to conduct these tests in a laboratory setting. As discussed later in this chapter, the possibility for human error is considerable when performing and interpreting the results of EMIT or any other drug test. When employees stand to lose their jobs or other liberties as a consequence of positive results, it is imperative that skilled, thoroughly trained personnel be used to conduct all tests.

District of Columbia Police drug screening program

With one exception, the police departments interviewed for this report⁸ have either contracted with a commercial laboratory for screening and confirmation tests, or have made testing arrangements with facilities such as local health clinics or State crime labs. The exception is the District of Columbia's Police and Fire Clinic. The clinic uses a commercial laboratory for confirmation tests by gas chromatography/mass spectrometry, but has conducted its own EMIT tests since 1982. A description of how EMIT tests are conducted at the clinic is provided below. It is intended to give only a general overview of the process.

Calibrating the equipment--Before running any EMIT tests for the day, the operator first calibrates the equipment⁹ by running urine samples prepared by the test manufacturer. Each of these samples contains a known quantity of a particular drug. Two numerical readings are printed out for each drug, a "negative" reading, and a "low" reading. For marijuana, a "medium" reading is also obtained. Once these readings have been established, the operator is ready to test the actual employee urine samples.

The numerical readings that are produced are peculiar to the equipment and the test mixtures being used, and may vary slightly each time the equipment is calibrated.¹⁰ If screening tests are to be run all day, the equipment needs to be calibrated several times. Screening tests for PCP require calibration approximately every hour.

Testing urine samples--A urine specimen of about 50 milliliters is collected from each employee or applicant to be tested. Samples are stored in a locked refrigerator until time for the tests. About 5 milliliters of urine from each sample is transferred by the operator into small containers in the EMIT carousel. Once the samples have been loaded, the process becomes completely automated.

Usually, urine samples are tested in batches of about 60.¹¹ All of the samples in the batch are screened for one drug at a time. For example, all samples are screened for cocaine, then all are screened for marijuana, etc.

Interpreting the results--When the readings from the employee or applicant samples are printed out, they are compared to the readings established the last time the equipment was calibrated. Samples that are not negative are considered suspect. Suspect urine samples are tested by EMIT a second time. If a sample again produces readings that are not negative, the person's original container is sent to a commercial laboratory for confirmation by the GC/MS method.

Processing time--After the equipment is calibrated and readings are established, it is possible to screen one urine sample for one drug in only a few minutes. Clinic staff estimates that it takes about 30 minutes to screen one urine sample for four drugs. For batch processing, it takes the staff about 5 to 6 hours to screen 60 urine samples for four drugs. This estimate includes calibrating the equipment, checking and double checking sample identification numbers, and preparing all the required logs and reports.

Drugs selected for screening--Both the EIA and RIA methods are most commonly used by employers to test for the following drugs or drug groups:

- Amphetamines.
- Barbiturates.
- Benzodiazepines (Valium^R, Librium^R).
- Cocaine.
- Cannabinoids (marijuana, hashish).
- Methadone.
- Methaqualone (Quaalude^R).
- Opiates (including heroin, morphine, codeine).
- Phencyclidine (PCP).

Some large police departments conduct tests for all or most of these drugs, while other departments select only the drugs that present the most serious problems in the community. The choices made by the five departments interviewed for this report are presented in Table 3-1 on the next page.

How reliable are test results?

Sensitivity limits and cutoff limits

The amount of drug metabolites found in urine is usually measured in terms of nanograms per milliliter (ng/ml). A nanogram is one billionth of a gram.

Manufacturers of the assays used in urine testing have determined sensitivity limits for each assay. These sensitivity limits are also expressed in nanograms per milliliter. The sensitivity limit represents "the concentration of drug in the urine sample below which the assay can no longer be considered reliable."¹²

The cutoff limit or cutoff point represents the concentration limit actually used in testing urine samples. It is the smallest amount of drug the assay is designed to detect with a high degree of reliability.¹³ Urine test manufacturers set the cutoff limits on their assays well above their sensitivity limits to reduce the possibility of false positive readings, as explained below. Different test manufacturers and different laboratories may not use the same cutoff limits. The police department does not have to be restricted by what the laboratory offers and can set the cutoff limits it determines appropriate for its objectives.

Table 3-1

Drugs tested in five police departments

Drug or drug group	Police Departments				
	Honolulu	Chicago	District of Columbia	Miami	Louisville
Amphetamines		X		X	X
Barbiturates		X		X	X
Benzodiazepines		X		X	X
Cocaine	X	X	X	X	X
Cannabinoids	X	X	X	X	X
Methadone		X		X	X
Methaqualone		X		X	X
Opiates		X	X	X	X
Phencyclidine		X	X	X	X
Tricyclic Anti-depressants				X	
Propoxyphene (Darvon ^R)				X	
"Designer" Drugs		X*			

*Occasionally

False negatives and false positives

The concepts of "false negatives" and "false positives" are a source of potential confusion when interpreting drug test results. These concepts are illustrated in the table below and are explained in the paragraphs that follow.

A false-negative result on a drug screening test means that the urine sample actually contained the drug in question, but the presence of that drug was not detected. Samples that are old and have undergone changes in pH levels may produce false negative results on EMIT tests. Also,

Table 3-2

		Drug present	
		No	Yes
Test result	Pos	False positive	OK
	Neg	OK	False negative

adding certain substances to a urine sample (for example salt, handsoap, water), or drinking large quantities of water, can alter test results. EMIT tests for marijuana may give false negative results if acidic liquids, such as lemon juice or vinegar, or alkaline solutions, such as chlorine bleach, are added to the urine sample.¹⁴

Depending on the cutoff limits used, a laboratory may legitimately report a test result as negative when in fact the sample contains the drug in question. For example, if the employer and the laboratory agree to use a cutoff limit for cannabinoids of 100 ng/ml, any sample containing less than this amount would be considered negative.

A false positive means that test results show a particular drug is present in the urine sample when in fact it is not. False positives can occur because of any number of human, technological, or procedural errors. As discussed below, false positives can also be the result of cross-reactivity--the ability of substances other than the drugs in question to produce positive results.

Cross-reactivity

Reputable manufacturers of screening tests have evaluated most substances that could cross-react with their assays to produce false-positive results. They publish brochures that explain the results of their tests for cross-reactivity. In addition, responsible companies recommend in their sales literature and consultations with employers that follow-up tests be done to confirm all screening test results that are not negative.

There are good reasons for this recommendation. Although myths and rumors abound, there are certain prescription drugs, over-the-counter drugs, and other substances that can interfere with screening test results. Some examples are listed below.

• Amphetamines. Certain over-the-counter diet and cold remedies, nasal decongestants,¹⁵ and asthma medications contain compounds that can produce false-positive results for amphetamines on EMIT. The District of Columbia Police and Fire Clinic stopped screening for amphetamines because of this problem.

• Opiates. Assays for opiates respond to morphine in the urine. Heroin metabolizes into morphine, but so does codeine, an ingredient in some cough medicines. Eating certain types of poppy seeds can also produce positive screening test results for opiates.¹⁶

• Benzodiazepine. This substance may cross-react with certain prescription sleeping pills.⁷

At one time, certain anti-inflammatory drugs and painkillers such as Advil[®] and Nuprin[®] were found to register positive on EMIT screening tests for marijuana when test cutoff limits were set at 20 ng/ml. This problem has been corrected by the manufacturer.¹⁸ One toxicologist has promoted a theory that melanin, which is present to a greater degree in the urine of dark-skinned than light-skinned people, can be confused with marijuana in various urine tests.¹⁹ A lawsuit filed on behalf of several Cleveland police cadets introduced this theory in court. However, the plaintiffs did not produce the supportive scientific evidence requested by the judge.²⁰

Passive inhalation, brownies, and marijuana tea--Several major clinical studies have been conducted in small unventilated rooms or closed automobiles to determine whether inhaling someone else's marijuana smoke can result in positive urine screening tests.²¹ At the highest exposure levels, only a few subjects (2 out of 75 in 1 study) tested positive on EMIT screens with a 20 ng/ml cutoff point, and none were positive on the EMIT 100 ng/ml cannabinoid screen.

The elapsed time between exposure and testing was also important. Even when subjects were exposed to smoke from the equivalent of 40 street joints for 2 hours in a 10x11x7 foot room, positives on a 20 ng/ml screen resulted for a maximum of about 3 days.

It is possible to ingest enough marijuana in a brownie or cookie to test positive for several days on an EMIT screen with a 100 ng/ml cutoff level. However, it is highly unlikely that marijuana added to a hot or cold drink would release THC because of its insolubility in water.²²

Detection times

For what length of time after usage can drugs be detected by urine tests? As noted earlier in this chapter, variables such as the sensitivity of the assay, the amount of drug used, individual metabolism, and the type of drug all have an influence on detection time. As a result, there are no definitive answers to this question; however, some general guidelines can be given.

For cocaine, the urine test is reliable for about 24 hours after last usage, and for longer periods if large amounts have been consumed.²³ Opiates and PCP can generally be detected from 2 to 4 days after use.²⁴ Marijuana metabolites in an infrequent user are typically detected by 20 ng/ml assays for from 1 hour to 4 or 5 days after use; however, marijuana in heavy chronic users has been detected at urine concentrations greater than 20 ng/ml after more than 4 weeks.²⁵

Confirmation tests

The three urine tests most commonly used for confirmation are gas chromatography (also called gas/liquid chromatography); high performance liquid chromatography; and gas chromatography/mass spectrometry (GC/MS). While all of these methods may produce acceptable results for certain purposes, the GC/MS process is widely recommended in employment situations where careers may depend on the results.

Gas chromatography/mass spectrometry (GC/MS)

GS/MS is a sophisticated technique requiring expensive equipment and highly skilled technicians. Because it can distinguish between closely related compounds, it is frequently said to produce a "molecular fingerprint" of the drug metabolites present in the urine sample.

The assays used in GC/MS testing also have cut-off limits. A positive result on a GC/MS test means that the sample in question contains an amount of a drug that exceeds these established limits. Results are expressed quantitatively, usually in nanograms per milliliter (ng/ml); however, they are often reported to the employer only as positive or negative. This practice prevents the employer from inappropriately using the quantitative data in an attempt to show impairment.

The GC/MS equipment consists of three components: a gas chromatograph, a mass spectrometer serving as a detector, and a data-handling computer. Drugs are isolated from the urine with a small volume of solvent. This drug-rich, concentrated solution is introduced with a syringe into the gas chromatograph, where it is propelled by a stream of helium through a coil of absorbing material. This special material has the power to separate one drug from another. Each drug will exit the coil at a different and characteristic time. As each drug completes its excursion through the coil, it is bombarded by electrons, resulting in fragmentation patterns distinct for that drug. The time a drug resides in the coil and its fragmentation profile provide conclusive evidence for the presence of that drug.

GC/MS equipment must be calibrated frequently by using quality control samples. Some of these are commercial quality control samples, which contain known quantities of drugs. "Blind" samples, the contents of which are unknown to the equipment operator, are also used by conscientious laboratories.

Chain of custody

The most technologically sophisticated drug testing methods will be of no value to the em-

ployer, and will be unfair to the employee, unless strict procedures are in place for establishing the chain of custody of urine samples. Chain of custody procedures and security measures need to be established for the following activities:

- Collecting the sample.
- Labeling the sample in a way that eliminates mix-ups but protects the employee's or applicant's identity.
- Limiting the number of individuals who handle the sample.
- Requiring that all persons who handle, transport, and conduct tests of samples sign for their receipt and release.
- Ensuring that samples are stored properly and that confirmed positive samples are frozen and retained.
- Limiting access to information about test results to individuals with a legitimate need to know.

Chain of custody procedures and supporting materials from experienced police departments are included in the Appendix and indicate the level of detail that should be included.

Collecting the sample

Two problems that must be addressed with regard to sample collection are (1) protecting against sample contamination or substitution by the applicant or employee, and (2) dealing with a person's inability to urinate at the time the sample is requested. The second problem is usually handled by requiring the sample within 4 hours, or by the end of the officer's shift.

Direct "body to bottle" observation provides the greatest protection against sample tampering. This procedure is used in a number of police agencies. However, at least two court decisions have severely criticized observed collection.²⁶ Employee morale and privacy concerns must be weighed against management's need to obtain unadulterated samples.

One less intrusive alternative might be the use of a "dry room" free of potential contaminants such as soap and water. This procedure involves securing and limiting access to the room; searching the room before and after each sample is given; and requiring that jackets, coats, purses, briefcases and other items that could conceal substitute samples be left outside. Other measures include dyeing the toilet water and sampling the temperature of the specimen.

Selecting a laboratory

Employee drug testing has become a \$100-million a year business.²⁷ Commercial laboratories are virtually unregulated at this time. No regulations exist for how tests should be run, how equipment should be maintained, how data should be interpreted, how quality control should be achieved, or how evidence should be prepared for legal testimony. Some laboratories are excellent, others are not, and the differences may not be obvious.

Learning from experience

From 1972 through 1981 the Centers for Disease Control (CDC) and the National Institute on Drug Abuse (NIDA) conducted a series of proficiency tests of 13 laboratories engaged in drug screening.²⁸ Their clients were primarily methadone treatment programs. These labs were evaluated using "known" quality control samples (the labs knew they came from the evaluators) and "blind" samples. Two of the major conclusions were:

- The labs were often unable to detect drugs at the levels required by their contracts, resulting in an unacceptable number of false negative readings; false positives were also unacceptable for certain laboratories and certain drugs.

- The laboratories frequently took greater care with the known samples than with the blind samples.

The second situation involved the urine testing programs in several branches of the armed forces. When large-scale testing in the military began in the early 1980's, sample mix-ups, inadequate testing methods, and poor quality control in the military laboratories were discovered and widely publicized.²⁹

Since that time, the armed forces have made substantial changes in their programs. All drug screening tests are now confirmed by gas chromatography/mass spectrometry, and the Armed Forces Institute of Pathology conducts stringent proficiency tests of all military labs and private labs that test military personnel.

The situation uncovered by CDC and NIDA need not be repeated if the employer has all results confirmed and does not compromise on selecting quality lab services.

Checklist for selecting a laboratory

In the past few years, testing methods have improved, high quality laboratory services are available, and reliable confirmation tests are coming down in price. Although the industry is not regulated at this time, Federal and State agencies are now preparing strict rules to gov-

ern the operations of labs that provide urine testing services. NIDA is in the process of establishing a lab certification program and Federal agencies will be required to buy services from accredited labs. Listings of accredited labs should be available from NIDA in January 1988. In addition, the Department of Health and Human Services (DHHS) recently issued technical guidelines for drug testing by Federal agencies. The DHHS guidelines include lab selection criteria that may be useful to police and other employers.

State regulations and the forthcoming accreditation standards should offer much-needed protections for employers, but there will be a continuing need for police agencies to research and monitor the drug testing services they purchase. Below are some questions to ask in selecting a laboratory:

- What is the laboratory's philosophy? Is it trying to sell you on price alone?
- What methods of analysis for screening and confirmation does it offer?
- How does the laboratory describe its quality control and quality assurance program? How many quality control samples are processed with each batch? How often are instruments calibrated?
- Is the laboratory certified by a professional organization? Does this organization conduct proficiency tests of the lab? If so, are blind samples used?
- Does the lab have its own in-house proficiency testing program?
- Is it experienced? What references can it provide?
- What are the professional qualifications of the laboratory director and other laboratory personnel? How are technicians trained and monitored?
- Will the lab stand behind its findings? Will it provide you with thorough documentation? Will experts testify at administrative hearings or in court if necessary?
- What systems are in place for controlling and documenting the chain of custody of samples?
- Are results reported in a confidential manner and within a reasonable length of time?
- How secure is the lab facility?
- Are samples stored under refrigeration? Are samples with confirmed positive results frozen and retained?
- Does the laboratory test its own personnel?

In Suffolk County, New York, an employee drug testing study group, which included the county medical examiner, developed a thorough list of recommendations for laboratory requirements.³⁰ These recommendations specify screening and confirmation test methods, sample storage requirements, confidential reporting procedures, and a requirement that the lab provide expert testimony when necessary. Summarized below are other recommendations from Suffolk County that police agencies may want to consider incorporating in their own laboratory contracts:

- The lab will supply copies of all protocols used in drug testing, and will immediately inform the purchaser of any changes made in these protocols.
- The lab will immediately inform the purchaser of any changes in its supervisory and management staff.
- Upon demand, the lab will provide the purchaser with all testing data for evaluation, including RIA, EIA, and GC/MS printouts.
- The lab will provide the purchaser with the scores it receives on all proficiency tests.
- The lab will permit unannounced site visits of its premises by authorized purchaser representatives.
- The purchaser reserves the right to submit unidentified proficiency samples and to "split" samples without the knowledge of the lab.

Alternative chemical testing methods

Although blood tests for drugs of abuse may be conducted, cost is one of the major reasons why employers do not use them for large testing programs. Nevertheless, some departments may want to consider them as an option in certain situations. For example, the Miami Police Department's drug testing policy states that officers ordered to be tested on the basis of reasonable suspicion may choose between blood or urine tests.

Blood tests for marijuana metabolites, according to some experts, show some potential for determining intoxication based on blood concentration levels. This is because THC enters the bloodstream rapidly from the lungs and disappears in a few hours. However, because of individual differences and tolerances, there is currently little agreement about what level of THC concentration in the blood constitutes impairment.³¹ In addition, blood tests raise even more difficult legal issues than urinalysis, since the intrusion is so much greater.³²

Experimental research on hair testing for certain drugs of abuse is being conducted by

several groups in Los Angeles³³ and throughout the country. According to researchers at the University of Alabama, hair tests have detected amphetamines, barbiturates, cocaine, and opiates for an extended length of time after use; but hair tests cannot accurately determine marijuana use.³⁴ While this method has potential for showing a person's drug history, it cannot provide information about recent drug use. Further, it may not prove less intrusive than urinalysis for some people, since current methods require from 40 to 100 hairs to run the test. The acceptability of hair testing has not yet been determined by the courts, and the method is not ready to be marketed commercially. Hair testing also promises to be more expensive than urine or blood tests.

It is possible to detect cannabinoids by a saliva test for up to 12 hours after smoking.³⁵ However, like other testing methods, a saliva test cannot be used to prove impairment. Systems to analyze brain waves are coming onto the market, but the reliability of brain wave tests has not yet been demonstrated to the satisfaction of most experts.³⁶

Estimating the cost of a testing program

Laboratory costs

The reliability of employee drug test results is so crucial that cost should never be the deciding factor in awarding a contract to a laboratory. The use of accurate testing methods, including GC/MS confirmation, the quality of the staff, the lab's quality control program, communication between the lab and the department, timeliness of reports, and support services are among the most important factors to consider in lab selection.

In very general terms, the price range to expect for an immunoassay or TLC screening test of one urine sample is from \$2.50 to \$6.00 per drug tested. Some newspaper articles have stated that GC/MS confirmation tests "cost \$100 or more." Our limited survey of police agencies found a range of \$45-\$100 per drug for GC/MS. Among the variables may be the size of the laboratory, the anticipated number of tests, and whether or not the laboratory specializes in testing for drugs of abuse. Some laboratories offer a set price per sample that includes screening for selected drugs and confirmation if necessary.

Personnel and other costs

Police and Fire Clinic personnel in the District of Columbia estimate the Clinic spends approximately \$18,000 per year on EMIT chemical assays,

or about \$2.50 per test for each drug tested. Program costs include the initial equipment investment and salaries and benefits for a full-time civilian program director, two police officers who operate the test equipment, a sergeant who observes and documents the sample collection process, and other administrative personnel costs. In addition, there are costs for overhead, equipment maintenance, forms and other printed materials, and other items.

Even when an employer does not conduct in-house screening, there may be personnel costs related to planning and research, sample collection, and record keeping. Other costs might include physical improvements to secure a room where samples are collected and miscellaneous printing costs. Given the complexity of drug testing methods, some organizations are using technical consultants in both the planning and implementation phases of their programs. A medical expert serving on the police department's planning task force can help develop detailed descriptions of specimen collection, test methodology, chain-of-custody procedures, and reporting protocol. An expert consultant may also be retained by the department to review laboratory findings that are challenged by employees and to testify at administrative hearings and court proceedings. For obvious reasons, this consultant should not be affiliated with a vendor of drug testing services.

Notes

1. Pat Guy, "Industry Wins Big in Drug War," USA Today, October 13, 1986.

2. John P. Morgan, M.D., "Problems of Mass Urine Screening for Misused Drugs," Journal of Psychoactive Drugs, 16:4, 1984.

3. EMIT^R tests are distributed by Syva Company, Palo Alto, California. Throughout this report, "EMIT" refers to the registered trade name of tests for drugs of abuse distributed by Syva.

4. Abuscreen^R tests are distributed by Roche Diagnostics, Inc., Nutley, New Jersey. Throughout this report, "Abuscreen" refers to the registered trade name of tests for drugs of abuse distributed by Roche.

5. J. Michael Walsh, Ph.D. and Richard L. Hawks, Ph.D., Employee Drug Screening: Detection of Drug Use by Urinalysis, National Institute on Drug Abuse, 1986, p. 7.

6. "Check/Doublecheck Technical Information, Drug Screening and Confirmation Service Analytical Procedures," CompuChem Laboratories, August 1, 1986.

7. Walsh and Hawks, p. 9. Immunoassay tests should not be used as "presumptive evidence" in the true legal sense without confirmation.

8. Twenty-four departments in large jurisdictions that responded to an NIJ-sponsored telephone survey in early 1986; the five departments visited for this report; and others that discussed their programs on the telephone or provided materials on policies and procedures.

9. The Clinic uses the EMIT d.a.u. (drugs of abuse in urine) lab system 5000 with Auto Carousel.

10. These readings are not expressed as nanograms per milliliter.

11. Some laboratory systems used for EMIT screening can process more than twice this number of samples at one time.

12. Walsh and Hawks, p. 7.

13. Lee I. Dogoloff and Robert T. Angarola, Urine Testing in the Workplace, (Rockville, MD: The American Council for Drug Education), 1985, p. 22.

14. Richard H. Schwartz, M.D. and Richard L. Hawks, Ph.D., "Laboratory Detection of Marijuana Use," Journal of the American Medical Association, 254:6, August 9, 1985.

15. John P. Morgan, M.D., "Urine Testing for Abused Drugs: Technology and the Real World," presented at the Bureau of National Affairs Fourth Annual Conference on Alcohol and Drugs, Arlington, Virginia, November 17, 1986. Dr. Morgan (City University of New York Medical School) states that 95 percent of "positive" amphetamine screening tests reflect over-the-counter compounds. A marketing specialist at a major laboratory notes that of any 100 urine samples screened by EMIT for amphetamines, 50 are typically "positive," but only a few of these are confirmed as positive by GC/MS.

16. Subcommittee on Civil Service of the Committee on Post Office and Civil Service, House of Representatives, Staff Report, "Drug Testing in the Federal Government," June 20, 1986, p. 165. "The poppy seeds on the 1.5 billion Burger King hamburgers sold each year could cause positive results on tests for opium."

17. Morgan, "Urine Testing for Abused Drugs."

18. William C. Collins, an attorney whose clients include Syva Company, correspondence to the authors, December 4, 1986: "It was discovered a few months ago that ibuprofen . . . sometimes cross-reacted with the EMIT 20 ng/ml assay. The more commonly used 100 ng assay did not cross-react. Syva changed the 20 ng assay to eliminate the cross-reaction."

19. James Woodford, Ph.D., "Marijuana Urinalysis Testing," (Atlanta, GA: Web of Research), undated.
20. Collins, correspondence. See also Shield Club v. City of Cleveland, Civ. No. 72-1088, (N.D. Ohio, July 1986).
21. Robert E. Willette, Ph.D., "Interpreting Cannabinoid Assay Results," (Woodland Hills, CA: ADL), undated. Dr. Willette was formerly chief of the Research Technology Branch, National Institute on Drug Abuse.
22. Ibid.
23. Sidney Cohen, M.D., D.Sc., Cocaine: The Bottom Line, The American Council for Drug Education, 1985, p. 30.
24. Walsh and Hawks, pp. 10-11.
25. Schwartz and Hawks, pp. 788-789.
26. See Capua v. City of Plainfield, 643 F.Supp. 1507, 1513 (D.N.J. 1986); Caruso v. Ward, 506 N.Y.S. 2d 789 (N.Y. Sup. Ct. 1986).
27. Fern Schumer Chapman, "The Ruckus Over Medical Testing," Fortune, August 19, 1985, pp. 57-58.
28. Hugh J. Hansen, Ph.D., Samuel P. Caudill, Ph.D., and Joe Boone, Ph.D., "Crisis in Drug Testing: Results of CDC Blind Study," Journal of the American Medical Association, 253:15, April 26, 1985.
29. "Military Overturns Sanctions in Drug Test Cases," Associated Press, The Washington Post, December 18, 1985. Also see Morgan, "Problems of Mass Urine Screening."
30. Leo A. Dal Cortivo, Ph.D., "Substance-Abuse Testing in a Government Laboratory," Presentation for "Face Off with the American Disease: A Symposium about Substance Abuse Screening," Regional Conference, American Association for Clinical Chemistry, November 1986.
31. Richard Hawks, Ph.D., "The Metabolism, Pharmacokinetics and Analysis of Marijuana Components in Body Fluids: Implications for Non-Research Use," Urine Testing for Marijuana Use: Implications for a Variety of Settings, Margaret Blasinsky and George K. Russell, Ph.D., Eds. (Rockville, MD: The American Council for Drug Education), 1981.
32. Schmerber v. California, 384 U.S. 757, 766-67 (1966).
33. Janus Foundation Research Report, "Monitoring of Substance Abuse Through Hair Analysis: A Breakthrough in Medical and Forensic Science," Los Angeles, December 1984.
34. "Drug History Detectable in Hair," Law Enforcement News, November 11, 1986, p. 11.
35. Arthur J. McBay, Ph.D., "Cannabinoid Testing: Forensic and Analytical Aspects," Laboratory Management, January 1985, p. 40.
36. Bureau of National Affairs Fourth Annual Conference on Alcohol and Drugs, Arlington, Virginia, November 17, 1986.

Chapter 4

Overview of government and police drug testing initiatives

Introduction

This chapter highlights major initiatives of Federal, State, and local units of government for controlling and preventing employee drug use. It also includes a chart that summarizes the situations in which drug tests are required by the police departments in Miami, Chicago, Honolulu, Louisville, and the District of Columbia.

Federal Government positions

Commission on organized crime

Several recent Federal Government initiatives have focused the public's attention on drug abuse among American workers. The first of these was a report by the President's Commission on Organized Crime, published in March 1986. As a result of its 3-year investigation, the Commission set forth 71 recommendations. Among the most controversial and widely publicized of these are recommendations for requiring Federal employees and other workers to submit to drug tests.

The Commission on Organized Crime recommended that the President direct all Federal agencies to develop employee drug abuse policies "with implementing guidelines, including suitable drug testing programs."¹ Further, the Commission said government contracts should not be awarded to companies that do not have drug programs, including "suitable" drug testing. It urged State and local government agencies and private employers to adopt policies similar to those developed by Federal agencies, and to consider the appropriateness of requiring both applicants and current employees to take drug tests.

The public debate that followed the release of the Commission's report raised questions about Federal employee testing that have implications for drug testing by other public employers: How can a large testing program be justified, given a lack of evidence of widespread drug use? To what extent will taxpayers support such a program for its possible deterrent value?

The White House Domestic Policy Council requested that several agencies and task forces develop proposals for meeting some of the administration's objectives with regard to drug abuse. The working papers submitted by various groups ranged from proposals to fire employees

for drug use without proof of impaired job performance, to strong recommendations for treatment opportunities.²

Executive Order on a Drug-Free Federal Workplace

On September 15, 1986, the day after President and Mrs. Reagan's televised address on fighting drug abuse, the President signed Executive Order 12564. The Order directs the head of each executive agency to develop "a plan for achieving the objective of a drug-free workplace with due consideration of the rights of the government, the employee, and the general public."³ Specifically, the Executive Order mandates that these plans include the following components:

- Policy statements of the agency's expectations and the actions it will take when drug use is identified.
- Employee assistance programs.
- Training for supervisors in identifying and handling illegal drug use by employees.
- Provisions for self-referrals and supervisory referrals to treatment "with maximum respect for individual confidentiality consistent with safety and security issues."
- Provisions for identifying illegal drug users, including drug testing.

The Executive Order lists certain requirements for drug testing programs and procedures, but leaves many of the details to the discretion of Federal agency heads. The FBI and DEA have won exemptions to certain provisions of the Executive Order. These are discussed in this chapter under "Current Federal agency policies."

Federal employees to be tested--The President has ordered that each executive agency head establish a program to test employees in sensitive positions. In addition, provisions for voluntary testing are to be established by each agency. As defined within the Order, sensitive positions may include the following:

- Law enforcement officers.
- Employees with access to classified information.
- Presidential appointees.

• Other positions involving law enforcement, national security, the protection of life and property, public health or safety, or "other functions requiring a high degree of trust and confidence."

In addition, the Order authorizes each agency head to test employees in the following circumstances:

- When there is a reasonable suspicion that an employee uses illegal drugs.
- In an examination regarding an accident or unsafe practice.
- Through an employee assistance program as part of, or followup to, counseling and rehabilitation.
- When a person applies for a Federal job.

Drug testing procedures--The Executive Order also includes several procedures for operating drug testing programs. Sixty days notice is to be given employees before drug testing starts. During that period, employees are to be told how to obtain services through the agency's employee assistance program. The Order also states that, before submitting to a test, the employee is to have an opportunity to provide medical documentation about legitimate drug use, and specifies that procedures for protecting the confidentiality of employee records should be developed. With regard to direct observation of employees as they give urine samples, the Executive Order states that employees be allowed individual privacy "unless the agency has reason to believe that a particular individual may alter or substitute the specimen."

The Order required the Department of Health and Human Services (DHHS) to issue guidelines for specific testing methods that all Federal agencies must use. These guidelines were released in February 1987.

Personnel actions--Agencies are instructed by the Order to refer to an employee assistance program anyone found to use illegal drugs. Action to discipline the employee is also required, with these exceptions:

- Employees who volunteer information about their use of illegal drugs prior to being identified by other means.
- Employees who obtain counseling or rehabilitation through an employee assistance program and thereafter refrain from illegal drug use.

The Order specifies that an illegal drug user in a "sensitive" position shall not be allowed to remain on duty prior to successful completion of rehabilitation through an employee assistance program. However, agency heads may permit employees who are still in counseling to return to

duty if doing so would not pose a danger to public health, safety, or the national security.

DHHS scientific and technical guidelines

As directed by the Executive Order, the Department of Health and Human Services on February 19, 1987, issued "Scientific and Technical Guidelines for Drug Testing Programs."⁴ The first section outlines protocols for sample collection, laboratory analysis, transmission of information, and interpretation of results. The second section contains model language for developing requests for proposals for collection and analysis.

The guidelines require Federal agencies to test at a minimum for marijuana and cocaine. Agency heads may also choose to test for opiates, amphetamines, and PCP; and, when testing on the basis of reasonable suspicion, may test for any drug identified in Schedule I or Schedule II of the Controlled Substances Act.

The sample collection procedures issued by DHHS allow for individual privacy "unless the agency has reason to believe that a particular individual may alter or substitute the specimen." In lieu of direct observation, precautions include using toilet bluing agents; requiring the employee to leave coats, jackets, purses, and briefcases outside the room; and immediately checking the temperature of the specimen. The employee will initial the label on the specimen bottle and sign a ledger and certification statement.

Analysis of an employee's urine sample requires a three-step review process. First, an immunoassay test will be used for screening (other methods may be approved when immunoassays are not available for drugs of special concern). A negative result will be considered evidence that the employee has not used the drugs in question. Second, positive screening test results will be submitted for confirmation by GC/MS. The guidelines specify the cutoff levels to be used for both screening and confirmation tests.

Finally, results reported positive after GC/MS will be evaluated by the agency's Medical Review Officer (MRO). The MRO is a physician whose responsibilities include determining alternate medical explanations for the positive results. The review process may involve interviewing employees and their physicians, reviewing employee medical records, and evaluating lab quality control procedures.

Office of Personnel Management policy guidelines

Executive Order 12564 also directed the Office of Personnel Management (OPM) to develop policy guidelines for drug testing Federal workers.

The OPM draft guidelines were circulated to the Cabinet secretaries in late 1986. They address agency responsibilities in developing drug testing plans. They also provide guidance for random and comprehensive testing of employees in sensitive positions, testing based on reasonable suspicion, and applicant testing. They outline testing procedures, and discuss actions to be taken when employees have positive results.⁵ According to the guidelines, agencies must also make provisions for voluntary testing, may require followup testing after rehabilitation, and may test employees after accidents or unsafe practices.

It is mandatory under the OPM guidelines that employees found to be using illegal drugs be referred to an employee assistance program. However, one of the most controversial aspects of the OPM guidelines is a requirement that agencies also initiate disciplinary action against such employees unless they voluntarily identify themselves, obtain counseling, and refrain from drug use thereafter. Disciplinary options range from a written reprimand to removal from Federal service.

Current Federal agency policies

The drug testing programs actually implemented by Federal agencies will be influenced by recent and pending court cases (discussed in Chapter 9), discussions with employee organizations, budget constraints, and other considerations. Some agencies with law enforcement and public safety responsibilities began drug testing before the President issued the Executive Order.

Law enforcement agencies--The Justice Department has taken a position that random employee drug testing is permissible in certain circumstances. On September 19, 1986, the Justice Department filed an amicus brief in the U.S. District Court in Boston in support of the Boston Police Department's mandatory random drug testing program. The Drug Enforcement Administration (DEA) and Federal Bureau of Investigation (FBI) in mid-1986 announced plans to test new employees and supervisors for drugs, and to test veteran agents later in the year. Previously, the FBI had required urine tests only upon reasonable suspicion of drug use.⁶ After the Executive Order was issued, the FBI and DEA won an exemption from the requirement to refer drug using employees to an employee assistance program. They also successfully argued that, since their programs predated the Order, they had more latitude than other agencies, including the right to do random testing. Drug testing programs for the Secret Service; U.S. Marshal Service; Bureau of Alcohol, Tobacco and Firearms; and the U.S. Border Patrol are in various stages of planning.⁷

Transportation agencies--Drug tests of air traffic controllers and other Federal Aviation

Administration (FAA) employees were scheduled to begin by the end of 1986. Plans called for these tests to be conducted as part of annual physical examinations. In late 1986, the Department of Transportation and the FAA were reported to be considering expanded drug testing, including tests of employees suspected of drug use, after accidents, and as part of treatment programs.⁸

In February 1986, the Federal Railroad Administration (FRA) amended its alcohol and drug use regulations (known as "Rule G") to authorize railroads to conduct employee drug testing. Under the revised Rule G, drug testing is authorized for applicants as part of pre-employment physicals, and for employees in the following circumstances:

- After accidents caused by human performance failure.
- After violation of certain safety rules.
- Upon reasonable suspicion of drug use.

The reasonable suspicion rule requires that two supervisors, one of whom must have completed training on employee substance abuse, be able to articulate their grounds for suspicion in writing. Rule G does not include random testing of employees. It does allow for sanctions other than termination, and opportunities for rehabilitation, in an effort to encourage employees to come forward and seek help. The Brotherhood of Locomotive Engineers, through a labor-management "Rule G bypass" agreement, established an employee self-help and prevention program, Operation Redblock, which encourages employees to steer their coworkers to sources of assistance.⁹

State and local initiatives

In 1986, several State legislatures considered issues related to drug testing. Maine passed legislation that authorized a study of drug testing issues, and in California, a comprehensive drug testing bill was passed by the State legislature, but was vetoed by the Governor. The California bill would have required that suspect test results be confirmed by a second test, and would have required employers to provide their employees with opportunities for rehabilitation. However, an additional requirement to have all drug tests conducted by State-licensed labs was considered too restrictive by the Governor.¹⁰

Texas law on testing peace officer applicants

In May 1985, the Texas State Legislature adopted a bill that amended the State's licensing, certification, and recordkeeping requirements for peace officer candidates. Peace officers under the act include State and local police officers, reserve law enforcement officers, sheriffs' deputies, and jailers.

In order to be licensed by the Commission on Law Enforcement Standards and Education, peace officer candidates must now be "examined by a licensed physician and . . . declared in writing by the physician to show no trace of drug dependency or illegal drug usage after a physical examination, blood test, or other medical test."¹¹ The amended act also requires that an applicant be certified in writing by a "psychologist or psychiatrist to be in satisfactory psychological and emotional health."¹² Previously, a licensed physician could have provided this certification. The examining psychologists, psychiatrists, and physicians are to be selected by the hiring agency, but may be appointed by the Commission if it believes its rules were not properly followed.

Also under the new legislation, if there is a break in the employment of a peace officer of 180 days or more, the appointing law enforcement agency must submit to the Commission a new declaration of lack of drug dependency or illegal drug usage, along with other updated information including a new criminal history check and new declaration of psychological health.

Maryland Attorney General's opinion

The Attorney General of the State of Maryland, at the request of the Secretary of Personnel, issued an opinion in October 1986 on the legality of several approaches to testing State employees and applicants for State jobs to detect drug use. The Attorney General concluded that mandatory testing of employees whose work was not directly related to public safety would be a violation of their Fourth Amendment rights, and that firing such employees solely on the basis of drug test results would violate the Federal Rehabilitation Act of 1973.¹³

Mandatory testing of public safety employees, the Attorney General concluded, would be constitutional if the tests were ordered on the basis of reasonable suspicion, and if certain procedural safeguards were in place.¹⁴ The Maryland State Police, whose drug testing program included mandatory random testing of veteran officers, made that aspect of its program voluntary after the Attorney General's opinion was released.

The Attorney General also cautioned that while testing police applicants would be legally permissible, "an applicant's agreement to submit to drug testing may not be bootstrapped into his or her blanket consent for testing during future employment."¹⁵

New Jersey Attorney General's opinion

In the fall of 1986, the Attorney General of New Jersey issued drug testing guidelines for law

enforcement officers and urged that they be adopted by all law enforcement agencies whose officers carry firearms.

The guidelines call for drug tests in three situations: prior to appointment to a law enforcement agency, during recruit training, and after hiring if there is "individualized reasonable suspicion to believe that the officer is unlawfully using drugs."¹⁶ The guidelines call for dismissal of officers who produce positive confirmed test results that are upheld after a fair and impartial hearing. In addition, they recommend that all law enforcement supervisors receive inservice training in substance abuse detection. The guidelines include detailed minimum standards for testing procedures and methods, designed to ensure fairness to employees and test reliability.

San Francisco city ordinance on drug testing

In November 1985, San Francisco became the first municipality in the country to deal with drug testing by passing a local ordinance to regulate the practice.¹⁷ The law imposes procedural safeguards on drug testing and severely limits the situations in which most public employers and private firms in the city may conduct drug tests. However, uniformed police, sheriff's, and fire department employees, police communications dispatchers, and emergency service vehicle operators are exempt from the provisions of the San Francisco ordinance.

Overview of police drug-testing programs

There is no comprehensive listing of drug testing programs operated by police agencies throughout the country. However, the National Institute of Justice, several national law enforcement organizations, individual police departments, and others have conducted limited telephone or mail surveys in the past 2 years to determine police policies, procedures, and opinions on employee drug use and drug testing. Collectively, the five departments that were visited for this report have policies for drug testing in almost every situation of interest to law enforcement agencies. Their programs are represented in Table 4-1 which follows.

A recent survey sponsored by the National Institute of Justice¹⁸ shows that a few departments require drug tests in situations other than those listed in Table 4-1, including the following:

- o Upon transfer to a specific sensitive job (e.g., the narcotics unit).
- o Any time a weapon is discharged.
- o Any time an officer or citizen is seriously injured.

Table 4-1

Drug testing policies in five police departments

Drug testing situations	Police departments				
	Honolulu	Chicago	District of Columbia	Miami	Louisville
Officer applicants and recruits					
Policy statement that applicants may be tested	X				X
Prior to pre-employment physical		X			
Part of pre-employment physical			X	X	
On date sworn in			X		
From one to three times while at academy	X	X	X		
Part of end-of-probation physical			X		
Tenured officers					
When suspected of drug use		X	X	X	X
All officers when promoted		X			
All officers when transferred		X			
After leaves of absence		X	X		
After auto accident				X	
Part of scheduled physical exam			X	X	
Part of other mandatory physicals		X			
Mandatory tests of undercover or narcotics officers	X		X		X
Mandatory tests of officers in other sensitive jobs	X				
Random testing program	X				
Civilians					
When suspected of drug use				X	
Crossing guards and traffic control personnel		X			

Chapter 5 discusses applicant and recruit testing in greater detail, while Chapter 6 focuses on policies and procedures for testing tenured officers. The legal issues to consider in establishing a testing program are addressed in Chapter 9.

Notes

1. President's Commission on Organized Crime, America's Habit: Drug Abuse, Drug Trafficking and Organized Crime, March 1986.

2. Judith Havemann and Helen Dewar, "Reagan Council Splits on Drug Tests," The Washington Post, September 9, 1986.

3. Federal Register, Executive Order 12564, Drug-Free Federal Workplace, 51:180, September 5, 1986, pp. 32889-32893.

4. Department of Health and Human Services, Alcohol, Drug Abuse, and Mental Health Administration, "Scientific and Technical Guidelines for Drug Testing Programs," February 13, 1987.

5. Office of Personnel Management, Federal Personnel Manual System, FPM Letter 792-16, November 28, 1986.

6. "FBI & DEA Start Program With Recruits, Supervisors," Law Enforcement News, July 7, 1986.

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7. For a complete listing of Federal agencies with drug testing programs in June 1986, see Subcommittee on Civil Service, House of Representatives, "Drug Testing in the Federal Government," June 20, 1986.
 8. Ralph Blumenthal, "U.S. Weighing Wider Drug Tests for Airlines' Operational Workers," The New York Times, September 28, 1986.
 9. Brotherhood of Locomotive Engineers, sample Rule "G" Bypass Agreement and Prevention Program Companion Agreement.
 10. Deborah Kasouf, "The High Cost of Employee Drug Abuse," Public Administration Times, October 1, 1986.
 11. H.B. 1592, 59th Legislature, (Amended Section 7A, Chapter 546) May 27, 1985.
 12. Ibid.
 13. 71 Opinions of the Attorney General 10 (1986) (Opinion No. 86-005, October 22, 1986), 2.
 14. Ibid., 3.
 15. Ibid., 20.
 16. W. Cary Edwards, Attorney General, State of New Jersey Department of Law and Public Safety, "Memorandum to All Law Enforcement Agency Heads Regarding Law Enforcement Drug Screening Guidelines," October 22, 1986, p. 2.
 17. City of San Francisco Ordinance to Prohibit Employer Drug Testing of Employees, Ordinance No. 527-85, November 12, 1985.
 18. J. Thomas McEwen, Barbara Manili, and Edward Connors, "Employee Drug Testing Policies in Police Departments," National Institute of Justice, Research in Brief, September 1986.

Chapter 5

Policies for testing applicants and recruits

Drug testing in perspective

In general, using drug tests to screen applicants and recruits is less controversial than requiring tests of tenured officers under any circumstances. Nevertheless, it is important to plan and execute applicant and recruit screening programs carefully. Chapter 3 explained how selecting inappropriate tests, failing to confirm initial screening tests, or mishandling samples can produce false-negative or false-positive test results. Lack of attention to these details can mean hiring applicants who have recently used illegal drugs or unfairly excluding candidates who are drug free.

It is also important to view urine testing as a supplement, but not a substitute, for other inquiries about applicants' drug use and their attitudes about drugs. For example, police personnel in Chicago and Louisville emphasized that their psychological testing programs have served them well in identifying applicants with drug problems.

Policies on history of prior involvement with drugs

When asked in a newspaper interview to describe the ideal police candidate, San Diego police psychologist Dr. Michael Mantell replied, "We [psychologists] screen out, we don't screen in."¹ Mantell, who also heads the police psychology section of the American Psychological Association, notes that psychological testing can help screen out applicants with drug problems, but individual police agencies must be responsible for the final "screening in."

Most departments eliminate applicants who they know have recently used drugs. But departments vary somewhat in their views about what level of prior drug involvement can be tolerated. Young people in the 1970's and 1980's may have experimented with drugs in the same way that many older officers experimented with alcohol. Also in the 1970's, many Vietnam veterans who applied for police work admitted past marijuana use overseas. In light of these facts, many police agencies have become somewhat tolerant of prior drug use by applicants, especially if the involvement was limited to experimenting with marijuana and the incidents did not occur recently. Some departments are also concerned that the qualified applicant pool will be greatly depleted if these candidates are categorically eliminated.

Policies on prior drug use at the study sites

Louisville--The written policy in the Louisville Police Department regarding prior drug involvement reflects the department's concern with how recently an applicant may have used or sold drugs:

The Division of Police reserves the right to disqualify anyone who has used or sold marijuana within 3 years prior to time of application; or has used or sold any controlled substance or narcotic drug without a prescription within 6 years prior to time of application.²

Applicants rejected because of their failure to meet this requirement may reapply after 1 year but, according to department personnel, these applicants will be among the last considered in the future.

Some Louisville police applicants rejected on the basis of prior drug involvement have appealed the department's decision to the city's Civil Service Board. A few of these cases were decided in favor of applicants who had used marijuana in the past, but had been truthful when questioned about it by police personnel.

District of Columbia--In the District of Columbia, police personnel officers say that "experimenters" may be accepted if they meet other hiring criteria. Recent or heavy use of any drug, or involvement with cocaine or other hard drugs, will disqualify a candidate. Personnel officers say they reserve the right to reject an applicant who admits using marijuana more than 15 times, although they also weigh how recently the drug use occurred.

The union representative consulted for this report expressed strong opposition to this degree of leniency. The union agrees with the department's policy to conduct applicant urine tests, but feels a greater commitment to recruiting "clear-headed" applicants is also needed.

Chicago--In Chicago, qualified applicants whose prior drug use was limited to experimenting, and who pass the Inwald Personality Inventory (one of two psychological tests given), may be hired. Applicants who have been rejected for recent use, determined by a urine test or other inquiries, may reapply at the time of the next announcement. However, as in other departments, a previous positive urine test will surface in subsequent background checks, and in most cases applicants rejected once for drug involvement will be rejected again.

Miami--Applicants whose prior drug involvement was experimental and with marijuana only, as determined by background investigations and interviews, may be hired by the Miami police department. The department has a policy of rejecting all applicants who are known to have used hard drugs one or more times.

Psychological tests and interviews

When asked what advice they would give other departments for effective applicant drug screening, police personnel in Chicago and Louisville strongly recommended the use of psychological tests. (Louisville does not conduct urine tests of applicants.) In Chicago, two psychologists under contract with the police department have done interesting research on how urine tests and psychological tests can work in tandem to identify applicants with drug problems.³

Drug screening procedures in Louisville--Applicants who pass the Louisville Police Department's written entrance examination next complete a pre-employment interview, conducted by one lieutenant colonel and one staff member from Police Personnel. Questions about drug use may be asked at that time. The interview is followed by a polygraph test, physical examination, and background investigation.

Louisville police noted that in the past, approximately five to seven applicants per training academy class had to be terminated for various problems, including drug use, compared to only one or two per class at the present time. They attribute this improvement to the application of a new psychological testing program and to the skill of the psychologists who conduct the followup psychological interviews.

As the final step in the hiring process, a five-member panel interviews each applicant. The interview panel includes one major, one captain, one lieutenant, one sergeant, and one police officer, each of whom asks several questions from a list furnished to them in advance. During the final interview, applicants are again asked whether they drink, and if so, how much; and whether they use or have ever used drugs, and if so, what drugs. They may also be asked to describe their attitudes about drug use, and to explain whether they feel police officers should be held more accountable for their actions than the average citizen.

Reasons for not conducting urine tests--Although Louisville's policy states that applicants may be given drug tests, to date no applicants or recruits have been tested, nor does the department anticipate using chemical tests in the near future. Several reasons for this were given.

First and most important, police administrators believe the department is already able to screen

applicants well by using the polygraph exam, interviews, and new psychological testing program. Second, the department feels a local estimate of \$60 each for blood tests would make applicant screening too expensive. The department has not done exhaustive research on the cost of urine testing. The State crime lab conducts urine tests of Louisville narcotics officers, but its workload will not permit handling large testing programs for police agencies in the State.

Chicago Police Department psychological testing program

The Chicago Police Department began administering psychological tests to applicants in January 1985. Since that time, over 7,000 persons have completed the tests. Two psychological exams are given, the Minnesota Multiphasic Personality Inventory (MMPI) and the Inwald Personality Inventory (IPI). With the MMPI, the MacAndrew's Alcohol Use subscale, consisting of approximately thirty questions, has proved useful in detecting persons who have a propensity toward substance abuse. The IPI contains a self-report drug use scale made up of fourteen true/false or yes/no questions. This scale measures actual drug use behavior.

Dr. Eric Ostrov of the Isaac Ray Center, the firm that provides the department's psychological testing and evaluation services, recommends the use of psychological tests immediately after the urine test is given.⁴ At this point, an applicant who has used drugs is often unsure whether evidence of the drug will be detected by the urine test and may admit to some drug use on the self-report scale of the IPI. If an applicant obtains high scores on either of the drug scales, an interview is scheduled with a psychologist.

Urine-testing procedures for applicants and recruits

Notifying applicants of the test date

Because of scheduling needs, police departments often announce applicant urine test dates in advance. The Miami police department tells applicants of the urine test the day it is given, but Chicago and the District of Columbia give at least 2 or 3 days notice. Job announcements in some departments may provide several weeks notice of urine testing. Departments that test recruits usually tell them at the academy about the tests, but do not announce the dates in advance.

There are some employers who do not tell applicants that urine or blood tests for drugs will be part of their physicals. Legally, organiza-

tions are able to justify this omission because there is no doctor-patient relationship between an applicant (or an employee) and a doctor retained by the employer.⁵ Ethically, this practice may be questioned, since applicants can be rejected because of a procedure they know nothing about, and are not given an opportunity to explain positive results.

Of course, giving notice makes it possible for some individuals who use drugs to abstain for a few days or weeks and pass the urine test. Nevertheless, District of Columbia police note at least one practical advantage to notifying applicants of testing and test dates: it can discourage some unsuitable candidates from ever applying and seems to discourage others from reporting for pre-employment physicals. A considerable number of applicants do not abstain in spite of the warning and are screened out before the department incurs additional expense.

Testing procedures in Miami

Applicant testing--Urine testing of applicants to the Miami Police Department began in early 1984. Applicants first receive a psychological evaluation as part of the written entrance examination. The next step is a physical exam, which includes a drug test.

Urine samples are collected and analyzed by a private laboratory, which uses EMIT tests. As noted in Chapter 4, Miami screens applicants for propoxyphene (Darvon^R) and tricyclic antidepressants as well as nine controlled substances. The police department usually receives the results of these screening tests in 3 to 5 days.

Miami requires that applicants next take a polygraph exam, which is followed by a background investigation, an agility test, and an assessment center interview.

The laboratory used by the department does not conduct confirmation tests of applicant samples, although it retains all samples with positive EMIT results. At the time of our site visit, no applicant had ever filed a suit challenging either the testing process or the accuracy of the results.

Testing probationary officers--The Miami Police Department does not have a special program for testing officers while they are on probationary status for 18 months. These officers are covered under the Fraternal Order of Police contract with the department, and are subject to the same, but not more stringent, urine testing requirements as tenured officers. They are also entitled to the same disciplinary review and grievance procedures as veterans.

Testing procedures in Chicago

Applicant testing--When the Chicago Police Department began testing applicants in 1985, it

already had several years experience testing tenured officers when they were suspected of drug use and during medical examinations. Many of the officials interviewed for this report now believe testing of applicants and probationary officers is essential, even if no other drug testing is done.

Chicago police applicants who pass the written entrance examination must next submit a urine specimen for drug testing. This step is separate from the required physical exam.

The department's Personnel Division, Medical Section, is responsible for collecting the urine samples. The collection process includes assigning a control number to each person tested, witnessing the specimen being given, and preparing a witness affidavit. A copy of this affidavit is given to the examinee. Samples are then taken to the Medical Section laboratory where control numbers are checked and the samples are stored temporarily in a locked box inside a locked refrigerator.

A Medical Section supervisor then delivers the samples to a private laboratory, which uses an EMIT test to screen them, and gas chromatography/mass spectrometry to confirm samples that are suspect. The Chicago Police Department's written procedures for collecting, storing, transporting, and documenting the receipt and release of urine samples are comprehensive and detailed. Some of these procedures are included in the Appendix.

The department receives a report from the laboratory on both the EMIT and GC/MS results within a week to 10 days. The lab retains all confirmed positive samples until the police department feels that no administrative or civil action will be taken. An applicant who wants a review of the department's decision may request a hearing before the city's personnel board. To date, no applicants have filed law suits challenging either the testing procedures or their test results.

After drug screening, applicants must pass a background investigation, psychological evaluation, and an assessment center interview. Polygraph tests are not used in Chicago, and the physical examination is the final step in the hiring process.

Probationary officers--During their 1-year probationary period, officers in Chicago are tested at least once. They are not informed of the test date in advance. The department and laboratory follow the same testing procedures as with applicants. Probationary officers with confirmed positive results are investigated by internal affairs. They receive a letter stating that their test results were positive and that they have been dismissed for that reason.

Unlike Miami, probationary officers in Chicago are not covered under a union contract, and their only avenue of appeal is through the court system. To date, no probationary officers have filed a suit against the department regarding either the department's testing program or the accuracy of the tests.

Testing procedures in the District of Columbia-- The District of Columbia police drug testing program is unique for several reasons. First, the program has evolved after more than 15 years experience with drug testing. The department began testing applicants in 1971 by contracting with an outside laboratory. Second, for more than 4 years, the Police and Fire Clinic has used trained police officers to conduct EMIT tests. Third, the department's current testing program includes as many as five routine, in-house tests of applicants and recruits.

Applicant testing--After a written test and background investigation, applicants report for the pre-employment physical, which includes the first applicant drug test.

The District of Columbia police have detailed written procedures for conducting tests and documenting the chain of custody of samples. Some of these procedures are included in the Appendix. Personnel involved include a sergeant who documents sample handling and observes samples being given (female applicants are observed by a female officer), two patrol officers who conduct the EMIT tests, and a civilian program administrator who also conducts tests as needed. The testing process is explained in Chapter 3.

Samples with suspect EMIT test results are tested again with EMIT. Samples that remain suspect are mailed by Federal Express to a commercial laboratory out of State. The lab uses GC/MS as the confirmation test and reports the results in writing to the department in about 10 days.

Applicants with negative test results then proceed with a psychological examination and a panel interview. The District of Columbia does not use polygraph examinations for applicants.

Swearing-in test

The department's in-house drug screening capability enables it to require a second urine test of applicants, which is conducted on the day they report to be sworn in.

Applicants receive the following notification of this test. The notice is included in the letter informing them of the date and time to report for orientation:

Prior to Orientation, a required Drug Urinalysis screening will be conducted. Upon the successful completion of the Drug

Screening Test, you will be administered the Oath of Office and begin your Orientation and appointment as a Police Officer. However, if there is a discrepancy noted in your test results, your appointment will be deferred pending further testing and confirmation, at which time you will be officially notified of any further consideration of your application.

When applicants have EMIT test results that are suspect but are not confirmed to be positive by GC/MS, they proceed to the academy and catch up with their applicant group.

Testing probationary officers--During the 1-year probationary period, officers are tested three more times, twice during the 16-week academy session, and again as part of end-of-probation physical exams. Recruits at the academy may be tested at any time, and have been tested as early as 1-week after being sworn in. They do not know the test dates in advance, although they are told at the academy that they will be tested twice.

Proposed testing in Honolulu

Honolulu police applicants who pass the written examination next complete a medical examination, physical condition test, department interview, psychological test, and a personal history questionnaire. The background investigation is the final step. The department does not conduct polygraph examinations of applicants.

The Honolulu police recruiting announcement contains the statement: "You may be required to pass a drug screening." However, at the time of our interviews, the department did not plan to implement routine urine tests of applicants in the near future. Instead, Honolulu has been developing random and mandatory drug testing procedures for officers, with provisions for testing probationary officers.

Proposed testing of probationary officers--As explained in the next chapter, Honolulu's plans include creating two "mandatory test level" groups. Members of these groups will be required to submit to urine tests for drugs "on a regular basis." Probationary officers will be included in a mandatory group, along with officers in sensitive or dangerous positions. These include internal affairs officers, narcotics investigators, SWAT team members, and others.

According to the department's plans, EMIT and thin layer chromatography tests for cocaine and marijuana only will be conducted by a local private laboratory. Samples that appear to be positive after both tests will be mailed to the Mayo clinic for confirmation by GC/MS. Honolulu intends to consider rehabilitation as an option

the first time a tenured officer has a confirmed positive drug test result, but it is likely that probationary officers will be terminated.

Because program details are still being discussed and are subject to change, this description should not yet be considered formal policy. Details about plans for mandatory and random testing of veteran officers in Honolulu are presented in Chapter 6.

Test results

Because of the length of time marijuana metabolites may be present in urine at detectable levels, it is not surprising that most of the applicants who test positive in Chicago, Miami, and the District of Columbia, have been positive for marijuana. In fact, Chicago estimates that marijuana is the drug present in 90 percent of positive applicant tests. The Louisville Police Department, through screening methods other than urinalysis, also finds marijuana use more prevalent than the use of any other drug among applicants with drug problems.

On the followup tests of probationary officers in Chicago and the District of Columbia, cocaine has been the most frequent drug of abuse. Among probationary officers testing positive in Chicago, the department estimates that 90 percent were positive for cocaine. Since academy recruits do not know the test dates in advance, regular cocaine users have no opportunity to "prepare" for urine tests by abstaining for a day or two. Of course, occasional users may still go undetected.

Statistics on applicant test results can, to a limited extent, point to certain drug use trends in the community. For example, the District of Columbia, after several years of testing under its current system, has noticed a slight decrease in positive results for PCP among police applicants, and a slight increase in positives for cocaine, with marijuana remaining relatively constant. Chicago experienced a slight decrease in 1986 in the number of applicants rejected for positive drug tests (16.8 percent) compared to 1985 (19.4 percent).

Notes

1. Marie Rosen, "Interview with Dr. Michael R. Mantell, Chief Psychologist for the San Diego Police Department," Law Enforcement News, November 25, 1986.
2. "Special Requirements for Recruits," Louisville Police Department, 1986.
3. Eric Ostrov, J.D., Ph.D. and James L. Cavanaugh, M.D., "Validation of Police Officer Recruit Candidates' Self-Reported Drug Use," presented at the American Academy of Forensic Sciences Conference, New Orleans, Louisiana, 1986.
4. Ibid.
5. Mark A. Rothstein, "Screening Workers for Drugs: A Legal and Ethical Framework," Employee Relations Law Journal, 11:3, p. 436.

Chapter 6

Testing tenured officers

One important point must be stressed. Any department instituting a drug screening program must be ready to accept the fact that positive results will occur with some very qualified, tenured employees.¹

Introduction

Police applicants found to be using illegal drugs usually receive a form letter that states they have been rejected from further consideration. Typically, probationary officers are confronted and given a written notice of termination unless, as in Miami and Honolulu, a union agreement or departmental policy requires other procedures.

But veteran officers, even those with proven substance abuse problems, are entitled to a greater degree of consideration. As government employees, they have constitutional protections against unreasonable search and seizure. These protections must be considered before any drug testing program begins. They may also be covered under the Police Officers' Bill of Rights in some States. In addition, they have due process rights under the department's disciplinary and grievance procedures, or the collective bargaining agreement, if one exists.

This chapter explains how some departments have answered these questions:

- What should the department's policy be on disciplining officers who use drugs?
- Who should be tested?
- When should they be tested?
- What procedures are being considered for random testing?

What should the disciplinary policy be on using drugs?

Termination for all drug violations

If an officer has an alcohol problem, it is not unusual for a department to take disciplinary action and at the same time offer some opportunity for the officer to obtain help. Although some illegal drugs may not be as harmful as alcohol, many departments are recommending termination for use of any amount of any illegal drug, on or off duty, whether or not job per-

formance was impaired. In a recent survey by the Police Executive Research Forum of 68 police administrators, 90 percent of the respondents said they would terminate officers for use or possession of illegal drugs.

The District of Columbia is one police department that recommends termination in all cases of use or possession. According to policy, the recommendation is the same for both the 15-year veteran who tried marijuana once off duty, and the officer with an expensive cocaine habit. When asked whether there might be mitigating factors in some cases, one administrative officer in the District said:

In my view, 500 noble deeds would not merit special consideration when it comes to drug use by a police officer.

The deputy superintendent of the Chicago Police Department put it this way:

Discharging a drug abusing police officer is necessary to provide a safe work environment for other police officers and to protect public safety. Discharge is more than just appropriate; it is necessary.²

The overriding consideration seems to be that alcohol can be obtained legally; most drugs of abuse cannot. As suggested in Chapter 2, use of illegal substances also invites association with drug dealers and other criminals, and increases the possibility that officers may become involved in drug sales, theft, and other crimes.

Alternative discipline and treatment

Some police departments have disciplinary policies that do not demand termination in all drug use or abuse situations. Instead, for certain types of violations, these departments take lesser forms of disciplinary action and the officer is allowed to obtain treatment.

Treatment for use of illicit drugs--In contrast to the strict approach, a Honolulu police personnel administrator describing the department's proposed drug testing program said, "Our objective is rehabilitation."

The Honolulu Police Department's draft regulations³ clearly describe the disciplinary actions proposed for regular officers who receive their first confirmed positive urine test result. After an internal affairs investigation and completion of the disciplinary review proc-

ess, and with the concurrence of the Chief of Police, an officer may be disciplined and treated instead of losing his or her job. Key features proposed are that the officer take the following actions:

- Immediately enter a department-approved drug abuse treatment program.
- Not return to full duty until receiving negative urine test results and gaining clearance from the city/county physician.
- Submit to frequent urine tests for drugs upon return to full duty for a period not to exceed 12 months.

While in treatment, but after obtaining negative test results, the officer may return to limited duty in an assignment that does not require carrying a gun or driving a police vehicle.⁴ This proposed alternative will not apply if an officer has a second confirmed positive urine test.

The St. Paul, Minnesota, Police Department has also reported a willingness to consider an alternative to firing for drug violations under certain circumstances. The alternative includes immediate referral to the employee assistance program and transfer of assignment. Continued employment depends upon full cooperation with all program requirements. This alternative is not an option if the drug test is positive and the officer is also involved in any of the following situations:

- Unauthorized discharge of a firearm.
- Serious vehicle accident.
- High speed chase.
- Arrest with serious injury to the suspect.
- Any serious injury to an officer stemming from a police incident.⁵

Treatment for problems with prescription or over-the-counter drugs--In deciding on disciplinary action for drug use, a department may want to consider making a distinction between use of illicit drugs and being under the influence of prescription or over-the-counter drugs.

The San Francisco police department has made this distinction in its policies. Its relevant General Order⁶ calls for a recommendation of termination for an officer found under the influence or in possession of any controlled substance unless prescribed by a physician. However, an officer found under the influence of a prescribed or legal over-the-counter drug while on duty may be eligible for an Alternative Punishment Program. This alternative applies to the first offense only.

Under this program, the Chief may suspend the officer for 3 months without pay. The officer may then petition the Police Commission for acceptance into a diversion program. Upon accept-

ance, all or a portion of the suspension may be held in abeyance. The officer must then comply with all aspects of the diversion program and year-long followup requirements. Upon successful completion of the program, the officer's file is purged of the past year's reports.

Treatment for officers who seek help--Should officers who ask for help with drug problems be treated differently from those who get caught? Some departments believe special consideration should be given to officers who come forward, admit their drug problems, and succeed in solving them. The Miami and Chicago police departments take this approach.

In Miami and Chicago, officers who have used drugs, as determined by urine tests or investigations, are unequivocally recommended for termination. But officers who ask for help for a drug problem before being tested may be given an opportunity to obtain treatment without having disciplinary action taken against them.

In Chicago, there have been a few cases where officers voluntarily entered private rehabilitation facilities upon learning they were required to take a physical exam that included a drug test. To return to duty, the officer must take the following steps:

- Complete a mandatory medical exam after treatment to determine fitness for duty (a medical exam is required after any absence of 30 days or more, and most in-patient rehabilitation programs take at least 30 days).
- Authorize the release of the treatment facility's case files to the Police Personnel Medical Section for the purpose of further evaluating the officer's fitness for duty.
- Submit to periodic, unannounced drug screenings after return to duty.

According to Chicago personnel officers, the Federal Rehabilitation Act prevents the department from using in a disciplinary hearing the treatment records of an officer who volunteered for rehabilitation as described above.

The extent to which officers use department-sponsored employee assistance programs, especially for problems with illegal drugs, depends largely on that program's reputation for confidentiality and the department's policies regarding termination for drug violations. These issues are discussed in Chapter 7 on employee assistance programs.

Some experts have recommended declaring a one-time "amnesty" period before testing employees for drugs. In a police setting, this could involve not taking disciplinary action against officers who voluntarily seek treatment prior to the starting date of the urine testing program.

Who should be tested?

The issue of who should submit to drug tests, or whether or not to test at all, is based on the department's problems and objectives related to drug use by employees. In order to meet the test of "reasonableness" in implementing a drug testing program, the department must clearly and completely document its needs, interests, and justifications for requiring employees to submit to drug testing. While the legal aspects of this issue are discussed fully in Chapter 9, several practical aspects of the issue can be mentioned at this point.

First, in terms of recognizing and defining the problem: Is there a recognized drug problem? Have officers been found using drugs, or is drug testing a preventive measure? Thus, is the problem being defined by specific examples from the department's own experience, or from the drug problem in the population in general?

Second, in terms of articulating the department's objectives in drug testing: Is the department attempting to combat any drug abuse by officers on and off duty? Or, is the objective more narrowly defined, such as ensuring all officers are "fit for duty?" What about civilians?

Collectively, the departments visited for this report have tested officers in almost every conceivable situation, ranging from testing on reasonable suspicion to random testing of all officers. Their policies and procedures, and the rationales behind them, are discussed in the sections that follow. It should be emphasized that even the most experienced departments have revised their policies several times and are still revising them.

Testing based on reasonable suspicion

A number of police departments, including many that do not test employees in other situations, have policies and procedures for conducting tests based on reasonable suspicion. Courts have held that a "reasonable suspicion standard," which is something less than "probable cause," but something more than a mere suspicion, is the basis upon which a search such as urinalysis can be justified.⁷ It is clear that reasonable and objective standards related to job performance or fitness for duty are favored by the courts to avoid drug tests at an employer's "unfettered discretion."⁸

Behavioral measures and work performance

In fairness to the officers, and in order to withstand court tests of reasonableness, department policies need to answer these questions:

• What specific behaviors or deviations from expected performance indicate that an officer may

be under the influence of, or has used, illicit drugs?

• How will these behaviors be documented?

Unlike employees under the influence of alcohol, drug users often do not exhibit obvious, unique physical or behavioral symptoms. For example, an employee might smell of liquor but will not smell of cocaine. Employees might talk about hangovers, giving supervisors reason to pay closer attention to work performance; but police employees are not likely to talk about "crashing" from illegal drugs.

As a result, police supervisors are often reluctant to order urine tests for behaviors unrelated to specific incidents of poor work performance. Of the 39 officers charged with violating District of Columbia police drug-use policy over the past 5 years, the majority were discovered through tests conducted as part of their routine physical examinations. As noted by one official, "less than a handful" were ordered by their supervisory officers to take urine tests on the basis of reasonable suspicion based on behavior, and in these instances the behavior was "bizarre" or obvious.

Some police employee assistance programs provide training for supervisors in recognizing signs of substance abuse and other employee problems. In addition, the Los Angeles Police Department's Drug Recognition Program described below suggests that supervisors can improve their skills in recognizing employees with drug problems.

Los Angeles Police Department Drug Recognition Program

It should be emphasized that the LAPD Drug Recognition Program is not being used as a basis for ordering employee drug tests. It involves training officers to use specific procedures to identify drugged drivers. However, the program's success in laboratory and field tests does have implications for improving supervisors' alertness to specific physical traits and behaviors that may indicate drug use.

A laboratory test of the LAPD drug detection procedure, sponsored by the Department of Transportation and the National Institute on Drug Abuse, was conducted in 1985 at Johns Hopkins University. Four members of the LAPD's Drug Recognition Program evaluated 80 male volunteers ages 18 to 35 (a total of 320 evaluations).

Some volunteers were not given any drugs, while others were given either marijuana, valium, secobarbital, or amphetamines. The officers had no idea what drugs were being administered. The drug detection procedure used by the officers included evaluating alertness and responsiveness; observing and measuring certain physiolog-

ical symptoms such as pupil size, blood pressure, and pulse rates; and conducting behavioral tests similar to those used to test alcohol impairment.

In more than 98 percent of the instances in which volunteers were intoxicated, the officers correctly identified them as being under the influence of some type of drug. In nearly 92 percent of the cases, the officers correctly identified the class of drug.⁹

Work performance measures

Specific incidents such as accidents, injuries, or negative changes in overall work performance, may also justify ordering an officer to take a urine test for drugs on the basis of reasonable suspicion.

In the Miami and District of Columbia police departments, for example, urine tests may be ordered after automobile accidents. The District may also order drug tests after weapons are discharged, and after an officer or citizen has been injured. However, testing in these situations is not a matter of routine. There must be other reasons to suspect that drugs are involved.

Other employee performance indicators that may justify ordering a urine test could include the following:

- Frequent absences.
- Frequent tardiness.
- Serious errors in judgment.
- Chronic missed deadlines.
- A history of citizen complaints.
- Excessive force complaints.
- Repeated instances of conduct violations.
- Excessive use of medical leave.
- Poor traffic safety record.

One model for reviewing, monitoring, and improving employee performance is the Chicago Police Department's Personnel Concerns Program. An important component of this program is a "behavioral alert system." This is defined as a "systematic review of a Department member's behavior pattern to alert supervisors to the need for intervention."¹⁰ The system includes specific "behavioral alert indicators" similar to the performance measures listed above. Excerpts from the general order describing the Personnel Concerns Program and behavioral alert indicators are included in the Appendix.

The Personnel Concerns Program was established independently of the department's drug testing program. However, employees whose behavior causes referral to the program may be ordered to take a medical examination that includes a urine test for illegal drugs.

Testing officers in sensitive jobs

As discussed in Chapter 4, Federal Government agencies are now deciding what positions should be considered "sensitive" for the purpose of requiring drug tests. Some police departments have decided that officers in narcotics, vice, or undercover units should be subject to special drug testing requirements. Departments with these requirements usually offer two justifications for their policies:

- In the past, members of these units had drug-related problems or were involved in criminal activities related to drugs.
- Members of these units are more frequently exposed to drugs and the temptations associated with them than are other officers.

In the District of Columbia, only undercover officers are required to submit to testing at the request of their control officers. Although similar testing for vice officers has been considered, department officials are not convinced vice officers are any more vulnerable to drugs than officers in many other functions. In Louisville, officers working in vice and narcotics are subject to unannounced testing at the discretion of their supervising officer. Departments considering similar policies should consult with their own legal advisors. As discussed in Chapter 9, great care must be taken that employees are not selected for testing at the employer's "unfettered discretion."¹¹

Chicago tests all officers before they transfer to another unit but does not single out any unit for routine testing thereafter. Miami has no "sensitive jobs" category for drug testing purposes. In Honolulu, as explained below, officers who handle narcotics evidence as well as those in narcotics enforcement are proposed for frequent testing.

Honolulu's proposed testing program includes two "mandatory test groups" in addition to 22 random test groups. Mandatory test group members will be tested "on a regular basis" or "frequently." Members of these groups include officers in the following job functions:

- Internal affairs officers.
- Personnel officers and assistant personnel officers.
- Officers who investigate or handle illegal drugs.
- Helicopter pilots and observers.
- Members of other specialized units (SWAT team, explosives team, canine handlers).

As this list suggests, Honolulu is interpreting the "sensitive job" concept more broadly than the other departments by (a) taking steps to assure department members that the administrative officers responsible for drug testing are themselves beyond reproach, and (b) including officers who handle specialized or dangerous equipment.

Testing in other special situations

Some departments have decided to require urine tests of officers in other special circumstances. These include tests conducted before or after various types of leave, and tests required as part of rehabilitation and follow up in departments that do not automatically recommend termination for drug use.

In the District of Columbia, officers are tested for drugs before and after military reserve duty, and any time the Police and Fire Clinic conducts a physical exam for an illness or injury. (Promotional, fifth-year, and age group physicals also include urine tests for drugs, as explained in the next section.)

In Honolulu, which intends to offer opportunities for rehabilitation, regular officers with a first confirmed positive urine test result will be assigned to a mandatory group for frequent testing. Officers who refuse to submit to a required urine test will also be assigned to a mandatory group. After an officer's third refusal to take a test, he or she will be subject to disciplinary action for violation of directives (see the section in this chapter on refusal to take a urine test).

Testing as part of a physical exam

Including urine tests for drugs in regularly scheduled physical examinations has several potential benefits for departments that have determined a need to test all officers:

- It is less intrusive than other approaches. Officers expect to provide fluid samples when they report for physicals.
- Because of this expectation, the courts may look more favorably on testing associated with physical exams than on unannounced random testing.
- Unlike random testing, this approach does not require complex scheduling procedures.

The major drawback is obvious:

- Because officers know the approximate date of their required physicals well in advance, those who use drugs can prepare for and pass their urine tests.

Age group physicals

In the District of Columbia, scheduled physicals that include urine tests for drugs are fifth-year physicals and age group physicals conducted every 2 years beginning at age 35. Urine tests are also included as part of required pre-promotional physicals. Administrators believe the department has benefited from this testing approach. As mentioned earlier, of the 39 officers brought up on administrative charges for drug violations in the past 4 years, all but a few were discovered through physical exams that included urine tests. However, some administrators note that these physicals do not allow testing of many officers ages 25 to 35, an age group that may be particularly vulnerable to drugs. At the time of our interviews, the department was considering a proposal to lower the first age-group physical from 35 to 30.

Chicago's policies also contain a provision for drug testing at annual or other periodic physical exams, but the department has not yet decided to implement this. However, Chicago uses drug tests as part of other mandatory physical examinations, as explained below.

Other mandatory physicals

In the Chicago Police Department, drug tests are included in mandatory physical exams, which can be ordered for any of the following reasons:

- To identify the cause of an illness or incapacitation.
- To determine if an officer is capable of performing required duties or essential functions.
- When a pattern of sick leave use indicates the officer may not be physically fit to perform required duties or essential functions.
- When an officer has exhibited unusual work habits or behavioral traits.
- When an officer has been scheduled to submit to a department-ordered psychiatric examination.
- Whenever an officer is transferred or promoted.
- When an officer qualifies for a training program of more than 1 week in duration which is held outside of the department.
- When an officer returns to the department after an absence of 30 days or more from a leave of absence or suspension.

Another approach to testing as part of physical examinations was recently implemented by the Miami Police Department, and is discussed in the next section on random testing.

Random testing

For some police administrators, testing officers on a random basis for drugs is attractive for two main reasons:

- Officers are provided with a minimum of notice of the test, leaving little time for drug users to pass by abstaining temporarily from drugs.
- A large number of employees can be tested without waiting for routine scheduled physical exams.

Random testing is also the only way to determine the actual prevalence of drug use among officers. It can be designed as a true random sample of officers so the results can be extrapolated to the entire population of officers.

At the same time, random testing has created morale and legal problems for several departments. In some police agencies, a high percentage of officers have volunteered for one-time testing on short notice as a way of making a public statement about their integrity regarding drugs.¹² But, as discussed in Chapter 8 on police union positions, some officers, while they advocate testing applicants or testing officers on reasonable suspicion, feel that random testing constitutes an unreasonable search.

Surprise tests versus random testing programs

A distinction should be made between two approaches to mandatory unannounced testing that have been used by several police and fire departments in the past few years.

The first approach has essentially involved issuing an order that requires a group of employees to report immediately for urine testing. This type of "surprise" testing, as discussed in Chapter 9, has been judged in several court cases to be an unconstitutional invasion of privacy. This conclusion was based in part on the facts that (a) the drug testing policies and procedures were not well justified and defined, and (b) employees had no knowledge that they might be subject to such an order.

In contrast to these surprise tests, several departments have taken a systematic approach to developing random testing programs. These include the police departments in Boston, New York City, Honolulu, Miami, and the Maryland State Police. These departments developed written policies and procedures that address the technology to be used, procedures for supervising and documenting chain of custody, and other program components. In addition, provisions are included for using a computerized random selection process for determining the employees to be tested.

In spite of the attention given to procedural safeguards, two of the five police random drug testing programs mentioned above were challenged in court on constitutional grounds. Boston, which had planned random tests of all officers, was enjoined from proceeding as a result of a suit filed by the local Fraternal Order of Police. The department filed an appeal, which was pending at the time this report was prepared.¹³

The New York City police random testing program was limited to approximately 100 department members working in the organized crime control bureau. The department was blocked from proceeding by the State Supreme Court in Manhattan, and is appealing this lower court decision.¹⁴

The Maryland State Police developed a comprehensive drug testing program, which in 1986 included random testing of all tenured officers. The department operated the program for more than 2 months without being challenged in the courts. However, in late October 1986, the Maryland State Attorney General, responding to a request from the State Secretary of Personnel, released an opinion on drug testing that cautioned against proceeding except for applicant testing and testing on the basis of reasonable suspicion. In light of this opinion, the Maryland State Police have stopped mandatory random testing of tenured officers, at least temporarily.

Miami Police Department's random testing process

When we interviewed Miami police personnel in late 1986, there was no random testing program in place. Officers covered under the union contract were tested only on the basis of reasonable suspicion, during scheduled physical exams, and after automobile accidents if there was reason to believe drugs were involved. Since that time, the union has agreed to a random testing program, which began March 16, 1987.

Under the new procedures, officers are randomly selected by a computer program to report for their annual physicals, which include drug tests. Approximately 20 names will be selected each day. Once an officer takes the exam and drug test, his or her name will not be selected again for the remainder of that year. This differs from a "true" random selection process in which the names are returned to the pool and are subject to selection again whenever a list is generated.

Honolulu Police Department's random testing process

After 2 years of planning, which included meetings with police union representatives, the

Honolulu Police Department recently drafted policies and procedures for random testing. In late 1986, 50 administrators were the first department members to take urine tests under the proposed program, which is now being revised and finalized.

Rationale--The purpose of the random testing program, as described in the department's "question and answer" publication,¹⁵ is to (1) address public expectations and restore credibility after several drug-related incidents involving officers in 1984, and (2) address public safety concerns stemming from recent court decisions that have held departments responsible for ensuring that officers are fit to carry guns.

The random selection process--The department has established three test categories. Two of these are mandatory testing categories which, as described previously, include officers in certain special job functions. The third is the random testing category, which includes most of the department's 1,597 officers.

The random testing category is divided into 22 groups based on work assignments. These groups are placed in a random number generator in the department's computer. When the department decides to conduct tests, all members of the first group to appear on the list are tested within 48 hours.

Currently, the plan is to call up groups for testing 30 to 35 times per year, depending on budget considerations. This means that some groups may be tested more than once, while others may not be called up at all. An officer whose group is called may be on annual or other leave and will not be tested. On the other hand, an officer may be tested with his or her group, then be transferred to another group and be tested again if the new group is called.

Sample collection and processing--Sample collection is to be done onsite by a laboratory under contract with the department. Laboratory personnel will conduct "body to bottle" observation when samples are given. Sample containers will be numbered, and internal affairs will maintain the list of names matched to the numbers. Each officer is to provide two samples. Officers may be given up to 4 hours to produce a specimen, to accommodate those with difficulty urinating.

The first urine sample will be analyzed using two screening tests, an EMIT and a TLC test. The department plans to require test results from the lab within 24 hours. If the results of both screening tests are suspect, the second urine sample will be mailed to the Mayo Clinic for confirmation by GC/MS. As noted in Chapter 3, Honolulu intends to test only for cocaine and marijuana.

Special considerations for disciplinary action

When officers have confirmed positive urine test results, police agencies generally follow their standard disciplinary procedures. However, departments need to be clear about how they will handle several special situations that may arise as a result of a urine testing program.

Action based on initial screening test results

Some police administrators begin disciplinary action against an officer based solely on the nonnegative results of an initial urine screening test. They may take away the officer's gun and give him or her a light duty assignment pending the outcome of a confirmation test. The rationale for this is generally to protect the department from liability during the interim period. However, departments need to be cautious about taking action based solely on screening test results. As discussed in Chapter 3, false-positive results may occur. The department risks stigmatizing officers whose confirmation tests later exonerate them.

The District of Columbia police department at one time immediately placed officers on light duty when EMIT test results were suspect. Based on additional experience, the department changed its policy. Now, officers with suspect EMIT tests remain on duty until confirmation is received, except for two situations:

- When the drug in question is PCP.
- When, in the opinion of the department physician, the officer exhibits signs of drug addiction.

Honolulu, like Chicago and Miami, plans to wait until confirmation test results have been received before initiating disciplinary action.

Refusal to take a urine test

Many departments treat a refusal to take a urine test as they do any other refusal to obey a direct order. However, to avoid misunderstanding on this point, they often include in their drug testing policies a specific statement of the disciplinary action to be taken for refusal to be tested.

The Honolulu Police Department's draft policies state that an officer who refuses to be tested:

- Be placed in one of the "mandatory" test groups.
- Be ordered for testing a second time within 5 days.

• If the officer again refuses, he or she will be ordered for testing a third and final time within 5 days of the second refusal.

Officers who refuse a third time will be disciplined according to existing policy for three conduct violations within a 12-month period.

Delays in the disciplinary review process

Some officers may resign when confronted with evidence of drug use or possession. More likely, they will offer information in their defense, or contest some aspect of the drug testing program at a disciplinary hearing. In the District of Columbia, for example, only about 7 percent of the officers charged with violating drug use policies resigned. The rest exercised their due process rights to a hearing.

The department can control certain aspects of the disciplinary process. For example, it can insist that the internal affairs and disciplinary review sections treat drug cases as priority. But if there is not enough staff to handle the volume of cases, or if the agencies involved have different priorities, delays can result and discipline can be undermined. Chicago is a case in point.

Officers in Chicago with confirmed positive drug test results are stripped of police powers. Gun and badge are taken away, and the officer is assigned to inside administrative duty. The officer remains in that position until the following steps are taken:

- Completion of an internal affairs investigation.
- Review by the police department's legal advisor.
- Review by the Superintendent of Police.
- Review and approval to place formal charges by the city's Corporation Counsel (approximately 28 cases were awaiting review at the time of the interviews for this report).
- Suspension of the officer by the Superintendent.
- Recommendation to terminate from the Superintendent to the Police Board.¹⁶
- Hearing presided over by a hearing officer (as the agent of the Police Board).
- Review by the Police Board of the hearing transcript and hearing officer's report.
- Final disposition.

The net result of this lengthy process is that cases can take 2 years or longer to be decided.

38 Testing tenured officers

Further, while the department has recommended termination in every drug use case sent to the Police Board, the board has not supported this recommendation in all cases.¹⁷

Testing civilians

Police agencies may want to give some consideration to testing civilian applicants, or civilian employees who perform certain job functions. As noted in Chapter 4, no precedent has yet been established with regard to civilian testing by Federal Government agencies. However, the Department of Justice and Department of Transportation have defined "sensitive positions" for drug testing purposes, and other agencies may be expected to do so in 1987.

Of the five police departments visited for this report, only Miami currently requires civilian employees suspected of drug use to submit to urine tests. Chicago requires drug tests of civilian applicants for traffic control and crossing guard positions. Louisville police administrators were considering drug tests of civilians in certain positions that required working with confidential information, but had not made a decision at the time this report was prepared.

Notes

1. Letter from Maurice Turner, Chief, Metropolitan Police Department of the District of Columbia, to James K. Stewart, Director, National Institute of Justice, March 10, 1986.
2. Dennis E. Nowicki, "Police Officer Drug Abuse: An Issue of Public Safety," presentation at the International Association of Chiefs of Police 92nd Annual Conference, Houston, Texas, October 14, 1985.
3. Because the Honolulu Police Department had not finalized its program when this report was written, the department requested that its written regulations not be published verbatim.
4. Honolulu Police Department Special Order 86-14 on urinalysis testing, October 15, 1986; and "The Drug Urinalysis Program of the Honolulu Police Department--Questions and Answers," Administrative Bureau, Honolulu Police Department, November 1986.
5. St. Paul Police Department, "Drug and Alcohol Procedure," addition to General Order 230.20, Department Rules of Conduct, Number 5(a).
6. "Alcohol/Drug Use By Members," San Francisco Police Department General Order No. D-4, April 5, 1984.

7. See Chapter 9 for a more detailed discussion of drug testing based on reasonable suspicion.

8. Capua v. City of Plainfield, 643 F.Supp 1507 (D.N.J. 1986).

9. George E. Biglow, et.al., Identifying Types of Drug Intoxication: Laboratory Evaluation of a Subject-Examination Procedure, U.S. Department of Transportation, May 1985.

10. "Personnel Concerns," Chicago Police Department General Order 83-3, effective March 9, 1983.

11. See National Treasury Employees Union, Acosta v. Von Raab, Civ. A. No. 86-3833 (5th Cir. April 22, 1987). (Vacated district court's injunction against Custom Service's drug screening program that tested employees seeking transfer to sensitive jobs: criminal investigators, intelligence officers, and customs inspectors.)

12. After several incidents in Miami of police officers allegedly committing drug-related crimes, 864 officers volunteered to be tested; only one of these officers had positive confirmed results.

13. Guiney v. Roache, Civ. A. No. 86-1346-K (D.C. Mass. March 6, 1987). (As a matter of

discretion, the U.S. District Court abstained from deciding the case on the ground that a State court decision under the Massachusetts Constitution might obviate the need for a Federal constitutional ruling.)

14. Caruso v. Ward, 506 N.Y.S. 2d 789 (N.Y. Sup. Ct. 1986). But see McDonnell v. Hunter, 809 F.2d 1302 (8th Cir. 1987). (Modifying district court order and holding that urinalysis may be performed by systematic random selection of those Department of Corrections employees who have regular contact with prisoners.)

15. "The Drug Urinalysis Program of the Honolulu Police Department--Questions and Answers," Administrative Bureau, Honolulu Police Department, November 1986.

16. By State law, the Police Board conducts a mandatory hearing in disciplinary cases where termination or a suspension of more than 30 days is recommended. Officers suspended from 6 to 30 days may also request Police Board review of their cases.

17. The department and superintendent have sued the Police Board because of recent decisions where termination was recommended, but the Board ordered that the officer be allowed to remain. These decisions did not involve drug use.

Chapter 7

Employee assistance programs

Overview of employee assistance in police agencies

This chapter presents an overview of police employee assistance programs and discusses some of the confidentiality issues associated with operating them. It also describes employee assistance programs in four of the departments visited for this report.

Public and private employers have been criticized for using drug tests without providing drug abuse prevention and stress management programs. In recent years, police departments have increased their use of psychological services. Many departments also provide training to officers and supervisors in dealing with stress, alcohol abuse, and other problems. Some departments have established their own employee assistance programs. While small programs may simply distribute brochures about outside resources, others offer comprehensive services that include referrals, short-term counseling, recruit and in-service training, and counseling on finances and educational opportunities.

Employee assistance program staff may be police department employees, independent counselors under contract with the department, or officer-volunteers.¹ They may serve employees and family members who come to them voluntarily; employees referred "informally" by spouses, supervisors, and others; and employees ordered to obtain assistance in lieu of, or in addition to, disciplinary action.

Confidentiality issues

Probably the most important issue related to police officers' use of employee assistance programs is confidentiality. It is not realistic to expect employees to voluntarily use these programs if they believe their problems will become known to supervisors and result in adverse personnel actions.

When the department's policy on drug use includes a recommendation for termination, officers will be particularly reluctant to use department-sponsored programs for help with drug problems. A few employees may seek help from independent services, but it is typical for both drug and alcohol abusers to deny they have a problem until they are confronted.

Employee rights

Employees who do obtain services for drug, alcohol, emotional, medical, and other problems are entitled to protection from the improper release of information. Applicable laws may include the Federal Rehabilitation Act, State privacy laws, and other State laws that protect medical records. Employers and laboratories can be sued for improper release of information if disclosure results in damage to an individual. They may also be sued for libel or slander for releasing false information. Some of the significant legal issues regarding confidentiality are discussed in Chapter 9.

Exceptions to confidentiality

There are certain situations in which employee assistance program staff, doctors, counselors, and others may waive confidentiality. Usually, these are situations in which the client is considered a danger to self or others. In some programs, a client's admission to committing a felony may also be considered justification for breaking confidentiality.²

Depending on the circumstances, employee assistance programs may handle volatile situations by simply informing a supervisor that a client is temporarily unfit for duty. However, some programs provide administrators with a greater level of detail.

Regardless of the degree of confidentiality a service provider can guarantee, all department members must understand the ground rules in advance. As a matter of policy, written confidentiality guidelines can be established, published, and distributed to all officers. In practice, employee assistance programs will have to establish a track record of trust and responsiveness to encourage voluntary referrals for any type of problem.

Peer assistance models

In general, the more closely an employee assistance program is identified with the department administration, the more difficulty it has establishing trust with the rank and file. In fact, some police counselors believe mandatory and disciplinary referrals should not be handled by the same program that deals with voluntary cases.³

A great deal of interest has been expressed recently in peer assistance and referral models, some of which are sponsored by employee organizations and union chapters. Because these models do not have a disciplinary or "therapeutic" stigma, officers may be more willing to use them.

But peer assistance programs must also have clear confidentiality guidelines. Officer volunteers will confront situations in which their duties to uphold the law and ensure the safety of their co-workers come in conflict with another officer's need for help and job security. This can put the officer/advisors in a "confidentiality bind,"⁴ and could make them accessories to crimes.

Employee assistance programs in four departments

The employee assistance programs reviewed for this report differed with regard to their relationships with the department administration, staffing levels, staff qualifications, and scope of services.

Louisville

One of the earliest forms of employee assistance in police agencies was the appointment of police chaplains. In the Louisville Police Department, one full-time and one part-time chaplain operate the employee assistance program, which is now in its seventh year.

The chaplains also handle other duties and are assigned a car and a radio. They deliver death notices and aid officers by handling transients and dealing with residents in need of social services. The full-time chaplain believes that providing these services has been a major factor in building trust between the employee assistance program and the officers. At the same time, he emphasizes the importance of employee assistance staff establishing a good relationship with the Chief of Police.

The philosophy of the Louisville police program is one of "leniency, support, and absolute confidentiality" regarding the nature of any problem discussed. No written records are maintained. An estimated 75 percent of those who use the program do so voluntarily. Others may be either referred by a supervisor or ordered to report for assistance.

Approximately 135 to 155 persons are served each year by the Louisville employee assistance program. About 16 percent are referred to in-patient facilities for substance abuse treatment, most commonly for alcohol problems. When in-patient treatment is indicated, supervisors are informed that the employee will be on sick

leave, usually for 30 days. Approximately 32 percent of employees who use the program are referred to other types of outside resources, and about 52 percent receive one-on-one support services from the chaplains.

A "Catch 22" for recruits--The chaplains in Louisville conduct two or three sessions with each recruit class, informing them of the employee assistance program. But department administrators note that recruits do not want to use the program for fear that supervisors will become skeptical of their ability to handle police work.

Employee assistance staff and some administrative officers believe this reluctance often results in missed opportunities to deal with minor problems before they become major dilemmas. They also point out that some recruits may be assigned directly to narcotics or intelligence units, and may not be fully prepared emotionally to deal with the special problems of undercover work.

Chicago

In Chicago, the Professional Counseling Service was established in 1980 to provide employee assistance services. It is administered by the police department and has a budget of approximately \$295,000. Staff include two counseling professionals with clinical training; four police officers who work as alcohol counselors and are on call 24-hours a day; and one secretary.

The program director estimates that since 1983 the employee assistance program each year has served 550 to 600 officers and family members. The staff has noticed a slight increase in drug problems since the program began, but believe that the extent of drug use by officers in the department has been overestimated. Among the services most frequently provided are alcohol counseling, general counseling, trauma debriefing, and assistance to officers who call about spouses and children.

Confidentiality issues--Like many police employee assistance programs, there are limits on the degree of confidentiality it can promise. Counselors may talk with the department's Chief Surgeon about certain cases. If an officer is ordered to report to the program, administrators will be told whether or not the employee has complied with the order, but will not be told details of the officer's problem.

In the past, the program experienced problems when some private treatment centers to which employees were referred gave the department's Chief Surgeon specific information about employees' treatment. Employee assistance personnel believe the centers did this because they

were dealing with another medical professional, and were not aware it was creating a problem. But the result was that the police department, which recommends termination for drug use by officers, was receiving information upon which it was not allowed to act. Meetings were held with treatment center staff to correct this problem.

Training--All recruit classes, promotional classes, and districts have heard presentations by Professional Counseling Services staff encouraging them to use the program. The Fraternal Order of Police has also sponsored several seminars on drug use, and notes that participation was higher for family members than department members.

District of Columbia

A department-sponsored employee assistance program and a new Officer Assistance Program sponsored by the Fraternal Order of Police are available to District of Columbia police officers, civilian employees, and their families.

Employee Assistance Office--The department's employee assistance program began in 1978 with two chaplains as codirectors. The following year the current director was hired. The director also provides counseling services, and specializes in marital and family problems. Other staff in 1986 included one full-time counselor, two part-time counselors who are on call 24 hours a day, a management assistant, and a secretary.

The three primary services of this program are short-term direct counseling; assessment interviews and referrals; and support services, which include providing recruit training on such topics as family crisis intervention and stress management.

Counseling involves approximately 50 new cases a year. These cases may originate as self-referrals, informal referrals by spouses and others, or formal referrals (supervisory orders to report). The Employee Assistance Office is located in a townhouse away from headquarters. It does not conduct mandatory psychological evaluations for the department. The director estimates that 95 percent of all formal referrals made by the program are related to alcohol, and that 85 percent of all counseling provided is for either alcohol or family and marital problems.

This program is considered highly confidential by some internal affairs officers and other department officials, who have been denied access to employee information. According to the program director, records remain confidential unless employees use their participation in the program as part of their defense in administra-

tive or other proceedings. In those situations, the records may be subpoenaed.

Several different approaches have been tried to encourage officers and family members to use the program. Twenty-two volunteer peer counselors were trained; and special workshops in "marriage enrichment" and "life enrichment" are offered once a month.

FOP Officer Assistance Program--After studying the Boston Police Department's Stress Program and similar peer support models, the Fraternal Order of Police started its own Officer Assistance Program in mid-1986. The program uses volunteer counselors trained with the help of a consultant from the Psychiatric Institute of Washington.

The FOP believes its program will be perceived as confidential by the rank and file because it is not linked to the department administration. It also believes officers will be more willing to come forward, discuss their problems, and follow up on referrals if they are assisted by other officers with whom they share similar experiences.

The FOP intends to have officer assistance volunteers in each district. The program will reach out to families as well as officers, provide a 24-hour hotline, and offer monthly meetings on such topics as grief and loss, depression, alcohol abuse, and family estrangement. The FOP committed \$18,000 to this effort for the first year. An article on the program is included in the Appendix.

Miami

Since 1977, the Miami police department has used a private contractor to operate its Psychological/Stress Counseling Program. The program is staffed by two full-time psychologists and uses 10 other therapists as needed to provide treatment and training on such topics as stress management. An average of approximately 100 officers a year use the program's counseling services for assistance with personal, work, emotional, and psychological problems.

Stress Program administrators emphasize the importance of keeping employee assistance services separate from any other program the department uses for mandatory psychological evaluations. Training bulletins published by the department emphasize that "counseling and treatment programs are conducted with confidentiality guaranteed (per American Psychological Association guidelines)"⁵ and that "participation in the [employee developmental services] program will not jeopardize an employee's job security, promotional opportunity, or reputation."⁶

Because of concerns about confidentiality, program staff would not offer an opinion about the

extent of drug problems in the department. For drug abuse problems, counseling may be provided by an out-patient worker, or the employee may be referred to an in-patient treatment program.

Notes

1. Gail A. Goolkasian, Ronald W. Geddes, and William DeJong, Coping with Police Stress, U.S. Department of Justice, National Institute of Justice, 1985. Police agencies interested in starting or improving employee assistance programs are encouraged to consult this manual, which includes specific examples of successful programs in several departments.

2. Ibid.

3. Ibid.

4. Marie Rosen, "Interview with Dr. Michael R. Mantell, Chief Psychologist for the San Diego Police Department," Law Enforcement News, November 25, 1986.

5. "Psychological Services," Miami Police Department Training Bulletin No. 5-84, February 10, 1984.

6. "Counseling Services for M.P.D. Personnel," Miami Police Department Training Bulletin No. 11, September 1986.

Chapter 8

Police union positions on drug testing

Police unions, whether or not they serve as local collective bargaining units, are understandably concerned about the movement of administrators toward drug testing. The union locals are placed in a difficult position. They have an overriding responsibility to protect members' due process and other constitutional rights. At the same time, they are not, and do not want to be perceived as being, tolerant of drug use.

General trends

The national office of the Fraternal Order of Police has been providing its local chapters with information and guidance on drug testing, but has not yet taken an official national position. It is likely that a resolution setting drug testing standards will be introduced at the FOP national convention in 1987.

In response to local situations, individual chapters of the FOP have been developing their own positions on drug testing. FOP chapters have supported individual officers at administrative hearings, and have filed lawsuits challenging drug testing in Plainfield, New Jersey; Boston; New York City; Miami; the District of Columbia; and other jurisdictions.

In general, many FOP chapters have taken the following positions:

- o They have advocated urine testing or other stringent drug screening methods for applicants and recruits.
- o They have stressed the necessity of due process and other procedural safeguards in drug testing of police officers.
- o They have opposed mandatory, unannounced drug testing of tenured officers in departments that gave "surprise tests" and in other departments that developed structured random testing programs.
- o They want to be included in the development of drug testing policies, either by negotiating as part of the collective bargaining process, or by consulting with department administrators under meet and confer procedures.

Union involvement and positions in five police agencies

Each of the departments visited for this report has had different experiences with their union

locals on the issue of drug testing. This section describes how various agreements were reached and outlines the major concerns expressed by union representatives. Chapter 9 discusses legal issues raised by police and other unions in court cases related to drug testing.

Miami

Background--The decision to test Miami police officers for drug use resulted from two specific incidents involving three officers on June 11 and 12, 1985. One incident was the alleged use of cocaine by an off-duty officer. The other involved the alleged purchase of drugs by two on-duty officers who were in a marked police car. These three officers were ordered to submit to urine tests.

At the time these incidents occurred, the city and the union had been engaged in collective bargaining. The issue of drug testing had been placed on the bargaining table by the city, but no agreement had yet been reached.

Charges of unfair labor practices--The FOP felt the city had unlawfully ordered the three officers to submit to drug tests. On June 18, 1985, it filed an unfair labor practices charge against the city with the Florida Public Employees Relations Commission (PERC). The FOP alleged that the city failed to bargain, interfered with employees' rights, and failed to adhere to the department's negotiated grievance procedure. The FOP also requested an injunction to prevent the city from ordering further tests of officers.

The ruling by PERC reinstated the three officers and ordered the city to cease and desist from "unilaterally requiring its law enforcement employees represented by the FOP to submit to chemical testing (urinalysis) to detect the presence of controlled substances as a condition of employment."¹ The city appealed the PERC decision to the 3rd District Court of Appeal in Florida, where a decision was pending at the time this report was prepared.

Subsequent developments--Several other drug-related incidents occurred during the same time period. These incidents resulted in criminal indictments against several Miami police officers. In an effort to demonstrate that they were free of drugs, 864 Miami officers volunteered to take urine tests.

As a result of these events and the PERC ruling, provisions for drug and alcohol testing were incorporated into the current labor contract. The most recent contract revision in early 1987 permits the random selection of officers to take annual physicals, which include drug tests.

Key issues--Miami FOP leaders interviewed for this report expressed the following views:

- The FOP does not have a problem with applicant drug testing.
- Officers should be tested only on the basis of reasonable suspicion related to objective facts, or during annual physical examinations.
- The FOP would like to see opportunities for rehabilitation made available to officers who voluntarily come forward or test positive on a physical examination.

Advice to other departments--When asked what advice the union would give another department that plans to establish drug testing, the following points were emphasized:

- Evaluate the need to test based on such factors as the level of community problems, geographic location, and objective indicators of problems among officers (work performance, absenteeism, tardiness, and others).
- Establish strict procedures for chain of custody and confidentiality.²
- Select a credible laboratory.
- Work with the employee organization in establishing policies and procedures.

Chicago

Background--By 1984, the Chicago Police Department had several years experience with urine testing for drugs as a part of medical examinations and when officers were suspected of drug use. In late 1984 and early 1985, the department decided to expand its testing of tenured officers and to begin testing probationary officers and applicants. It also increased the number of drugs for which tests were conducted.

The personnel division cites a number of reasons for the decision to expand the drug testing program. These include an increase in drug-related arrests of police officers, increases in the number of drug-related cases handled by the department's medical section and internal affairs division, increases in positive drug tests after changing laboratories, and discussions with patrol officers and supervisors.

Union role in policy development--Union leaders report that they had received for com-

ment copies of the department's proposed orders related to drug testing. The FOP legal counsel met with the Superintendent's counsel, the research and development staff, and others before the expanded program was finalized and implemented.

The FOP in Chicago is not attempting to make drug testing an item for negotiation in the collective bargaining process. It has never filed a lawsuit related to drug testing in the department, nor was it contemplating any suits at the time this report was written.

Key issues--Chicago FOP leaders interviewed for this report expressed the following views:

- All applicants should be tested for drugs.
- Testing officers at the time of transfers and promotions is acceptable.
- Testing on the basis of probable cause is acceptable as long as a clear written reason for testing is given, and the official requesting the test is identified.
- Officers who volunteer for treatment should be allowed to keep some type of job, even if this is a position without police powers. Chronic drug users should be fired.

Advice for other departments--The Chicago FOP stressed the importance of working with employee organizations to develop drug testing procedures and offered this advice:

- Don't take a "shotgun approach" by using random testing.
- Don't use testing as a punishment for something else.
- Protect members from false accusations by putting the reasons for ordering tests and the names of persons initiating the action in writing.³

District of Columbia

Background--In 1971, the Metropolitan Police Department began testing applicants for certain drugs (applicants were not tested for marijuana until 1982). It also tested officers on the basis of reasonable suspicion. In 1982, the department began its in-house drug screening program, using an outside laboratory for confirmation tests. This in-house screening capability allowed the department to increase the number of situations in which officers were ordered to submit to urine tests for drugs.

The development of drug testing policies and procedures has been viewed by department officials as an administrative prerogative. Plan-

ning and research task forces included administrative, internal affairs, clinic, and planning staff members and outside consultants, but did not include union representatives.

Union role--Actions taken by the FOP chapter representing department members were probably best summarized by its labor committee chairman: "In an adversarial setting, we have accomplished what we wanted to accomplish."

In general, the FOP now finds the department's drug testing policies acceptable. But changes in testing procedures, chain-of-custody protections, and other due process safeguards were largely achieved on a case-by-case basis as a result of disciplinary hearings in which the FOP provided for the defense of members charged with drug violations.

In addition, the FOP challenged a special order⁴ that required officers to submit to urine testing if suspected of drug use. A suit filed by the FOP maintained that the order violated officers' reasonable expectations of privacy. The lower court granted a preliminary injunction and ruled that the order was unconstitutional. However, the Court of Appeals overturned the decision and upheld the authority of the department to conduct drug tests in line with the special order.

Key issues--The previous chapter included information on a new FOP-sponsored employee assistance program. Other concerns discussed by the labor committee chairman included the following:

- Tougher policies are needed on accepting applicants who admit to prior drug use. The department should do more to recruit "clear-minded, drug-free" employees.
- Hair testing for drugs should be considered in the future if the reliability of this method becomes accepted. It promises to be less embarrassing than urine testing, does not create storage and handling problems, and has the potential to reveal chronic drug use.
- Use of illegally obtained drugs should not be tolerated under any circumstances. However, some alternative to termination should be considered in unique circumstances, for example, dependency on pain killers prescribed for a work-related injury.
- The FOP is not opposed to testing as part of scheduled age physicals but would seek to block random testing.

Advice for other departments--In addition to a recommendation that departments consult with the union when developing policies and procedures, the FOP representative cautioned against relying on the results of any type of test without also conducting a departmental investigation.

Louisville

The Louisville Police Department has not implemented or proposed an extensive drug testing program. Only narcotics officers and officers suspected of drug use are subject to testing. Administrators and the union attorney report having a good line of communication regarding drug tests.

The union does want to see drug testing included in collective bargaining. During partial negotiations in November 1986, the union wanted a one-sentence definition of "reasonable suspicion" included in the contract, and was concerned that testing not be ordered on the basis of anonymous complaints. Other union positions were as follows:

- It is opposed to random or surprise tests.
- It is opposed to drug testing as part of the physical examination.
- It believes testing of officers in the narcotics unit is justified because of incidents in the past.
- It would have chain-of-custody concerns if testing were done by an independent lab not located in the Louisville area.

Honolulu

Department administrators have been meeting since 1984 with representatives of the State of Hawaii Organization of Police Officers (SHOPO)⁵ to develop random and mandatory testing policies. As a result of these discussions, the proposed drug testing program, described in Chapters 5 and 6, includes an opportunity for treatment after a first positive urine test and other procedural safeguards. The administration addressed many of the officers' concerns in a "Questions and Answers" bulletin, which is included in the Appendix.

Notes

1. Fraternal Order of Police Lodge No. 20 v. City of Miami, Florida, Public Employees Relations Commission, State of Florida, December 11, 1985, (appeal docketed).
2. In Florida, a drug test ordered by the city may be considered a public record rather than a personal medical record.
3. Internal affairs personnel also stressed this point.
4. "Drug Testing for Illicit Narcotic or Controlled Substance Use," Special Order 83-21, issued March 2, 1983.
5. SHOPO is an independent, nonaffiliated police officers organization.

Chapter 9

Legal issues related to police employee drug testing

Introduction

Police department employee drug testing by urinalysis raises numerous legal issues for agencies considering developing policies and procedures to deal with potential employee drug use. The media and professional journals are devoting more attention to the subject of drug testing, and the case law is starting to develop.¹ In this chapter, the most significant and current legal issues are discussed, including Fourth Amendment search and seizure, Fourteenth Amendment due process and equal protection of laws, acceptance of different types of drug testing methods, and procedures involving administering drug testing programs.

This presentation will be valuable in providing some general legal guidance; however, police administrators contemplating developing a drug testing program should receive the specific legal advice of the local general counsel.

Fourth amendment search and seizure

The Fourth Amendment to the United States Constitution protects people from unreasonable searches and seizures.² Under the Fourth Amendment, a search and seizure can be made only with a warrant based on probable cause, or without a warrant under certain recognized exceptions.³

Courts have clearly established that intrusions "beyond the body's surface" are searches within the meaning of the Fourth Amendment.⁴ Under the Fourth Amendment, persons have a reasonable expectation of privacy to be free from bodily intrusions by government employers.

While courts have held that a person does not have a reasonable expectation of privacy in what a person "knowingly exposes to the public," most courts support an analogy to the blood test and find that an individual clearly has a reasonable and legitimate expectation of privacy in one's own urine.⁵ One does not reasonably expect to discharge urine under circumstances making it available to others to collect and analyze in order to discover the personal physiological secrets it holds.⁶ For these reasons, governmental taking of a urine specimen constitutes a search and seizure within the meaning of the Fourth Amendment.⁷

The Fourth Amendment protects persons only from unreasonable searches and seizures.⁸ Thus, courts must decide whether department drug testing of employees is reasonable under the cir-

cumstances. This reasonableness will be determined by balancing the employee's expectation of privacy against the department's needs and interests in testing employees for use of drugs. The U.S. Supreme Court has explained:

The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.⁹

Employee's expectations of privacy

The initial analysis involves determining whether taking an employee's urine unreasonably invades the individual's legitimate expectation of privacy. In Katz v. United States, the U.S. Supreme Court articulated an accepted standard for what constitutes a legitimate expectation of privacy as follows:

There is a two-fold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and second, that the expectation be one that society is prepared to recognize as "reasonable."¹⁰

Absent directives, general orders, or collective bargaining agreements authorizing the government employer to conduct drug tests, employees reasonably expect to be free from urine testing while on the job. One threshold for government drug testing of employees is notice and the existence of clear standards and procedures for drug testing.

While one court decision stated that police officers "are possessed of a certain level of constitutional protection which cannot be lowered,"¹¹ another court recognized that police officers may in certain circumstances "enjoy less constitutional protection than an ordinary citizen,"¹² since the police are a paramilitary organization.

In Capua v. City of Plainfield,¹³ a case involving mass urine testing of fire and police department employees, U.S. District Judge H. Lee Sarokin articulated two additional privacy interests for the individual. First, a urine test done under observation is likely to be a "very embarrassing and humiliating experience."

Second, compulsory urinalysis forces individuals to divulge private, personal medical information unrelated to the government's interest in discovering illegal drug abuse. Courts have clearly recognized a right of privacy in such personal medical information.

In fact, such a right of privacy in medical information discovered in drug tests is analogous to similar issues of propriety in polygraph testing. A problem arises in using the polygraph when employers ask questions to obtain information outside the scope of job-related inquiries. In response, over one-half of the State legislatures have enacted statutes limiting or prohibiting the use of polygraph testing by private or public employers.¹⁴

A final issue highlighting the individual's right of privacy over the government's need to conduct drug testing is that urinalysis measures drug use in the past. Urine test results cannot prove that an employee was under the influence of drugs while at work. In a recent opinion, the Office of the Attorney General for the State of Maryland noted:

Poor performance resulting from current drug abuse is an observable fact and can be dealt with through the customary personnel methods of counseling or, if necessary, discipline. Learning, through urinalysis, that an employee used illegal drugs at some time in the past, and presumably off-duty, is a poor surrogate for direct observation of impaired condition during working hours.¹⁵

Government's interests

As mentioned previously, judicial determination of reasonableness under the Fourth Amendment involves balancing the employee's expectation of privacy against the employer's needs and interest in testing employees for use of drugs. The interests of police departments, which must be balanced against the rights of officers, have been summarized in a very thoughtful article on the subject by Jeffrey Higginbotham, Legal Counsel Division of the FBI Training Academy.¹⁶ Mr. Higginbotham enumerates seven significant police department interests which may be offered to justify a police department's drug testing program:

• Public safety: Police activities, such as use of firearms, vehicle pursuits, and other activities requiring judgment and skill can be hazardous to the public if performed by officers impaired by use of drugs.¹⁷

• Public trust and integrity: Possession of illegal drugs by police officers (or anyone) is a criminal offense in most jurisdictions. Sworn to uphold the law, police lose the public trust when they break the law.

• Potential for corruption: An officer using drugs must associate with criminals to obtain the drugs; such association may be a basis for exploitation of the officer.

• Presentation of credible testimony: An officer illegally using drugs could be subject to impeachment on the witness stand as a law violator.

• Coworker morale and safety: The department has an obligation to ensure employees that coworkers can serve as partners or back-ups in a reliable and effective manner.

• Loss of productivity: Drug use by officers could result in high absenteeism and injuries on the job, increasing the cost of police services to the taxpayer.

• Civil liability: A police department may be held legally liable if it knew, or should have known, that an officer, as a result of drug use, presented an unreasonable risk of harm to others. Liability may be based on a failure to address an employee drug problem with due diligence, or inadequate policies and procedures to ensure officers are fit for duty.¹⁸

In summary, in order for a police department to develop a drug testing program consistent with Fourth Amendment requirements, the department must document its policies, procedures, and the need for such a measure. In some of the most recent court cases dealing with police department drug testing, the courts also appeared to be influenced heavily by the lack of facts or statistics to demonstrate an actual employee drug problem. In Penny v. Kennedy, the court stressed the following:

Several weeks before the trial of this case, Chief McCutcheon stated that the Chattanooga Police Department had no drug problem. By the time of the trial he had concluded that the department does have a drug problem. Nevertheless, he still concedes that there is no drug problem in "ninety percent" of the department. Aside from the Chief's opinion, there are no facts which have been presented to the Court from which it could be concluded that the remaining ten percent have a drug problem. There is no indication that any police officers have tested positive for drugs of any kind in the 1986 tests conducted to date.¹⁹

Drug testing administration and procedures

Liberty and property interests

In addition to Fourth Amendment search and seizure issues, employee drug testing programs must

be consistent with the requirements of the Fourteenth Amendment to the United States Constitution, which entitles all persons to "due process of law" and "equal protection of the laws."²⁰

Fourth Amendment issues address whether it is constitutional to establish a drug testing program. Fourteenth Amendment issues deal with the manner in which the program is implemented. Fourteenth Amendment issues include reliability of tests and key procedures enumerated in screening programs, such as employee notification, obtaining the specimens, chain of custody of the specimen, confidentiality of records, and sanctions. Each of these areas, which were discussed in Chapter 3, will be briefly reviewed below.

The Fourteenth Amendment safeguards the "liberty" and "property" interests of individuals. Courts recognize that employees have a "liberty interest" to be free from an unwarranted stigma attached to discharge, particularly where such reputation impairs the individual's ability to obtain future employment.²¹ Courts also recognize that employees sometimes have a "property interest" in their employment.²² These liberty and property interests cannot be removed from employees without due process of law. In reference to the police department's unannounced mass urine testing, the court in Capua v. City of Plainfield summarized the argument as follows:

. . . discharge on charges of drug abuse could severely affect these interests. The deprivation of plaintiff's [police officers] liberty and property interests trigger constitutional requirements of procedural due process. Defendant's [police department] actions impermissibly violated these protected liberty and property interests without due process of law.²³

While these Fourteenth Amendment liberty and property rights do not prohibit police departments from disciplining or discharging officers found using drugs, departments developing a urine testing program must consider some basic procedural safeguards, which are discussed below, in order to meet the requirements of due process of law.

Drug testing program procedures and due process requirements

Employee notification--The court in Capua v. City of Plainfield²⁴ considered the department's surprise drug testing program a form of employee harassment and coercion because of a lack of written directives establishing standards and procedures for testing. Employee notification of drug testing, and a clear and detailed written directive enumerating applicable procedures for collecting, testing, and using

the information derived, may be prerequisites to ensure due process under the Fourteenth Amendment.

In his article, Higginbotham²⁵ argues that notice of drug testing reduces an employee's expectation of privacy and may help a department meet the test of reasonableness under the Fourth Amendment. He further suggests that "education and publication of the policy within the department be made a part of a decision to implement a drug testing program."²⁶

Chain of custody--The first issue involving chain of custody is how the specimen is collected. There is a tradeoff in the collection process between the intrusiveness of the "body to bottle" urine collection method, described in Chapter 3, and ensuring reliability of the process by obtaining uncontaminated samples. While close observation is "embarrassing,"²⁷ the whole program could be questioned if the sample collection process does not have integrity.

The chain of custody of drug specimens in a urine testing program should be treated as carefully as physical evidence in a criminal investigation. The chain should be documented at each stage of the process. In drug testing, departments often perform the initial sample collection in-house and use outside labs for testing. In these situations, the department must take responsibility for ensuring the reliability of the lab's chain of custody while the specimen is under the control of the lab. Important criteria for selecting a private lab is sensitivity to this issue and internal procedures for controlling and documenting chain of custody. Transporting the specimens to and from outside private labs is also a consideration in terms of chain of custody.

Another aspect of due process related to the chain of custody of urine specimens is whether the department should preserve a sample for the employee for an independent analysis. In a case involving air traffic controllers who were disciplined on the basis of positive urine test results, the U.S. Court of Appeals for the Fifth Circuit overturned the case partly because the urine samples were destroyed and not accessible for independent testing by the employees.²⁸

However, Higginbotham suggests in his article that the preservation of positive urine results for an employee's independent verification may not be legally required under the Supreme Court's ruling in California v. Trombetta.²⁹ This case, which dealt with breath samples, held that preservation of positive breath samples for DWI defendants would be required only where the sample was exculpatory and there was no opportunity to cross-examine the reliability of the testing apparatus. Higginbotham concludes, however, that departments should still consider preserving positive urine samples for independ-

ent verification by employees in order to "promote a sense of fairness and enhanced reliability in the testing procedures."³⁰ In this same vein, the court in Capua v. City of Plainfield stated:

. . . defendants' [city] refusal to afford plaintiff [police officers] full opportunity to evaluate and review their personal test results or to have their own specimens re-tested by a technician of their choice offends traditional notions of fundamental fairness and due process.³¹

Test accuracy--The basic concepts related to the accuracy of urinalysis are discussed in Chapter 3. The due process requirement of the Fourteenth Amendment does not require that the screening test be entirely faultless, only that the testing apparatus and procedures be highly reliable and accurate. To avoid a risk of false positives, departments are cautioned to use acceptable cutoff levels in urine tests for drugs of abuse, and to use reliable confirmatory tests to verify positive results.³² For example, an initial drug screening immunoassay test, such as the EMIT urine test that shows results of drugs in urine, should be confirmed by a more reliable test, such as gas chromatography/mass spectrometry (GC/MS).

In a recent decision, the U.S. Court of Appeals for the Fifth Circuit summarized the reliability of the Custom Service's drug screening as follows:

The drug-testing program is not so unreliable as to violate due process of law. While the initial screening test, EMIT, may have too high a rate of false-positive results for the presence of drugs, the union does not dispute the evidence that the follow-up test, GC/MS, is almost always accurate, assuming proper storage, handling, and measurement techniques. Customs also employs elaborate chain-of-custody procedures to minimize the possibility of falsely positive readings. Moreover, the employee may resubmit a specimen pronounced positive to a laboratory of his own choosing for retesting. Finally, the Customs Service program includes a quality-assurance feature. Control samples will be intermingled with those of the employees to measure the incidence of false-positive results. Quality-assurance reports will be provided to the Union. Hence, if the quality-assurance program indicates that false-positive results occur, employees may challenge the validity of their own positive tests on that basis.³³

Test confidentiality--Courts have always been very careful about protecting the individual's right of privacy in medical information.³⁴ In upholding the reasonableness of the urine testing of jockeys, the court in Shoemaker v. Handel³⁵ was influenced in part by the fact

that the procedural guidelines governing the drug testing program had sufficient precautions to guarantee the jockey's privacy in the medical information obtained.

While most urine tests look only for the presence of illegal drugs, it is medically possible by analyzing urine to obtain other information, such as drugs an individual may be taking to control certain emotional or physiological disorders. These disorders may have no impact on job performance, but the knowledge of the disorders in the employee could have an impact on an employer's decision to promote or assign an employee. In Capua v. City of Plainfield, the court expressed the need for confidentiality of information in a drug testing program as follows:

. . . compulsory urinalysis forces plaintiffs [police officers] to divulge private, personal medical information unrelated to the government's professed interest in discovering illegal drug abuse . . . Plaintiffs have a significant interest in safeguarding the confidentiality of such information whereas the government has no countervailing legitimate need for access to this personal medical data.³⁶

Confidentiality should also be extended to the employment records of employees involved in drug-use situations. As a cautionary measure, if an employee is discharged for drug abuse, the reason for such termination should not be disclosed to prospective employers. Stating that an officer was discharged should be sufficient to alert a potential police employer to question the individual about the circumstances of the dismissal and take other investigative steps. The reason for not hiring applicants, if for drug abuse, should remain confidential as well.

A recent law article³⁷ observed that defamation suits by former employees are increasing rapidly. These legal actions allege that references given to prospective employers are defamatory and prevent the individual from getting job offers. The laws on defamation vary from State to State. While employers traditionally have a qualified privilege in such employment matters, many employers are providing very limited information on reference checks.

Test results and discipline--Another aspect of "due process" in the context of employment decisions requires that "penalties be rationally related to and not disproportionate to the degree of seriousness of an employee's drug-related offense."³⁸ As discussed in Chapter 6, some departments, such as Washington, D.C., take a strict enforcement approach--illegal drug use will result in termination. These departments will dismiss an officer based on confirmed positive results on a drug test. These departments also consider refusal to submit to the drug tests as failure to comply with a departmental order and grounds for dismissal.

The unresolved issue is whether police departments have a legitimate interest in preventing off-duty illicit drug use by officers. As mentioned in Footnote 17, since many agencies require law enforcement officers to carry weapons off-duty and become involved in situations off-duty requiring a police presence, these agencies may be able to regulate employee drug use while off-duty. If the police agency has legitimate justification to regulate off-duty officer conduct and prevent off-duty drug use, then a confirmed positive urine test without more could be the basis for discipline.

However, if the agency cannot justify the regulation of off-duty conduct, then even confirmed positive urine tests will need to be corroborated by other independent evidence of officer drug-impairment. The department will have to show how drug use has impaired the officer's job performance and jeopardized the public safety.

In Capua v. City of Plainfield,³⁹ the court held mass urine testing unconstitutional and indicated that drug testing would only be allowable as a result of individualized, reasonable suspicion that the employee was drug-impaired. Part of the court's reliance on this standard was because the police department justified drug testing to combat employee drug use while on duty. The court noted that on-duty drug use would "manifest some outward symptoms which, in turn, would give rise to a reasonable suspicion."⁴⁰

In contrast, two recent Federal appellate court decisions seem to indicate that the appellate courts may be more solicitous of the government's interests than the lower courts have been. In McDonnell v. Hunter,⁴¹ the appellate court modified the lower court order and held urine testing of corrections employees permissible (in addition to random selection) where there was reasonable suspicion that the employee was under the influence of drugs on duty or that controlled substances were used within the previous 24-hour period.

More recently, the U.S. Court of Appeals for the Fifth Circuit drew an analogy between the Customs Service's drug screening of employees transferring to sensitive positions and the government's interest in inspecting highly regulated industries. The court noted that, "Individuals seeking employment in drug interception know that inquiry may be made concerning their off-the-job use of drugs and that the tolerance usually extended for private activities does not extend to them if investigation discloses their use of drugs."⁴² (Emphasis added.)

Other departments have taken a more moderate approach to disciplining officers found using drugs. Rather than impose a strict consequence of termination, these departments judge each

case on its merits and the surrounding circumstances. These departments often treat the drug case as a medical problem and opt to place first offenders into a rehabilitation program. Some labor attorneys feel that arbitrators tend to favor employee assistance programs and sometimes have the authority to order reinstatement if they feel the employee should have been given an opportunity to receive treatment prior to discharge.⁴³

In addition, in one of the cases upholding random drug testing based on an administrative search exception to the Fourth Amendment requirements, the court seemed influenced by the fact that no criminal action was contemplated for jockeys testing positive on urine tests. The court cited an opinion by the New Jersey Attorney General that stated in part:

. . . the Attorney General . . . is unaware of any statute that would require the [Racing] Commission to report suspected drug use to any prosecutorial authorities.⁴⁴

The decision to terminate an employee for drug impairment may also be challenged as a violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Terminating employees impaired by drugs, however, would likely meet the test of being a rational and legitimate government interest. In New York City Transit Authority v. Beazer,⁴⁵ the Supreme Court upheld the Transit Authority's policy of barring all methadone users from jobs in the subway system. The court stated that this approach created a special classification or status for drug users, in contrast to an individualized, case-by-case evaluation of an applicant's job capabilities; however, such an approach represented a rational policy choice and did "not implicate the principle safeguarded by the Equal Protection Clause."⁴⁶

Regardless of the policy of the police department with regard to disciplining officers found using illegal drugs, courts are consistent in observing the employee's right to a hearing with the concomitant rights of confrontation of one's accuser, subpoena of witnesses, and protections against self-incrimination. Most of these rights are detailed in collective bargaining agreements, city or county grievance procedures, and the Police Officer's Bill of Rights adopted in many States.⁴⁷ One of the key "due process" points relied on by the court in approving the drug testing program in Shoemaker v. Handel⁴⁸ was the jockey's ability to request a hearing to challenge the test results or any penalties.

Employment decisions in government are further governed by the standards of the Federal Rehabilitation Act,⁴⁹ which prohibits employment discrimination against the handicapped in any program or activity receiving Federal financial assistance. While alcoholism and drug addiction

are now included as handicaps, the statute only protects "otherwise qualified handicapped individuals" from employment discrimination. Thus, the individual does not fall into the protected class if the drug abuse prevents the individual from performing the duties of the job or if the individual's employment, by reason of the drug abuse, would constitute a threat to the safety of others.⁵⁰

Thus, the across-the-board policy approach of New York City Transit Authority v. Beazer may conflict with the Federal Rehabilitation Act, which seems to dictate employment decisionmaking on a case-by-case basis. Nonetheless, discharge by police departments of drug users who exhibit impaired job performance or jeopardize the safety of citizens or coworkers would not violate the statute.

Drug testing: Status of the individual and the testing circumstances

Recent court decisions have focused on the status of the individual being tested, the surrounding circumstances, and the type of drug testing application. The issues involved in the employment status of the individual include testing tenured officers versus nontenured persons, and civilian versus sworn personnel. The issues related to the type of testing application include testing for cause, testing in sensitive positions, and mandatory and random testing. These practices, explained more fully in previous chapters, will be analyzed below from the legal perspective.

Pre-employment testing: Applicants and probationary officers

In general, there are no Fourth Amendment problems with police departments' drug testing programs that focus on applicants for sworn positions and probationary officers. The rationale is that a urine or blood sample is traditionally provided to meet the medical requirements of the job. Submitting the specimen to an additional drug test does not infringe on the applicant's expectation of privacy, since the sample was given with consent. Thus, it may be permissible to require public safety applicants to submit to drug testing as part of the mandatory physical/medical examination routinely required for all candidates.

In a recent opinion, the Office of the Attorney General for the State of Maryland concludes in part:

. . . the State's interest in avoiding the employment of drug abusers in public safety jobs is correspondingly greater. Because of the obvious link between avoidance of drug abuse and job requirements, we conclude that--as to jobs directly related to public

safety--the Fourth Amendment balancing test permits the State to require drug testing of all applicants.⁵¹

The Texas legislature recently passed an act requiring applicants to public safety officer positions to be examined by a licensed physician and to show "no trace of drug dependency or illegal drug usage after a physical examination, blood test, or other medical test."⁵²

Since probationary officers generally lack the civil service or tenure status of employees, the courts have also not imposed constitutional barriers to drug testing of this group.

Testing tenured officers at designated periods

Some police departments are presently conducting drug tests of police officers as a routine part of the annual physicals; when officers return from extended leaves of absence, such as for a disability; and when officers are promoted or transferred to sensitive positions, such as narcotics units.

For the past 5 years, the District of Columbia Metropolitan Police Department has been conducting drug tests on urine specimens obtained from police officers at routine mandatory physicals. While the complaint seeking declaratory and injunctive relief in Turner v. Fraternal Order of Police, mentioned previously, was filed by the Fraternal Order of Police to contest the constitutionality of the urinalysis testing "upon suspicion of drug abuse," it is meaningful to note that the union did not challenge the mandatory urinalysis drug testing conducted with the routine physicals.⁵³

The theory behind the constitutionality of drug tests at routine physicals is the same as discussed under the applicant testing; namely, that the urine is submitted for required medical tests, and merely applying an additional screening for the presence of drugs does not violate the individual's expectation of privacy.

Courts have also condoned drug testing of officers returning from absence from duty under the same theory. In a recent unpublished case, the United States Court of Appeals for the Seventh Circuit upheld the drug testing program of the Chicago Police Department which screened officers returning to duty from a leave of absence.⁵⁴ An opinion by the Office of the City Attorney, Milwaukee, Wisconsin, quotes a pertinent portion of the case ruling as follows:

. . . drug screening appears to be part of the Police Department's method for insuring that officers who have been temporarily away from active service or who were about to undertake new duties are fit to perform their jobs. Submission to such periodic physicals is no less a reasonable condition

of employment than submission to compelled urinalysis upon suspicion of drug use. That such physicals are conducted only in conjunction with returns from various forms of leave status indicates that the Department's concern is primarily with job performance and makes remote the possibility of 'abusive or harassing' drug screenings.⁵⁵

In this opinion, the court also found permissible the drug testing of officers as a condition of accepting assignments to new duties.

Departments should be cautioned, however, that if the change of assignment is not to a sensitive position, for example, one involved in a drug-related area such as narcotics investigation, drug screening may be more difficult to support. It is an accepted practice in many police departments to periodically screen narcotics officers for drug use. Such a program helps establish credibility and avoid vulnerability to impeachment of officers when testifying in court.

In a case currently on appeal by the City of New York, the lower court granted an injunction to the Patrolmen's Benevolent Association barring the police department from "randomly" testing officers assigned to the organized crime control bureau, but allowed the drug testing of newly assigned officers to the bureau as a condition of employment.⁵⁶

The Customs Service's program requiring employees seeking transfer to certain sensitive jobs to submit to urine testing was recently approved by the Federal Court of Appeals.⁵⁷ The sensitive positions included criminal investigators, intelligence officers, and customs inspectors. The court approved the drug testing in part because the testing was "consensual."⁵⁸

Testing tenured officers for cause

The one area where courts have uniformly allowed police departments to conduct drug tests of tenured employees is for cause related to accidents, negligent acts, and observable work performance which would indicate a job-related basis for instituting urinalysis.

The importance of this responsibility for police departments is underscored by the train collision between Conrail and Amtrak trains in Baltimore County, Maryland, on January 4, 1987, that resulted in 16 deaths and 175 injuries. The train engineer of the Conrail train submitted to a required urinalysis just after the accident, and his urine was found to contain THC metabolites, indicating that marijuana was used sometime prior to the accident.⁵⁹ This information will undoubtedly be used in assessing the employee's culpability in contributing to the accident.

The major cases upholding drug testing of government employees⁶⁰ have done so primarily because the government employers minimized the intrusiveness of the searches on the employees by establishing an objective, individualized basis for the drug testing.

As in the program of the Federal Railroad Administration, courts have upheld warrantless drug testing of employees after "serious accidents." In Division 241 Amalgamated Transit Union (AFL-CIO) v. Suscy,⁶¹ one of the first Federal cases involving urinalysis of employees, the court allowed the Chicago Transit Authority to conduct required drug tests of bus drivers involved in serious accidents. The court held that safety of mass transit riders certainly outweighed an individual's interest in refusing to disclose evidence regarding intoxication or drug use.⁶²

Based on the court's holding in Suscy, which has been followed and cited in most of the subsequent urinalysis cases, a police department has precedent to establish a urinalysis program which requires officers to submit to drug screening after "serious incidents" such as serious vehicle accidents, accidental firearm discharges, or other industrial-type accidents where the safety of the public is jeopardized.

The most reliable standard for police departments is to use "reasonable suspicion" as a prerequisite to conducting drug screening of police officers. In Turner v. Fraternal Order of Police,⁶³ the Court of Appeals approved the language and application of the police department's special order regarding urinalysis of officers because the order required only those officers "suspected" of drug use to submit to urinalysis. The pertinent language of the court's holding was as follows:

While it might have been drafted with more precision, the special order's reference to 'suspected' drug use does not grant the Department carte blanche to order testing on a purely subjective basis. Rather, the term 'suspected' must be construed here as requiring a reasonable, objective basis for medical investigation through urinalysis. This may be a basis short of the traditional 'probable cause' but nevertheless sufficient reasonably to warrant some medical investigation. Necessarily, this basis must be related to the police officer's fitness for duty. There must be a reasonable, objective basis to suspect that a urinalysis will produce evidence of an illegal drug use. Because of the clear public interest in ensuring that the police force operates free of narcotics, we consider that, as we here construe the regulation, the intrusion is constitutionally acceptable.⁶⁴

In two of the most recent cases, decided in late 1986, Federal courts rejected police urinalysis

procedures because of Fourth Amendment problems, but stated in the opinions that the police departments could administer urine tests if the standard of "reasonable suspicion" was used.⁶⁵ In Capua v. City of Plainfield,⁶⁶ the court noted that such a standard was not "unduly burdensome" to the department. Since the department's articulated main focus was to combat the influence of drugs upon employees "while on duty," the court argued that "one so under the influence of drugs as to impair the performance of his or her duties must manifest some outward symptoms which, in turn, would give rise to a reasonable suspicion."⁶⁷

Also, the recent opinion by the Attorney General of Maryland states as a conclusion that, "if the 'reasonable suspicion' standard is satisfied, mandatory testing of a public safety employee would comport with the Fourth Amendment."⁶⁸

In summary, the courts appear willing to tip the Fourth Amendment balancing test in favor of the interests of the government in community safety, over the rights of privacy of the employee, if the police department administers urine tests to officers based on the individualized, reasonable suspicion standard.⁶⁹ The objective of the tests must be clearly related to ensuring that drug use does not impair the officer's fitness for duty.

While these standards apply to sworn officers, the same standards may not apply to civilians in the police department. Unless the duties of the civilian position are such that impairment on the job would have serious consequences for the safety of the public, courts may not permit drug testing of civilians.⁷⁰

In Jones v. McKenzie,⁷¹ the school system initiated a drug screening program to detect employees who were using or under the influence of drugs. The Federal court held that public safety considerations, while possibly compelling enough to impose a warrantless urine search on bus operators, were not sufficient to infringe on the privacy expectations of the attendants. The court distinguished the privacy right of the attendants, whose job duties were primarily limited to assisting students off the buses, from those of the operators, whose use of drugs might affect job performance and the lives of school children.

Thus, in developing policies and procedures for drug screening employees, police departments need to justify the need for urine testing by arguing the governmental interests described previously in this chapter, taking into consideration the nature of the employee's job and the impact that drug impairment would have on job performance.

Departmentwide mandatory and random testing of tenured officers

While some authorities have espoused random urinalysis of employees as the most efficient and effective deterrent for employee drug use, the recent court cases dealing with law enforcement have split on whether such measures are unconstitutional searches and seizures.⁷²

In Capua v. City of Plainfield,⁷³ all police employees were subjected to a surprise urine test. As a consequence, a dispatcher with a positive test result was given the option of resigning or being suspended. While this case represented mass testing of all employees and not a random sample, the court's analysis would be the same. The court felt that the city was essentially presuming the guilt of each person tested, and also stated:

Defendants [city] undertook this search driven by the mere possibility of discovering that some fire fighters [and police officers] were using drugs and therefore might be impaired in their job performance at some future time because of this drug use. Such attenuated protestations of concern for the welfare of the Plainfield community, without more, cannot render the seizure of urine specimens constitutionally reasonable.⁷⁴

Mandatory departmentwide urine tests were also held unconstitutional in Penny v. Kennedy.⁷⁵ The court found the approach too intrusive on the individuals' reasonable expectations of privacy without the prerequisite of individualized reasonable suspicion of impairment due to drug use as a basis for the testing. In holding the approach unconstitutional, the court in Penny v. Kennedy stated:

. . . this does not mean the Chattanooga Police Department may not administer urine tests to its police officers for the presence of illegal drugs. This decision does mean that if such tests are given, they must be given on reasonable suspicion, their scope must be related to their objective, and they must not be excessively intrusive.⁷⁶

As discussed in Chapter 6 of this report, there are some police departments that have implemented a random drug testing program. For such a program to be constitutional, departments should make certain that the programs are truly random mathematically and not subject to arbitrary manipulation. The program should also be clearly documented in a general order and negotiated with the collective bargaining unit if a labor contract exists.

A Federal appellate court recently modified the lower court's order restricting drug screening of correctional employees to reasonable suspicion and held that urinalyses could be performed by systematic random selection.⁷⁷ The court felt that urinalysis, properly administered, was not as intrusive as "a strip search or blood test."⁷⁸ The court relied heavily on the decision in Shoemaker v. Handel,⁷⁹ which approved random selection by lot for urine testing of jockeys.

The court did stress that any random selection system "must not be arbitrary or discriminatory."⁸⁰

Liability for negligent testing

The law is unsettled on whether or not police departments or municipalities could be held liable for violating the rights of employees with drug testing later held unconstitutional. The Supreme Court has recognized the possibility of money damage awards for constitutional torts.⁸¹ However, the courts have also created degrees of immunity for government officials when they commit such torts while acting in good faith.

An employer's duty to drug test with care includes limiting the scope of the particular screening intrusion, properly training employees who will administer the tests, ensuring that the tests will be conducted fairly and reliably, safeguarding the integrity of the chain of custody of specimens, and attempting to protect the confidentiality of the test results.

Notes

1. American Bar Association Journal, November 1, 1986; Personnel Journal, September 1986; The Washington Post, September 24, 1986; The New York Times, December 11, 1986; National Law Journal, January 12, 1987.

2. The Fourth Amendment to the United States Constitution, which applies to the States through its incorporation in the Due Process Clause of the Fourteenth Amendment, states the following:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. Constitution, Amendment IV.

3. Terry v. Ohio, 392 U.S. 1, 20-21 (1968).

4. Schmerber v. California, 384 U.S. 757, 766-67 (1966).

5. For example, the taking of voice or handwriting samples is not a Fourth Amendment search, whereas the taking of blood, fingernail scrapings, pubic hair samples, breath samples, and X-rays are all searches subject to constitutional restraints. See "Notes, Dagnet Drug Testing in Public Schools and the Fourth Amendment," Columbia Law Review, 86:4, May 1986.

6. McDonell v. Hunter, 809 F.2d 1302 (8th Cir. 1987) (holding that taking of urine specimens is a search and seizure within meaning of Fourth Amendment).

7. Capua v. City of Plainfield, 643 F. Supp. 1507, 1513 (D.N.J. 1986) (enjoining city from surprise, mandatory urine tests of all police officers and fire fighters); City of Palm Bay v. Bauman, 475 So. 2d 1322 (Fla. Dist. Ct. App. 1985) (permanently enjoining city from random, unnoticed urine testing of police officers and fire fighters without reasonable suspicion).

8. Some authors have discussed the possibility of courts allowing employee drug testing under an administrative search. See e.g., Camara v. Municipal Court, 387 U.S. 523 (1967), or "business emergency standard." See e.g., Shoemaker v. Handel, 795 F.2d 1136 (3rd Cir. 1986), cert. denied, 55 U.S.L.W. 3392 (1986) (holding that warrantless drug testing of jockeys was constitutional because horse racing is a highly regulated industry and jockeys, by participation in such an environment where the expectation of privacy is lowered, consent to personal searches). See also, John F. Banzhaf, "How to Make Drug Tests Pass Muster," National Law Journal, January 12, 1987; "Notes, Constitutional Law: Urinalysis and the Public Employer--Another Well-Delineated Exception to the Warrant Requirement?", Oklahoma Law Review 39:2, Summer 1986.

9. Bell v. Wolfish, 441 U.S. 520, 599 (1979).

10. Katz v. United States, 389 U.S. 347, 361 (1967).

11. Penny v. Kennedy, Civ. A. No. 1-86-417 (E.D. Tenn., Nov. 13, 1986).

12. Turner v. Fraternal Order of Police, 500 A.2d 1005, 1008 (D.C. App. 1985). See also, McDonell v. Hunter, 809 F.2d 1302, 1306 (8th Cir. 1987) (corrections officers have diminished expectation of privacy based upon place of employment).

13. Capua v. City of Plainfield, supra note 7, at 1514.

14. Charles E. Lindsey, Jr., "Drug Testing in the Workplace: A Legislative Proposal to Protect Privacy," Journal of Legislation 13:2, 1986, pp. 277-78. See also, Alfred Klein, "Employees Under the Influence--Outside the Law," Personnel Journal, September 1986.

15. 71 Opinions of the Attorney General 10 (1986) (Opinion No. 86-055, October 22, 1986).

16. Jeffrey Higginbotham, FBI Law Enforcement Bulletin, October 1986. See also, Parts II and III of author's articles in November 1986 and January 1987 issues.

17. In one of the leading cases on police and drug testing, Turner v. Fraternal Order of Police, supra note 12, at 1008, the District of Columbia Court of Appeals described the importance of the issue as follows:

The Department . . . has a paramount interest in protecting the public by ensuring that its employees are fit to perform their jobs. Without a doubt, drug abuse can have an adverse effect upon a police officer's ability to execute his duties. Given the nature of the work and the fact that not only his life, but the lives of the public rest upon his alertness, the necessity of rational action and a clear head unbefuddled by narcotics becomes self-evident. Thus, the use of controlled substances by police officers creates a situation fraught with serious consequences to the public. Since many agencies require law enforcement officers to carry weapons off-duty and become involved in situations off-duty requiring a police presence, the public safety justification may apply to drug use by officers even while they are off-duty.

18. In Bonsignore v. City of New York, 521 F. Supp. 394 (S.D.N.Y. 1981), the city was found liable for failure to detect an officer who was unfit to carry a gun and was a danger to the public (officer shot his wife and committed suicide). This issue is discussed more extensively in a paper by Richard J. Koehler, formerly Chief of Personnel, New York City Police Department, entitled, "Drug and Narcotic Screening of Police Personnel," NYPD, October 1985.

19. Penny v. Kennedy, supra note 11, at 2. But see, National Treasury Employees Union, Acosta v. Von Raab, Civ. A. No. 86-3833 (5th Cir. April 22, 1987) (upholding Customs Service's compulsory drug testing for employees transferring to sensitive positions though Service did not attempt to justify drug screening on the ground that it suspected a significant level of drug use among its employees).

20. For purposes of this discussion, the pertinent part of the Amendment is as follows:

SECTION I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Constitution, Amendment XIV.

21. Board of Regents v. Roth, 408 U.S. 564, 573 (1972) (establishing principle that person has a liberty and property interest in reputation and thus triggers procedural due process).

22. Jones v. McKenzie, 628 F. Supp. 1500, 1504 (D.D.C. 1986) (holding temporary school bus attendant had property interest in job where board of education rules permitted termination only for cause).

23. Capua v. City of Plainfield, supra note 7, at 1521.

24. Ibid. at 1511.

25. Jeffrey Higginbotham, FBI Law Enforcement Bulletin, January 1987, at 18.

26. Ibid. at 18.

27. Capua v. City of Plainfield, supra note 7, at 1514.

28. Banks v. F.A.A., 687 F.2d 92, 95 (5th Cir. 1982).

29. California v. Trombetta, 467 U.S. 479 (1984).

30. Higginbotham, supra note 25, at 19.

31. Capua v. City of Plainfield, supra note 7, at 1521.

32. See, Jones v. McKenzie, supra note 22, at 1507 (holding that termination of employee based on an unconfirmed EMIT test was arbitrary and capricious, and ordered the school system to confirm all positive results as a prerequisite to employee termination).

33. National Treasury Employees Union, Acosta v. Von Raab, Civ. A. No. 86-3833 (5th Cir. April 22, 1987).

34. Whalen v. Roe, 429 U.S. 589 (1977).

35. Shoemaker v. Handel, 795 S.2d 1136, (3rd Cir. 1986), cert. denied, 55 U.S.L.W. 3392 (1986).
36. Capua v. City of Plainfield, supra note 7, at 1515.
37. Martha Middleton, "Employers Face Upsurge in Suits Over Defamation," National Law Journal, May 4, 1987, p.1. See also, Lewis v. Equitable Life Assurance Society, 361 N.W. 2d 875 (1985).
38. Office of the City Attorney, City of Milwaukee, Wisconsin, "Mandatory Drug Screening of Fire fighters," November 8, 1985.
39. Capua v. City of Plainfield, supra note 7, at 1518.
40. Ibid. at 1518.
41. McDonell v. Hunter, supra note 6, at 1308.
42. National Treasury Employees Union, Acosta v. Von Raab, supra note 33, at 18.
43. Klein, supra note 14, at 67.
44. Shoemaker v. Handel, supra note 35, at 1140.
45. New York City Transit Authority v. Beazer, 440 U.S. 568 (1979).
46. Ibid. at 592.
47. In Fraternal Order of Police Lodge No. 20 v. City of Miami, Florida, Public Employees Relations Commission, State of Florida, December 11, 1985, (appeal docketed), the hearing officer determined that the police department's drug testing program was a mandatory subject of collective bargaining.
48. Shoemaker v. Handel, supra note 36, at 1104.
49. 29 U.S.C., Section 791. A violation of this act could result in a loss of revenue sharing and other Federal assistance for a State, city, or county government.
50. 29 U.S.C., Section 706.
51. Opinions of the Attorney General, supra note 15, at 20.
52. H.B. 1592, 59th Legislature, Regular Session (Amended Section 7A, Chapter 546) May 27, 1985.
53. Turner v. Fraternal Order of Police, supra note 12. See also, City of Palm Bay v. Bauman, 475 So. 2d 1332, 1325 (Fla. App. 5th Dist. 1985) (held urine testing a violation of the Fourth Amendment unless the testing was predicated on reasonable suspicion of employee drug use, and implied that employee urine testing would be acceptable if performed as part of a required periodic physical examination).
54. Harris v. Washington, Case Number 84 C 8812 (7th Cir. 1985).
55. Office of the City Attorney, supra note 38.
56. Caruso v. Ward, 506 N.Y.S. 2D 789 (N.Y. Sup. Ct. 1986).
57. National Treasury Employees Union, Acosta v. Von Raab, supra note 33.
58. Ibid. at 15. The appellate court vacated the district court's permanent injunction of the Service's drug testing program. The lower court held the "consensual" aspects of the testing to be a form of coercion and refused to find voluntary consent ". . . where the price of not consenting is a loss of government employment or some other government benefit."
59. John Lancaster, "U.S. May Toughen Train Safety Rules," The Washington Post, January 19, 1987.
60. Allen v. City of Marietta, 601 F. Supp. 482 (N.D. Georgia 1985); Division 241 Amalgamated Transit Union (AFL-CIO) v. Suscy, 538 F.2d 1264 (7th Cir. 1976); Turner v. Fraternal Order of Police, 500 A.2d 1005 (D.C. App. 1985). But see, Shoemaker v. Handel, 795 F.2d 1136 (3rd Cir. 1986) which upheld drug testing of jockeys without individualized reasonable suspicion. Because the case turned on the highly regulated nature of the horse racing industry, it does not create precedent for drug testing in the public safety field. For analysis on this point, see Capua v. City of Plainfield, 643 F. Supp. 1507, 1518 (D.N.J. 1986) (Judge Sarokin).
61. Division 241 Amalgamated Transit Union (AFL-CIO) v. Suscy, supra note 60.
62. Ibid. at 1267.
63. Turner v. Fraternal Order of Police, supra note 12, at 1009. The union's injunction request only challenged the "facial constitutionality" of the order, and there was no hearing on the facts by the trial court. Thus, the due process aspects of the program's procedures were not at issue.
64. Ibid. at 1009.
65. Capua v. City of Plainfield, supra note 7; Penny v. Kennedy, supra note 11.

66. Capua v. City of Plainfield, supra note 7, at 1518. The department apparently limited the objectives of its urinalysis program scope to drug use by employees "while on duty," rather than a more global concern of drug impairment. Authorities have determined that certain drug use can have lingering effects. Thus, some drug use off-duty may lead to impairment on the job.

67. Ibid. at 1518.

68. Opinions of the Attorney General, supra note 15, at 15.

69. While "reasonable suspicion" is less stringent than the "probable cause" standard, both are difficult to clearly define. The Opinion of the Maryland Attorney General, supra note 15, at 15, notes that the standard of "reasonable suspicion" must be founded upon "objective facts and rational inferences derived from practical experience, rather than 'inchoate, unspecified suspicions' and must be directed toward the particular employees to be tested."

70. Shoemaker v. Handel, 795 F.2d 1136 (3rd Cir. 1986), appears to condone such a selective approach to drug testing employees--testing sworn, but not civilian positions--as not being a violation of the Equal Protection Clause to the Fourteenth Amendment because of the "hazardous" nature of the police job in con-

trast to most civilian jobs in the police department.

71. Jones v. McKenzie, supra note 22, at 1508.

72. McDonnell v. Hunter, supra note 6; City of Palm Bay v. Bauman, 475 So. 2d 1322 (Fla. App. 5th Dist. 1983).

73. Capua v. City of Plainfield, supra note 7.

74. Ibid. at 1517.

75. Penny v. Kennedy, supra note 11.

76. Ibid. at 2.

77. McDonnell v. Hunter, supra note 6, at 1308.

78. Ibid. at 1308.

79. Shoemaker v. Handel, supra note 35.

80. McDonnell v. Hunter, supra note 6, at 1308.

81. Monell v. Department of Social Services, 436 U.S. 658 (1978); Bivens v. Six Unknown Named Federal Agents, 403 U.S. 388 (1971).

Chapter 10

Policy direction and summary of key issues

Introduction

Police drug testing programs must balance the department's need to ensure a drug-free workplace with employees' rights to privacy, due process, and protection from unreasonable searches. Police administrators have compelling needs and legal obligations to ensure that officers and other employees are not impaired on the job due to drug use. However, these needs do not give a department license to conduct urine tests with impunity. Carefully thought out policies and procedures must be developed that are in line with the department's objectives for discovering and preventing employee drug use.

Process for developing policies and procedures

The planning and development phase of creating a drug testing program is critical. This is a technically complicated and difficult task that requires the department's best personnel, including experts in medicine, personnel, security, employee assistance, and the law. Recent court cases suggest that police and other government employers need to be able to quantify the drug problems they want to address. Moreover, the courts are not taking a favorable view of tests conducted without notice. Written policies and procedures must be developed and labor management agreements must be considered. Many potential problems can be avoided if the process for developing a drug testing program incorporates the following steps:

1. Research and document the department's problems related to drugs and explain the rationale for the testing program. Chapter 9 on legal issues contains a list of departmental interests that may justify testing. These include public safety interests, loss of public trust, potential for corruption, need to present credible testimony, employee morale and safety, loss of productivity, and civil liability.

Whenever possible, the department's drug use problems should be expressed in quantifiable terms. Examples of statistics that may be compiled include the following:

- Volume of applicants and recruits rejected for drug problems.
- Number of internal disciplinary actions for drug violations.
- Number of criminal actions against officers for drug-related crimes.

- Statistical information (without divulging any names of individuals) on extent of drug use from employee assistance and medical personnel.

- Volume of citizen complaints regarding officers and drugs.

2. Establish program objectives that relate to the specific problems identified. If a significant number of applicants are being rejected for drug use based on pre-employment investigations, this problem may justify applicant drug testing. However, it may not justify testing tenured officers.

The department also needs to review its overall system for controlling and preventing drug-related problems. Because drug testing infringes on employees' privacy, courts often look at urine testing as the last alternative. Departments may need to consider alternative measures such as those listed below, before deciding to launch a drug testing program:

- Improvements in recruiting methods.

- Improvements in psychological testing of applicants.

- Training for supervisors in recognizing and handling substance abuse problems.

- Specific employee performance evaluation criteria.

- Employee assistance or stress management services.

3. Obtain technical, legal, and other professional advice. Information on drug testing methods may be obtained from the National Institute on Drug Abuse, National Clearinghouse for Drug Abuse Information, American Council on Drug Education, and other sources. Experts in toxicology or medicine should be part of the department's planning team for drug testing.

All proposed drug testing policies and procedures should be reviewed by the department's legal advisor. As discussed in Chapter 9, particular attention should be paid to including protections consistent with the Fourth and Fourteenth Amendments to the Constitution; the Police Officers' Bill of Rights, if applicable; and all relevant State laws and local ordinances.

Information on police policies and procedures may be obtained from several national police organizations. The Police Executive Research

Forum in 1987 will sponsor regional training workshops on police drug testing issues and programs. In August 1986, the International Association of Chiefs of Police published a model drug testing policy that can provide general guidance. The Fraternal Order of Police also provides drug testing information to its members.

4. Involve the union or employee organization in policy development. Departments with union contracts may be required to negotiate their proposed drug testing programs as collective-bargaining items. Employee concerns for privacy and due process need to be recognized. Representatives of the union or employee organization may be included on a planning and development team. The union should be given an opportunity to review and comment on proposed drug testing regulations.

5. Coordinate the proposed drug testing program with other agencies. The city, county, or State government and other agencies in the area (for example, emergency medical service, fire, and public works) may be planning or operating drug testing programs. Possibilities for developing complementary policies, exchanging information, and sharing resources should be explored.

Drug-use policies

The department's hiring and disciplinary policies on drug use should be clearly stated. Experts in employee drug testing caution against updating an existing policy on alcohol use by simply inserting the phrase "and other drugs." Instead, the department will need to have policy statements which specifically address the use of illegal drugs. It may be useful to develop a checklist similar to the one that follows:

- The policy states the department's criteria for accepting applicants who have previously used drugs. May applicants who have experimented with marijuana be accepted if they meet other hiring criteria? How does the department define "experimenting"? What about experimenting with cocaine or other drugs?

- The policy contains a thorough explanation of the disciplinary actions to be taken when tenured officers have confirmed positive results on tests for illegal drugs. Will the department's recommendation be termination in all cases, or will treatment be an option?

- The policy is clear on how the department will handle officers found to be abusing legally prescribed or over-the-counter drugs.

- If treatment is an option, the policy states what evidence of successful rehabilitation and fitness for duty will be required.

- The policy states how the department will handle officers who voluntarily seek help for drug problems. Will they be treated differently from those who are "caught" on drug tests?

- The policy states how the department will handle officers who refuse to submit to a urine test for drugs when ordered to do so.

- If officers may be ordered to take urine tests based on reasonable suspicion of drug use, the policy includes the objective criteria to be used and authorizations needed for requiring these tests.

Testing situations: Who should be tested?

The selection of employees or positions for drug testing must be made in line with the department's objectives to detect or prevent drug use. The department must ensure that drug testing is not used as a disciplinary or punitive measure for other unrelated problems.

In general, courts have condoned drug testing by police departments in the following situations when the necessary procedural safeguards are in place:

- Testing applicants and recruits. Rejecting police candidates based on confirmed positive drug test results has been accepted by the courts primarily because an applicant or recruit is not considered to have a property interest in the job.

- Testing tenured officers on the basis of reasonable suspicion. Departments are cautioned, however, to include in their policies clear, objective criteria for ordering tests based on reasonable suspicion. Deteriorating work performance or erratic behavior documented in writing by one or more supervisors may be grounds for reasonable suspicion, but not a single anonymous complaint.

- Testing tenured officers during scheduled or mandatory physical examinations. Generally, this testing situation has been considered less intrusive than others because officers expect to give fluid samples during medical examinations.

Some departments test officers upon assignment to, or while working in, jobs that make them exceptionally vulnerable to drugs (for example, narcotics and undercover units, and evidence rooms). High-risk positions such as SWAT teams, scuba teams, and helicopter units have also been subject to special testing requirements in some departments. Officers in these positions are frequently asked to consent in advance to the drug tests; however, courts may scrutinize the voluntariness of this consent. A policy to test

officers in special jobs should include clear written justification for doing so.

Whether the public safety benefits of police random testing programs outweigh the privacy interests of employees is an issue to be decided by the courts. Any proposed random testing program should be submitted for a thorough legal review and should meet the following minimum criteria:

- The program is mathematically random and not subject to arbitrary manipulation.
- All policies and procedures are clearly documented in a general order.
- The program has been negotiated with the collective bargaining unit if a labor contract exists.

To save time and resources, the department's legal counsel might consider submitting the random testing plan to the local court for a declaratory judgment on the constitutional issues.

Procedural issues and safeguards

Departments must make sure their written drug testing procedures contain all of the necessary provisions to ensure that urine test results are accurate. These procedures must also provide for the privacy, confidentiality, and due process rights of employees.

As discussed in Chapter 3, to obtain accurate test results, the department must insist upon reliable testing methods and reduce the possibility of human error through strict controls on the chain of custody of urine samples. The sample checklist below for reviewing written testing procedures is a general summary of many of the details discussed in Chapter 3:

- Procedures include the use of an accurate test to screen urine samples for the presence of drugs and a different, more sensitive test to confirm the results of the screening test. GC/MS is the method recommended by most experts for confirmation tests.
- Procedures are clear on the types of drugs for which tests will be conducted and the cutoff levels to be used.
- The laboratory selected has a sound reputation for providing quality services. It follows strict internal quality-control and quality-assurance procedures.
- Laboratory and department personnel, if they supervise sample collection, control and document the chain of custody of urine samples with the same care that police handle physical evidence in a criminal investigation.

- Procedures include measures to prevent alteration or substitution of samples. Methods used to label samples should ensure accuracy and protect the anonymity of employees and applicants. Additional measures must be taken to ensure that employee rights to privacy, confidentiality, and due process are not violated.

- Employees should be given advance notice of the effective date of the testing program and should be briefed on all policies and procedures before testing begins.

- Results of initial screening tests should not be considered positive until they are confirmed by a second reliable test. Any disciplinary action taken before test results are confirmed should be based on performance measures, behavioral measures, or other objective facts.

- Confirmed positive test results should be reported in writing only to personnel who have a legitimate need to know.

- Drug test results alone should not be the sole basis for a decision to terminate an employee. An internal investigation should be conducted when confirmed positive results are received. It may also be advisable to have a medical expert review data from the laboratory and evaluate any claims that legitimate medication caused a positive result.

- Officers with confirmed positive drug test results should be afforded a hearing and all other due process rights in accordance with the department's established disciplinary and grievance procedures.

Training and prevention

To successfully implement a drug testing program, the department needs to be certain that all personnel who supervise the testing procedures thoroughly understand their responsibilities and are committed to the overall program objectives. Supervisory personnel should understand the rationale for the program, and receive training on all relevant policies and procedures. If tests may be ordered upon reasonable suspicion of drug use, supervisors should understand the objective, job-related criteria for requiring tests on that basis.

Training on the reliability of testing methods is also important. It may be helpful to have laboratory personnel conduct training on how the lab handles samples and on test reliability. While medium-sized and large departments may not find it practical to train all officers on these topics, employee labor group representatives should be included. This may help dispel myths about test accuracy and reduce the number of challenges to the testing methods used.

The overall goal of many drug testing programs includes objectives to prevent the use of illegal drugs and the misuse of prescribed drugs. These objectives for prevention cannot be achieved through drug tests alone. Moreover, the department has a duty to ensure that its employees are not experiencing any emotional or health problems that interfere with their fitness for duty. A related objective should be to ensure that employees and their families have access to confidential sources of help in handling stress, emotional difficulties, family and marital problems, alcohol and drug problems, and other concerns that can affect their health and well being.

The future of drug testing

The National Institute on Drug Abuse (NIDA) will be sponsoring a number of research projects on drugs in the workplace in 1987. Specific areas of special interest include the following:

- Developing techniques for detecting drug problems.
- Preventing workplace drug abuse.

- Studying employee drug testing policies.
- Measuring the effects of drugs on performance.

These and other research efforts may result in significant changes in drug testing methodology in the next few years. One area of interest is in determining reliable ways to correlate the level of drugs in blood, urine, and other substances with behavioral measures. It is possible that this could lead to the development of portable devices to measure drug-induced impairment. As medical researchers attempt to improve upon the accuracy of testing methods, many will also attempt to develop methods that are less intrusive than tests of urine or blood.

The fact that many police departments have modified their drug testing programs several times attests to the evolving nature of the technical and legal issues surrounding urine tests for drugs. Each department must keep abreast of improvements in testing methods and court decisions, and must shape its own program based on its unique needs and legal requirements.

Appendix

Chicago Police Department

Drug testing policies and procedures

Chicago Police Department Policy on drug testing based on allegations of impairment

General Order 82-14 (excerpted)
Effective July 30, 1985

II. Special Situations

- F. Allegations of impairment, not involving the operation of a vehicle--
on or off duty
1. Allegations of impairment, not involving the operation of a vehicle
include:
 - a. alcohol intoxication.
 - b. being under the influence of drugs.
 - c. being under the influence of a combination of alcohol and drugs.

NOTE: For the purposes of Item II-F of this addendum, the term alcohol intoxication will be understood to mean that condition wherein a person's mental or physical functioning is substantially impaired as a result of the use of alcohol. In addition, the meaning of the term "drugs" will be understood to include but not be limited to the following--cannabis as defined in Chapter 56 1/2, Section 702, Illinois Revised Statutes, and controlled substances as defined in Chapter 56 1/2, Section 1102, paragraph (u), Illinois Revised Statutes, or as amended.

2. Whenever a sworn member makes an allegation against another Department member relating to an allegation of impairment not involving the operation of a vehicle, the procedures outlined below will be followed:
 - a. The responsible command or supervisory member will:
 - (1) obtain a Complaint Register number.
 - (2) ensure that a To-From-Subject report is obtained from each member having knowledge of the circumstances surrounding the complaint.
 - (3) prepare a To-From-Subject report summarizing the investigation.
 - b. The accused member will be requested to read and sign a Notification of Charges/Allegations to acknowledge that he has received a written copy of the specific allegations made against him and will be:

- (1) ordered to submit to a visual examination, the results of which will be recorded in the "Observation" section of the Alcoholic Influence Field Report.
- (2) ordered to complete the "Performance Tests," the results of which will be recorded on an Alcoholic Influence Report. The "Performance Tests" will be administered by a sworn member at least one rank above the rank of the member being examined. In those instances when the accused member is a supervisory member, the performance tests will be conducted by the watch commander of the district of occurrence. If the circumstances require the presence of an exempt member, this member will be responsible for signing the report to indicate that his assessment of the accused member's condition is basically consistent with that of the examiner.
- (3) ordered to submit to a Chemical Breath Test, except when the allegation focuses exclusively upon drugs, the results of which will be recorded on the Chemical Breath Test Record formset and entered into the Chemical Breath section of the Alcoholic Influence Report.
- (4) ordered to submit a urine specimen if physically incapable of taking a chemical breath test and not hospitalized, if the results of the chemical breath test are inconclusive, or if the results of the chemical breath test are inconsistent with the degree of impairment or the allegation focuses upon drugs.

NOTE: Once a decision is made by the responsible command or supervisory member to have the accused member submit a urine specimen, no action pertaining to the collection of the urine specimen will be initiated until after the Internal Affairs Division has been notified. Urine specimen containers can be obtained from the Internal Affairs Division on the second and third watches by calling PAX 0-610 and on the first watch by calling PAX 0-301.

- (5) presented with the administrative Proceedings Rights form (CPD-44.105) before being asked the questions in the "Interview" section of the Alcoholic Influence Field Report or any other questions which would tend to prove or disprove the allegation.

c. The urine specimen will be:

- (1) collected in a manner that will preserve the dignity of the accused member and ensure the integrity of the sample.
- (2) collected in the presence of the investigating supervisor only if the supervisor is of the same sex as the accused member. When the supervisor is not of the same sex as the accused member, arrangements will be made to have a sworn member of the same sex as the accused member witness the collection of the urine specimen. The responsible command or supervisory member will submit a To-From-Subject report which identifies the sample collection site, the date and time of the collection, the identity of the witness to the collection, and any other circumstances pertaining to the investigation.
- (3) turned over to a member of the Internal Affairs Division who will assume the responsibility for ensuring that the urine specimen is properly secured in accordance with established Division level standard operating procedures pending processing by a medical laboratory.

NOTE: If the accused member refuses to provide a urine specimen or has refused to complete or comply with the tests required in conjunction with the administrative segment of the investigation, a violation of the Department Rules and Regulations, e.g., disobedience of an order or directive whether written or oral, will be added to the administrative charges against the accused member.

3. Whenever a complainant other than a sworn member makes an allegation relating to the categories of conduct identified in Item II-F-1 of this addendum, the responsible command or supervisory member will:
 - a. confer with another command or supervisory member to affirm the impairment of the accused member and follow the procedures contained in Items II-F-2-a a through c of this addendum when the accused member does exhibit obvious signs of impairment and there is reason to believe that he is under the influence of alcohol, drugs, or a combination of alcohol and drugs, not involving the operation of a motor vehicle.
 - b. support his findings by completing all the boxes up to and including the Observation Section of the Alcoholic Influence Field Report and by completing all the boxes up to and including the Performance Tests Section of the Alcoholic Influence Report and attach these forms to the To-From-Subject report, ensuring that the provisions established in Item II-F-2-a of this addendum are followed when the accused member does not exhibit obvious signs of impairment and there is no reason to believe that he is under the influence of alcohol, drugs, or a combination of alcohol and drugs, not involving the operation of a motor vehicle.
 - c. distribute all completed reports and forms relating to the incident in accordance with the procedures established in the addendum to this order entitled "Reporting and Review Procedures."

G. Allegations of miscellaneous drug-related activity--on or off duty

1. Allegations of miscellaneous drug-related activity include, but are not limited to a member's:
 - a. unauthorized involvement with a person or enterprise engaged in the illegal sale, delivery, manufacture, purchase, or possession of drugs.

NOTE: For the purpose of this order, the meanings of the words "person" and "enterprise," will be understood to be that of the definitions provided in Chapter 56 1/2, Paragraph 1653, Illinois Revised Statutes.

- b. illegal sale, delivery, manufacture, purchase, or possession of drugs.
2. Whenever an allegation against a Department member concerning any of the above categories of conduct is received, the responsible command or supervisory member will obtain a Complaint Register number.
3. The Complaint Register investigation and the preliminary investigation of all criminal charges, where applicable, will be conducted in conformance with existing Department procedures.
4. Whenever the results of the preliminary criminal investigation indicate reasonable grounds to believe that the accused member is involved in illegal drug-related activity, or upon completion of the initial stages of an administrative investigation which

indicates reasonable grounds to believe that the accused member is personally using illicit drugs or is personally misusing legally prescribed or dispensed medications, the accused member will be required to submit a urine specimen.

NOTE: Urine specimen containers can be obtained from the Internal Affairs Division on the second and third watches by calling PAX 0-610 and on the first watch by calling PAX 0-E-4-b of this addendum.

H. Repeated minor infractions

Department members who have repeated minor infractions will be processed in accordance with the Department directive entitled "Personnel Concerns."

**Chicago Police Department
Policy on drugs, drug abuse,
and mandatory physical examination**

General Order 85-5 (excerpted)
Effective July 25, 1985

I. Purpose

This order:

- A. States Department policy relating to the use of illegal drugs and the abuse of legally prescribed drugs by Department members.
- B. Sets forth conditions in which a mandatory physical examination will be required of a Department member.

II. Definitions

- A. The term "drug" includes the following:
 - 1. Cannabis as defined in Chapter 56 1/2, Section 702, Illinois Revised Statutes.
 - 2. Controlled substances as defined in Chapter 56 1/2, Section 1102, paragraph (u), Illinois Revised Statutes, or as amended.
- B. The term "drug abuse" includes the use of cannabis or any controlled substance which has not been legally prescribed and/or dispensed, or the excessive use of a legally prescribed drug.

III. Policy

- A. It is imperative that all Department members have the physical stamina and psychological stability to properly perform all required duties.
- B. The use of illegal drugs, cannabis, or nonprescribed controlled substances, or the abuse of legally prescribed drugs or controlled substances by Department members is strictly prohibited. Violation of this policy will result in disciplinary action.

IV. Mandatory Physical Examinations

- A. Mandatory physical examinations will be conducted at the Medical Service Section when, in the opinion of the Medical Director:
 - 1. an examination of any member is required to identify the cause of an illness or incapacitation.

2. a unit commanding officer/watch commander has furnished written documentation citing specific instances when a member was incapable of performing his or her required duties or exhibited unusual work habits and/or behavioral traits.
 3. a pattern of Medical Roll use indicates that the member may not be physically fit to perform his or her required duties.
- B. A mandatory physical examination, the scope of which will be determined by the Medical Director, will be conducted when a member:
1. is scheduled to submit to a Department ordered psychiatric examination.
 2. is appointed to an exempt position, subject to promotion to a career service rank, or is applying for assignment to certain specialized Department units (when notice has been given that a physical examination is required).
 3. qualifies for an extra-departmental training program of more than a week in duration which has been approved by the Academic Selection Board.
 4. is returning to the Department after an absence of 30 days or more:
 - a. from a leave of absence or suspension.
 - b. pursuant to an order of a court or an order of the Police Board.
 - c. to be re-employed.

NOTE: Mandatory physical examinations will include the submission of a urine specimen and blood sample for routine analysis and screening for the presence of drugs.

5. or specified groups of members (as determined by age, years of service, or functional speciality) are scheduled.

V. Medical Services Section Standard Operating Procedures

The Director of the Personnel Division, in conjunction with the Medical Director, will ensure that written Standard Operating Procedures are established for the collection of urine specimens and blood samples at the Medical Services Section.

VI. Specific Responsibilities

A. The Medical Director will:

1. identify those members whose use of the Medical Roll or reported medical condition requires a mandatory physical examination and report their status to the Director of the Personnel Division.
2. schedule these members for mandatory physical examinations.

B. The member subject to a mandatory physical examination will:

1. report on a date and time determined by the Medical Services Section.
2. furnish documentation relating to the use of any prescribed drugs, i.e., prescription bottle with prescription number, prescribing physician's statement, etc.

-
3. answer all premedical examination questions relating to his or her medical history including the use of any/all prescribed drugs and the name(s) of any prescribing physician(s).
 4. cooperate in the completion of all phases of the mandatory physical examination in accordance with the instructions of the examining physician or his/her designee.
- C. The Director of the Personnel Division will:
1. when necessary, initiate a preliminary investigation to determine the validity of a member's admission that he/she is presently taking prescribed drugs as documented on the Health Appraisal-Confidential Health History (CPD-62.424).
 - a. If the preliminary investigation reveals that the drugs have been legally prescribed and are being consumed according to prescription directions, no Complaint Register number will be required.
 - b. In all other instances, a Complaint Register number will be obtained when the test results indicate positive indicators/evidence of drug usage by the member.
 2. when a Complaint Register number has been obtained, forward a To-From-Subject report to the Office of Professional Standards without delay in accordance with the applicable provisions of Addendum 2 of the Department General Order entitled "Complaint and Disciplinary Procedures."
- D. Unit commanding officers/watch commanders will be responsible for ensuring that members have been properly notified of the date and time of a scheduled mandatory physical examination and that the notification has been properly documented, i.e., Commanding Officer's Book, etc.

Fred Rice
Superintendent of Police

84-10 RGB

Standard operating procedures mass physical examination

Location

Chicago Police Department Medical Section
1301 West Adams Street
Chicago, Illinois 60607

Collection of Urine Specimens

Two urine specimen collection stations are used to collect urine specimens. The stations are located in the basement of the Training Center.

The step-by-step procedure followed is:

1. The Medical Section Laboratory Technicians are provided with a list of those people scheduled to be administered the examination prior to the examination date.
2. The Laboratory Technicians will assign a control number to each person scheduled to take the examination. Each number is to be unique to the person to which it is assigned. The control number is never reused.
3. The control number, the person's name, and social security number are to be recorded in a control roster, in a control number ledger, and in an alphabetical ledger.
4. Each full control number is to be written on the side of individual drug screen specimen collection bottles with indelible ink. The last four digits of the number are written on the cap of each bottle, and on the side of each individual urine specimen collection cup.
5. Each number is written on a gummed label which is placed on the side of individual test tubes.
6. All of the above items are secured in the Medical Section laboratory until the day of the physical examination.
7. On the day of the examination, the personnel assigned to the urine collection station will pick up a copy of the roster of examinees, the specimen collection cups, the specimen collection bottles, the test tubes, a roll of evidence tape, and a supply of witness affidavit forms from the Medical Section laboratory, and report to the Urine Collection Station, with the supervisor assigned to that station.

The supervisor and the personnel assigned to the station are to remain at the station until all of the specimens have been collected.

8. Procedure to be followed at the Urine Collection Station:

- A. The items to be used in the collection of the urine specimens are to be placed on the table used in the process in a manner which provides easy access to the personnel collecting the urine specimens and also allows the supervisor assigned to the Urine Collection Station to keep them under observation.
- B. The personnel assigned to collect the urine specimens will be seated behind the table, positioned so the urinals and commodes can be observed.
- C. The supervisor is to position him/herself so he/she can observe both the collection table and the urinals and commodes.
- D. When an examinee enters the station, the personnel assigned to collect urine specimens will:
 1. Have the examinee identify him/herself.
 2. Locate the person's name on the control roster and check him/her in.
 3. Give the examinee the specimen collection cup with the assigned last four numbers of the person's control number printed on the side, and instruct the person to fill the cup to the prescribed level.
 4. Witness the entire urine specimen collection process.
 5. When the examinee returns to the specimen collection table with a urine specimen of a quantity sufficient for processing, the personnel assigned to collect urine specimens will:
 - a. Direct the examinee to sit across the table from him/her.
 - b. Take the specimen cup from the examinee and pour the required amount into the specimen collection bottle.
 - c. Pour the remainder into the appropriate test tube for medical testing.
 - d. Replace the cap of the specimen collection bottle.
 - e. Place a strip of Evidence Tape across the top of the urine collection bottle, extending down both sides of the bottle.
 - f. Present the examinee with a witness affidavit and direct the examinee to enter his/her name, then the number written on the collection cup, the number written on the bottle cap, then the number written on the specimen collection bottle, then sign, date, and enter the time of the transaction.
 - g. The personnel assigned to witness and collect urine specimens will sign the witness affidavit and give a carbon copy of the form to the examinee.
 - h. Discard the specimen cup with any remaining specimen immediately and in the presence of the person submitting the specimen.

6. When an examinee returns to the collection table with a specimen too small for processing, the personnel assigned to collect urine specimens will:
 - a. Tell the examinee that the specimen presented is insufficient and that he/she is to return when he/she is able to provide a full specimen.
 - b. Discard the specimen presented and the specimen cup that was presented in the presence of the examinee.
 - c. Note this fact and the time on the control roster.
 - d. Prepare a second cup with the control number written on its side, and place it with the corresponding specimen collection bottle.
7. When the supervisor assigned to the urine collection station or collection personnel observe a specimen substitution or suspects one has occurred, he/she will:
 - a. Tell the examinee that the specimen collected is unacceptable.
 - b. Tell the examinee that he/she is to return when he/she is able to provide an acceptable quantity of specimen.
 - c. Proceed with steps 6.-b., c., and d.
8. When all of the urine specimens have been collected or the physical examination has been concluded, the personnel assigned to collect urine specimens will destroy and discard any unused collection cups, bottles, and test tubes and make note of this fact on the control roster.
9. The personnel assigned to collect urine specimens and the supervisor assigned to the urine collection station will proceed to the Medical Section laboratory with the specimens collected, and deliver them to the laboratory technician on duty.

When the Laboratory Technician on duty in the Medical Section laboratory receives the specimens from the personnel assigned to collect urine specimens, the technician will:

- A. Check the specimens received against the master control roster and make note of the time they were received.
 - B. Void any unused control numbers.
 - C. Place the drug screen specimen bottles into the metal box used to store and transport the specimens and lock the box.
 - D. Place the locked box in the laboratory refrigerator and lock the refrigerator.
 - E. Conduct the medical processes on the portions of each specimen collected in the test tubes.
10. When the tour of duty has been completed, the laboratory door will be locked.

-
11. On the day the specimens are to be delivered to the Drug Screening Facility, the laboratory technician will:
 - A. Prepare a requisition for screening for each specimen on the two-part form set supplied by the testing facility.
 - B. Enter the name of the Medical Section supervisor who is to deliver the specimens to the Testing Facility, and the date and time of delivery to the Screening Facility in the Drug Screen Number Control Ledger and the master control roster.
 12. When the specimens are delivered to the Screening Facility, the delivering Medical Section supervisor will:
 - A. Unlock and open the metal storage and transportation box.
 - B. Present the specimen bottles and the requisition form sets to the Screening Facility personnel.
 13. The Screening Facility personnel will:
 - A. Check the control numbers written on the side of the specimen collection bottles against the corresponding requisition form set.
 - B. Time stamp and initial the requisition and give the copy of the requisition to the Medical Section laboratory technician as a receipt.
 - C. Secure the specimens in their locked refrigerator until processing.
 14. The Screening Facility will perform a drug screen on all of the specimens delivered to the facility, and if the specimen screens negative for drugs, the specimen will be discarded, and a report of this finding will be submitted to the Director of Personnel. If the specimen screens positive for drugs, a confirmation test will be performed. If the confirmation test proves positive, the Drug Screening Facility personnel will secure the remaining portion of the specimen in their locked refrigerator and submit a report of this finding to the Director of Personnel. If the confirmation test proves negative, the specimen will be discarded and a report of this fact will be submitted to the Director of Personnel.

Drug screen specimen affidavit

On the ____ day of _____, 19____, at _____, I _____
(TIME)
urinated into a cup with the number _____ written on its side.

I then delivered the cup containing my urine specimen to _____
and witnessed him/her:
(RECEIVING STAFF MEMBER)

A. Pour a portion of my urine specimen into a bottle with the
number _____ printed on its side.
(CONTROL NUMBER)

B. Close the bottle with a cap with the number _____
printed on its top.

C. Seal the bottle with a piece of red "evidence" tape which was
placed across the cap and down two sides of the bottle.

RECEIVING STAFF MEMBER'S SIGNATURE	EXAMINEE'S SIGNATURE
WITNESS' SIGNATURE	SUPERVISOR'S SIGNATURE

Urine Specimen Number _____ was received, and secured in
(CONTROL NUMBER)
the Medical Services Section Laboratory refrigerator by
_____ on _____ at _____.
(SIGNATURE/RECEIVING MEMBER) (DATE) (TIME)

Urine Specimen Number _____ was removed from the Medical Services
Laboratory by _____ on _____ at _____ and
(SIGNATURE/REMOVING MEMBER) (DATE) (TIME)
delivered to _____
(TESTING FACILITY)

REMARKS

Chicago Police Department

Personnel concerns program and behavioral alert system

Chicago Police Department Personnel concerns program and behavioral alert system

General Order 83-3, (excerpted)
Effective March 9, 1983

I. Purpose

This order:

- A. establishes the Personnel Concerns Program for Department members.
- B. defines specific terms that pertain to the Personnel Concerns Program.
- C. states Department policy relating to personnel concerns.
- D. identifies general and specific responsibilities associated with the program.
- E. establishes the positions of Personnel Concerns Supervisor and Personnel Concerns Program Manager.

II. Definitions

- A. Behavioral Alert System--A systematic review of a Department member's behavior pattern to alert supervisors to the need for intervention.
- B. Personnel Concerns Program--A program of intensive supervision of Department members who have been designated as personnel concerns.
- C. Personnel Concern--A Department member who has a history of unacceptable performance and who has not been responsive to repeated corrective efforts of supervisory members. This is a formal designation of a Department member which is applied by the Director of Personnel.
- D. Personnel Concerns Supervisor--A specially trained supervisor who has the responsibility to closely monitor, evaluate, guide, and improve the performance of an assigned personnel concern.
- E. Personnel Concerns Program Manager--A sworn supervisor designated by the Director of Personnel to coordinate and oversee the Personnel Concerns Program.
- F. Personnel Concerns Conference--A meeting involving the unit commander of exempt rank, the watch/unit commanding officer, the Personnel Concerns Program Manager, a personnel concerns supervisor, and the member designated as a personnel concern. The Personnel Concerns Program Manager will present a written notification to the member designated as a personnel concern informing him of his

deficiencies, status, and the fact that his future performance will be closely supervised in an attempt to assist the member to correct his problems. If improvement does not result, the necessary documentation will be provided for presentation to the Police Board.

III. Policy

An essential element of an effective personnel management system is the early identification of members who engage in conduct which is contrary to the goals of the Department. Routine review of various Department records provides an effective means by which problem members can be identified. Once a member is identified as exhibiting unacceptable behavior, the available resources of the Department can then be directed toward correcting the problem behavior. As each individual will exhibit different behavioral problems, the strategy to address the member's shortcomings must be tailored to the specific problems he/she is experiencing. The Behavioral Alert System and the Personnel Concerns Program are vehicles by which the Department can address these issues. THESE PROGRAMS ARE NOT INTENDED TO BE USED AS A SUBSTITUTE FOR DISCIPLINARY ACTION.

IV. General Responsibilities

- A. The Personnel Division is responsible for overseeing the Behavioral Alert System and Personnel Concerns Program and maintaining liaison with all Department units involved in dealing with Department members exhibiting unacceptable behavior.
- B. The Administrators of the Office of Professional Standards will:
 - 1. review investigations conducted by their office for patterns of behavior which would warrant concern.
 - 2. notify the unit commander of exempt rank when a member of his command receives an excessive force complaint.
 - 3. notify the Personnel Concerns Program Manager when their review of investigations identifies a member who has an unacceptable pattern of behavior.
- C. The Internal Affairs Division will review disciplinary records to identify those members who display a pattern of behavior that requires further evaluation by the Personnel Concerns Program Manager.
- D. The Traffic Safety and Training Section will review the Department's fleet-accident experience to identify patterns of member involvement that should be brought to the attention of the Personnel Concerns Program Manager.
- E. The exempt unit commanding officer is responsible for monitoring the performance of all members of his command. In addition, he will direct and support the efforts of his supervisory subordinates in dealing with the problem member. He is further responsible for identifying those members who have not responded to the efforts of supervisory personnel and bringing them to the attention of the Personnel Concerns Program Manager. Exempt members will also be cognizant of the additional responsibilities of personnel concerns supervisors when making unit assignments.
- F. Watch/unit commanding officers and supervisory members are responsible for the performance of their subordinates. The performance of all personnel will be continually monitored for both positive and negative aspects. Command and supervisory members are required to take the necessary actions to resolve unacceptable levels of performance. They will ensure that all available Department resources

are utilized in this endeavor. The formal designation of a unit supervisor as a personnel concerns supervisor does not relieve other supervisory personnel of exercising their responsibility of taking proper action on transgressions they observe or which are brought to their attention. As future needs arise for personnel concerns supervisors, additional unit supervisors will be selected and trained.

- G. The Training Division is responsible for the development of specific training programs to address the needs of the Personnel Concerns Program.

V. Behavioral Alert System

- A. The purpose of the Behavioral Alert System is to:
 - 1. identify Department members whose behavior indicates that future disciplinary or performance problems may result unless corrective action is taken.
 - 2. assist command/supervisory personnel in developing and implementing strategies for corrective action.
 - 3. standardize a system for documenting and maintaining records of corrective action taken.
- B. The following performance data are behavioral alert indicators:
 - 1. all excessive force complaints.
 - 2. complaint and disciplinary history.
 - 3. repeated incidents of medical roll use.
 - 4. repeated instances of minor transgressions within a 12-month period.
 - 5. a significant reduction in a member's performance.
 - 6. poor Department traffic safety record.
 - 7. significant deviations from the member's normal behavior.

VI. The Personnel Concerns Program

The Personnel Concerns Program:

- A. is an alternative for dealing fairly and impartially with members who have not responded to routine corrective action or the increased supervisory attention that results from Behavioral Alert System indicators.
- B. causes a review to be made of members with a poor performance history.
- C. requires the development of strategies to address the problems exhibited by an individual member.
- D. ensures documentation of the member's progress toward improved performance/behavior.
- E. ensures that all Department resources necessary to correct the problem are made available to the personnel concerns supervisor.
- F. provides necessary documentation for the Police Board to administratively address those members who cannot or will not perform to acceptable standards.

VII. Specific Responsibilities--Behavioral Alert System

- A. Watch/unit commanding officers will monitor members of their command for behavioral alert system indicators. When a member is identified by such indicators the watch/unit commanding officer will:
1. review all relevant unit records concerning the member's past work performance and disciplinary history.
 2. consult with other unit supervisors concerning the member's behavior.
 3. meet with the member to discuss the apparent problem. The purpose of the meeting is to:
 - a. inform the member of the behavior that has been identified as unacceptable.
 - b. attempt to identify the causes of the member's behavior.
 - c. provide guidance to prevent recurrence of undesirable behavior.
 - d. advise the member of Department resources to assist him/her (e.g., Professional Counseling Service, Chaplain's Unit, Voluntary Medical Program).
 - e. determine if other action is warranted (i.e., change of partner, change of watch, change of duties).
 - f. advise the member that his/her future performance will be closely monitored and continued unacceptable behavior will not be tolerated.
 4. prepare a written record of the meeting. A copy will be kept in a file maintained by the unit commander of exempt rank for 1 year from the date of the last entry, and a copy will be sent through channels to the Personnel Concerns Program Manager. The report will be prepared in a To-From-Subject format to the unit commander of exempt rank and will include a brief synopsis of the problem behavior, a summary of the member's explanation, and the plan or action taken to correct the problem.
 5. ensure that the member's semi-annual performance rating is consistent with the member's performance.
 6. if there is a recurrence of a behavioral alert system indicator within a 12-month period:
 - a. repeat the steps in Items VII-A-1 through 4 of this order, and
 - b. bring the matter to the attention of the unit commander of exempt rank.
- B. The unit commander of exempt rank will:
1. ensure that the behavioral alert system is implemented within his/her command.
 2. review reports submitted by watch/unit commanding officers to ensure that plans or actions taken are sufficient to correct the problem.

3. when the problem behavior persists, follow the procedure set forth in Item VII-A-3 and prepare a To-From-Subject report through channels to the Director of Personnel, Attention: Personnel Concerns Program Manager. The report will include a brief synopsis of the problem behavior, a summary of the member's explanation, and the plan or action taken to correct the problem.

4. recommend that a member be designated a personnel concern when all efforts to resolve the behavioral problem are unsuccessful.

C. The Personnel Concerns Program Manager will:

1. forward behavioral alert system indicators that come to his/her attention to the appropriate unit commander of exempt rank.
2. maintain a file on each member identified by the behavioral alert system for 12 months from date of last entry.
3. ensure that all available Department resources are being utilized by unit personnel to resolve behavioral problems.
4. bring to the attention of the Director of Personnel those members who should be designated personnel concerns.

VIII. Specific Responsibilities--Personnel Concerns Program

A. The personnel concerns supervisor will:

1. review the performance profile (which will include both complimentary and negative performance information) of the member designated as a personnel concern assigned to him/her.
2. consult with the watch/unit commanding officer and unit supervisors to discuss their previous efforts to deal with the member's behavioral problem.
3. participate in the Personnel Concerns Conference.
4. provide intensive supervision, guidance, and counseling to the member designated as a personnel concern to assist him/her in overcoming deficiencies.
5. document the personnel concern's performance through submission of periodic reports on critical incidents, counseling, and performance.
6. make recommendations as to the future status of personnel concerns.

B. The watch/unit commanding officer will:

1. provide command guidance and support to the personnel concerns supervisor.
2. be cognizant of the additional responsibilities of the personnel concerns supervisor.
3. review all reports submitted by the personnel concerns supervisor and comment on the personnel concern's progress.
4. review the semi-annual performance rating of members of their watch/unit designated as personnel concerns, and ensure that the assigned rating is consistent with the member's performance.

C. The unit commander of exempt rank will:

1. if he/she perceives a need, recommend members of his/her command for consideration as personnel concerns supervisors. Such recommendations will be made in a To-From-Subject report submitted through channels to the Director of Personnel.
2. ensure that the member designated as a personnel concern is continually under the direct supervision of the personnel concerns supervisor and that both are assigned to the same day-off group.
3. provide command guidance and support to the personnel concerns supervisor.
4. periodically consult with supervisors and the member designated as a personnel concern to determine progress being made.
5. review all reports submitted by the personnel concerns supervisor through channels to the Director of Personnel, Attention: Personnel Concerns Program Manager.

D. The Personnel Concerns Program Manager:

1. reports to the Director of Personnel.
2. exerts staff supervision over the Personnel Concerns Program.
3. develops, in cooperation with the Training Division, curricula for the Personnel Concerns Program.
4. reviews evaluation reports and other Department records relating to members designated as personnel concerns.
5. makes recommendations to the Director of Personnel concerning a member's designation as a personnel concern.
6. arranges and attends Personnel Concerns Conferences for each member designated as a personnel concern.
7. maintains a file on each member designated as a personnel concern for a period of 12 months from the date of the last entry.
8. recommends that members designated as personnel concerns who have achieved an acceptable level of performance be removed from the program and returned to normal supervision.
9. assists the Office of Legal Affairs in preparing cases for presentation to the Police Board when efforts to correct the behavioral problems have failed.

E. The Director of Personnel will:

1. oversee the activities of the Personnel Concerns Program Manager.
2. select personnel concerns supervisors based upon the recommendations of unit commanders of exempt rank.
3. be responsible for determining a member's status as a personnel concern.

Metropolitan Police Department of the District of Columbia

Drug testing policies and procedures

Metropolitan Police Department of the District of Columbia

Drug testing for illicit narcotics or controlled substance use

Special Order 83-21
Effective March 2, 1983

In keeping with the long established policy that the illicit use of narcotic drugs and controlled substances by members of the force will not be tolerated, I have instructed the Director of the Police and Fire Clinic to initiate testing procedures to ensure compliance with this policy. This procedure will consist of a urinalysis of all members who respond to the clinic for any type of physical examination. This would include probationary physicals, age-group physicals, prepromotional physicals, military leave physicals, pre-5-year tenure physicals, or any occasion where a member is required or ordered to undergo a physical examination.

Additionally, the Police and Fire Clinic will conduct urinalysis testing for narcotic or controlled substance use by any member of the force suspected of such drug use, as directed by an official of the department. Members may also be directed to submit to urinalysis testing at the discretion of a member of the Board of Police and Fire Surgeons.

When any member of the force either reports to or is directed or ordered to the clinic for the purpose of a physical examination, or for a urine test for narcotic or controlled substance use, that member shall be required to have in his/her possession their Identification Folder, (or Identification Card for noncontact members), or other positive proof of identification. The purpose of this requirement is to ensure that the member being tested is the individual he/she claims to be.

The confirmed finding of an illicit narcotic or controlled substance in the urine of the member, or the refusal of the member to submit to such testing, will result in a proposal for termination of that member from the Metropolitan Police Department.

Commanding Officers shall ensure that the contents of this Special Order are read to and understood by all members of their commands.

The provisions of this Special Order will be incorporated into the appropriate General Order at a later date.

Maurice T. Turner, Jr.
Chief of Police

**Metropolitan Police Department
of the District of Columbia**

**Obtaining urine samples from members reporting
for military leave and return to duty physicals**

Division Memorandum 85-6
Effective August 20, 1986

1. Effective immediately, any member who reports for a military leave or return to duty physical shall be required to give a urine sample as part of their physical.
2. This sample shall be obtained, recorded, and tested just like any other sample given during a physical examination.
3. This new procedure will not change the requirements of General Order 1001.1 as it relates to Military Leave Physicals. Members who go on military leave will continue to be examined by their assigned clinic physician or the Board of Police and Fire Surgeons as appropriate.
4. When a member checks in at the Liaison Desk for a military leave or return to duty physical, he/she shall be given a PD Form 302 and directed to report to the Administrative Lieutenant to obtain a PD Form 319. The Administrative Lieutenant shall fill out the PD 319.

The Administrative Lieutenant shall place two notations of "urine sample" under the information concerning military leave on the left-hand side of the PD Form 302. The first sample will be obtained during the military leave physical prior to the member going on military leave and the second sample prior to return to duty.

5. Any member who "checks out" a patient upon completion of military leave or return to duty physical, shall ensure the urine sample is obtained prior to the patient leaving the clinic.

James G. Brunzos
Director

**Metropolitan Police Department
of the District of Columbia**

Illicit narcotic/drug testing program

Division Memorandum, 86-8
Effective July 16, 1986

Effective July 16, 1986, the following changes/additions shall be made a part of the administrative in-house procedures relative to the Illicit Narcotic/Drug Testing Program.

Part III of Division Memorandum 83-6, dated July 20, 1983, has been amended as follows:

Part III. Obtaining and Processing of Samples Submitted at the Clinic

- A. The collection and processing of samples shall be strictly controlled by the utilization of PD Form 319, Narcotic/Drug Test Record. The collection process shall be governed by the following guidelines:
1. The person giving the sample must be positively identified prior to any sample being taken. The departmental identification folder (or temporary departmental identification card) shall be used for this purpose. In the event that the person giving the sample states that he/she does not have his/her identification card in his/her possession at that time, other forms of positive identification (driver's permit with picture, etc.) may be used at the discretion of the Administrative Lieutenant. If positive identification cannot be made by some means, the person shall not be allowed to give a sample.
 - a. The Administrative Lieutenant shall prepare the PD 319 and check-in urine specimen roster after establishing preliminary identification on each testee. He shall then complete Sections 1,2,3,4,5,6 and 7 of the PD 319 as follows:
 - (a) Section 1--Use Initials
 - DCFD - Fire Department
 - USPP - Park Police
 - PFC - Police and Fire Clinic
 - MPD - Metropolitan Police
Department
 - (b) Section 2--Date
 - (c) Section 3--Print Information Required
 - (d) Section 4--Print Unit of Person Giving Sample
 - (e) Section 5--Enter Social Security Number
 - (f) Section 6--Obtain Signature of Person Giving Sample
 - (g) Section 7--Purpose of Urine Specimen

The purpose of the urine specimen shall be indicated in Section 7 by using the following initials:

PROM - Promotion to any rank
DII - Detective Grade II Physical
TP - Tech Pay Physical
AN - Administrative Need
AG - Age Group
TB - Trial Board
ML - Military Leave
FFD - Fitness for Duty
MPO - Master Patrol Officer Physical
PROB - Probationary Physical
APP - Applicants

- b. The Administrative Lieutenant shall then stamp the reverse side of Part I of the PD 319 with the Drug Program Stamp. The Drug Program Stamp will enable the Administrative Lieutenant to stamp the following information on the reverse side of Part I of the PD 319 (Attachment #1):

Type of ID shown _____

Are you presently taking any medication (within last 30 days)?
If so, list:

I am not taking any medication at this time. _____

- c. The person giving the sample will then initial alongside the type of medication being taken or no medication as appropriate.
2. The person giving the sample will then take the PD 319 to the proper collection area where the PD 319 will be presented to an official or such person designated by the Administrative Lieutenant.
 3. It is extremely important that a 1:1 ratio be maintained between the person giving the sample and the official or designated person responsible for collecting same. No other person will be permitted in the collection room without the expressed approval of the Director, Police and Fire Clinic. The collecting/identifying official will review the PD 319 for correctness and final identification of the person submitting the sample. The collecting/identifying official will then print his/her name in Section 8 of the PD 319.
 4. All urine samples obtained in conjunction with the drug screening program must be personally observed. In the field of drug screening this method of viewing a urine sample is known as "body to bottle." Specifically, the official assigned to the collection area must observe the urine as it passes from the individual into the Waigene specimen bottle.
 - a. Officials assigned to the collection area will also ensure that persons giving samples do not substitute another person's urine or any other liquid for their urine sample. Officials should also be alert to the possibility of members attempting to place or mix any foreign substance into the sample bottle with their urine.
 - b. Any member who, in the judgment of the collecting official, violates this order will be required to remain at the Clinic and submit a proper sample.

- c. Members who violate this order will be subjected to disciplinary action as set forth in departmental orders.
5. After observing the sample being given, the collecting official shall sign Section 9 of the PD 319. He will then collect the Nalgene bottle and obtain the right thumbprint of the person giving the sample. The thumbprint is to be placed on Part III of the PD 319. The collecting official will then detach Part III of the PD 319 and attach it to the bottle containing the appropriate urine specimen. Part II of the PD 319 shall be given to the testee as a record of the control number assigned to the sample.
 6. If the person giving the sample is unable to urinate, the collecting official shall make a notation in Section 10 of the PD 319 indicating "No-Go" and the time that this occurs. Each instance the testee returns to urinate and a sufficient amount is not obtained, the time and the amount shall be noted in Section 10 of the PD 319: (Example: "No-Go" 1000 hrs, 1/4F 1200 hrs). If the testee does not submit a sufficient sample by 1500 hours on a normal clinic business day, the testee will be ordered by the collecting official or the official in charge of the clinic to report back to the clinic at 0800 hours the next clinic business day to give a sufficient urine sample. If a sufficient sample is not obtained from the testee by the close of clinic business on the second day, the collecting official shall notify the Administrative Lieutenant or the official in charge of the clinic and be guided by his/her instructions. When the sample is finally obtained, the initials of the collecting official shall be placed in Section 10 of the PD 319 to indicate that positive re-identification of the person giving the sample was accomplished prior to the sample being obtained. (Note: During the period while the person giving the sample is waiting to complete same, the PD 319 and the urine sample bottle shall be maintained in the custody of the collecting official.)
 - B. After completion of the collection process, the samples and properly completed chain-of-custody form shall be placed in the drug testing room by a staff member authorized to enter that area.
 - C. All completed copies of Part I of the PD 319's, voided PD 319's, and unused PD 319's shall be turned over to the Administrative Lieutenant by the collecting official. A sample of a properly prepared PD 319 is attached to this memorandum (Attachment #2).

Division Memorandum 85-4 is hereby rescinded.

James G. Brunzos
Director

Attachments:

1. Sample of Drug Program Stamp
2. PD 319 (Narcotic Drug Test Record)

Sample of Drug Program Stamp. 2-3/4 X 5 maximum size.

Type of ID shown _____

Are you presently taking any medication (within last 30 days)? If so, list:

I am not taking any medication at this time.

109158 TRAY BUSINESS SYSTEMS, INC.	<i>PART I</i>		Control Number
	1. Requesting Unit	2. Date Sample Taken	844118
	3. Name - Print (<i>Last, first, middle initial</i>)		4. Unit
	5. Social Security Number	6. Signature	
	7. Sample Requested By: <i>(Print)</i>	8. Approving Official <i>(Print)</i>	
	9. Sample Obtained By: <i>(Signature)</i>	10. Witness <i>(Signature)</i>	
	11. Results		
	<input type="checkbox"/> NEGATIVE		
	<input type="checkbox"/> POSITIVE FOR		
	P.D. 319 Rev. 8/83 Narcotic/Drug Test Record		
			<i>PART II</i> <i>PART III</i> 844118 844118
		† † Thumbprint	

Louisville Police Department

Special qualifications for assignment to the narcotics unit

Acknowledgment and acceptance of special qualifications for assignment to the narcotics unit of the Louisville Division of Police

I, the undersigned, hereby acknowledge the special qualifications required for assignment to the Narcotics Unit of the Louisville Division of Police as hereinafter stated; and I hereby agree to comply with said qualifications.

The qualifications are as follows:

A. Each officer upon assignment to the Narcotics Unit of the Louisville Division of Police, and at each time thereafter as directed by the Chief of Police, shall be required to take a polygraph examination. Said polygraph examination shall consist of, in addition to control questions, four questions specifically related to the duties of an officer in the Narcotics Unit. The four questions to be asked are as follows:

1. Have you since your last polygraph examination or within the last 12 months compromised any court case for your own personal gain or benefit?
2. Have you used any narcotics or controlled substances since your last polygraph or within the last 12 months except those controlled substances prescribed for you by a licensed physician or medical personnel?
3. Have you since your last polygraph or within the last 12 months made any illegal sales of narcotics or controlled substances?
4. Have you since your last polygraph or in the last 12 months misappropriated any investigative funds provided to you for the purposes of drug purchases?

B. All officers assigned to the Narcotics Unit of the Louisville Division of Police shall be required upon assignment and thereafter upon direction by the Chief of Police to take a blood test and urinalysis.

I have been informed and understand that if I refuse to take the required polygraph, blood test, and/or urinalysis, I shall be subject to immediate transfer out of the Narcotics Unit of the Louisville Division of Police. I also understand that the results of said tests may subject me to immediate transfer out of the Narcotics Unit. I further understand that my refusal to take said polygraph, blood test, and/or urinalysis, or the results of said tests, cannot be used against me in any disciplinary action.

I further understand and acknowledge that compliance with the above qualifications is, because of the sensitive nature of narcotics investigation, in the best interest of myself, the Narcotics Unit, and the Louisville Division of Police.

DATE

Miami Police Department

Drug testing policies and procedures

Miami Police Department

Recruitment and selection unit standard operating procedures

SOP 14

SUBJECT: Pre-employment Medical Screening of Sworn and Non-Sworn Applicants for Narcotics or Substance Abuse.

PURPOSE: To establish guidelines for the utilization of medical results showing the presence of controlled substances in Sworn or Non-Sworn applicants at the time of testing.

SCOPE: All applicants for employment in the Police Department shall have tests performed on their body fluids (urinalyses) to determine the presence of selected controlled substances. This test is part of the normal physical examination processing for all applicants.

Once completed, the results are forwarded to the City Medical Department for inclusion in the applicant's medical records.

A copy of the results are forwarded through channels to the Commander of the Recruitment and Selection Unit for review by the Personnel Selection Board.

As each applicant is considered, the test results are reviewed for determination of his or her qualification for the position.

As two samples of the same specimen are maintained, a retest may be ordered pursuant to subsequent challenge, if necessary.

Commander
Operations Support Section

Commander
Recruitment & Selection Unit

Effective Date: _____

Miami Police Department/P.O. Box 016777/Miami, Florida 33101/(305) 579-6565

**City of Miami
Police Department**

**Controlled substance/alcohol—Personnel screening form
Mandatory/Voluntary**

(Circle one)

Name of Employee: _____

I.B.M. Number: _____

Classification: _____

(Part I) (To be completed in mandatory situation only.)

Staff Officer Contacted: _____

Date and Time Contacted: _____

Signature of Persons Giving Order: _____

F.O.P. Representative Contacted: _____

Date and Time Contacted: _____

In accordance with the terms of the labor agreement between the City of Miami and the Fraternal Order of Police, Miami Lodge No. 20, Article 36, Substance/Alcohol--Personnel Screening, you are hereby required to submit to a Urinalysis/Blood test. As specified in the Memo of Understanding, you have the option of giving either a urine sample or a blood sample. Refusal to comply with an order to submit to such an examination will constitute the basis for disciplinary action up to and including dismissal.

Specify Choice of Test: _____ Blood
(initial one)
_____ Urine

I understand that I may not change my mind after a selection has been made. I further understand that refusal to sign any of the necessary forms shall constitute both a refusal to give a sample in violation of the labor agreement and disobedience to a direct order. These may both constitute a basis for disciplinary action up to and including dismissal.

(Part II) (To be completed by person giving order or making request.)

I _____ Request/Order _____,
Lieutenant or above (circle one) Department member
an employee of the Miami Police Department, to provide a urine/blood (circle one) sample to be used for testing to identify possible substance abuse. I understand that testing shall not be conducted without reasonable belief.

Signature

Date

Date & time of first sample _____ Laboratory I.D. _____

Witness to sample (preferably I.S. Investigator) _____

(Part III) (To be completed by person ordered or volunteering.)

I _____ have been Ordered/Volunteered (circle one) to provide a urine/blood (circle one) sample.

Signature

Date

(Part IV) (To be completed at the conclusion of first test.)

I have been notified that the results of the first test were positive/negative.
(circle one)

Signature

Date and Time

I have been advised that I may provide a second sample for a second test. If I do not give a second sample, I understand the remaining portion of the first sample will be tested. I further understand that if I do volunteer to give a second sample, the sample must be given immediately. Any delay in giving a second sample shall be deemed a refusal to provide a second sample. I also understand that I may not switch choices of samples for a second test. Any attempt to switch choices of samples for a second test shall constitute a refusal to provide a second sample. The second sample is optional at the employee's discretion.

Based on the above results, I hereby request to give a second sample.

Yes

Signature

Date & Time

No
(initial one)

Date & time of second sample _____ Laboratory ID # _____

Witness to second sample (preferably I.S. Investigator) _____

I have been notified that the results of the second test was positive/negative.
(circle one)

Signature

Date & Time

Honolulu Police Department

"Questions and Answers" publication on drug testing

The drug urinalysis program of the Honolulu Police Department Questions and answers

Administrative Bureau, Honolulu Police Department, November 1986

Q. What is the reason for a drug testing program?

A. There are two primary reasons: (1) public expectations regarding professionalism and integrity, and (2) public-safety concerns.¹

Because of unfortunate drug-related incidents involving police officers reported in 1984, our credibility to enforce drug laws was in question. Drug testing is seen as a method to restore that credibility.

The public-safety concern stems from recent court decisions that hold police departments responsible to ensure that its officers are fit to carry guns. In one particular decision in New York, the court was of the opinion that the city could be found liable in a shooting incident wherein the city "failed to address itself with due diligence to the problem of reasonably ensuring that police officers are fit to carry guns without endangering themselves or the public" Bonsignore v. City of New York, 521 F. Supp. 397, (2nd Cir. 1981).

Q. Will the test be compulsory for all officers?

A. All sworn personnel will be subject to the drug testing. There will be three test categories--two will be mandatory test categories and consist of officers who will be required to be tested frequently. Officers in these categories include the Personnel Major and Captain; Internal Affairs sworn personnel; officers directly involved in the investigation or authorized handling of illegal drugs; helicopter pilots and observers; bomb technicians; canine handlers; SWAT members; those on initial probationary status; officers who refuse to submit a urine sample, and officers who receive a confirmed positive result for the first time.

The third category will include all other officers who will be tested at random.

Q. How does assignment to a random category work?

A. Officers in the random category will automatically belong to a random group based on their departmental assignments. These random groups are given reference numbers. For example, Watch B of District II is assigned Reference Number 21. There are 22 random groups at present which could increase as the department grows in personnel strength.

Q. How will the random selection work?

A. The selection of a random group will be by a probability sampling process known as simple random selection with replacement.² A computer-generated file of random numbers or a statistical table of random numbers can be used. The purpose is to ensure that each random group has an equal probability of being selected or not selected each time a drug test is initiated.

Q. Will all personnel in a random group be tested?

A. Probably not. Only personnel on duty and who are notified at the time the specimens are to be collected will be subject to testing. You will be notified verbally when you report to work.

Q. How much advance notice will be given?

A. The division commander will be given less than 48 hours notice.

Q. How much time will be allowed for me to give a specimen?

A. After a verbal notification by a supervisor, you will have 4 hours to submit a urine specimen.

Q. What if I miss the 4-hour cutoff time?

A. An administrative investigation will be initiated on any officer who fails to submit a specimen within 4 hours after being notified.

Q. Where will we have to go to give a specimen?

A. In general, the contract private firm will come to the job site of the random group that is selected to be tested. Under some circumstances, personnel may be referred to the private laboratory.

Q. Why is there wholesale random testing instead of testing based on probable cause?

A. Reasonable belief or suspicion is the language used in urinalysis testing. For example, in Turner v. Fraternal Order of Police, 500 A.2d 1005 (D.C. App. 1985), the court said that suspected drug use "must be construed here as requiring a reasonable objective basis. . ." and the court upheld the Washington, D.C., Police Department's urinalysis program.

The IACP guidelines uses the reasonable objective basis as a standard to include involvement in traffic accidents and a drop in work production as indicators that may warrant a drug test.³

The Boston Police Department uses reasonable suspicion as its standard that includes a "tip" or "informant."⁴

The New York Police Department uses reasonable basis in its procedure based on Amalgamated Transit v. Suscy, 538 F.2nd 1267 (7th Cir. 1976) wherein urine testing was upheld on reasonable grounds--drivers involved in serious accidents was considered reasonable grounds.

It should be noted that the Department of Civil Service, City and County of Honolulu, is proposing a citywide drug test policy that utilizes reasonable suspicion as its standard.

HPD administrators did consider a reasonable grounds method over random testing. It was not selected as a method because it leaves too much to human judgmental decisions that could be perceived as arbitrary. This position could change if future circumstances would warrant it but not before it has been discussed with SHOPO.

Q. How often will a random group be selected?

A. The number of times your random group will be selected is unknown beforehand. A random process is like a lottery---it operates on pure chance instead of human judgmental decision. Your random group could be selected every time or not at all throughout the year. That's the "luck of the draw."

Q. What if I'm tested in one group then transfer to another division that is selected the next time, will I have to be tested again?

A. Yes. The randomness is by group assignment, not by individual names. You could also transfer out a day before the test each time and never be tested. This is the chance factor of randomness.

Q. Who will be doing the testing?

A. The specimen collection and urinalysis tests will be by private firms on contracts with the department. Our standards require three separate tests. Two separate tests will be by the first private laboratory. Another separate test will be by a second private lab that is independent of the first lab. The second lab is a cross check of the first lab's finding of a positive result.

Q. What kinds of tests will the labs conduct?

A. The first screening test will use the EMIT process that employs an enzyme-immunoassay technique.⁵ Any positive results from the EMIT must be confirmed by a chromatography technique. This will be a Thin Layer Chromatography (TLC) or a Gas-Liquid Chromatography (GLC) which allows for separation and identification of drugs.⁶ The third test will confirm the findings of the second test and must be by a Gas Chromatography/Mass Spectrometry (GC/MS). The GC/MS will "determine the molecular weight and confirm the identity of the compound" and "gives excellent accuracy, reliability, and sensitivity."⁷

Q. What about the false-positives of urinalysis that have been argued in the press?

A. False-positives have been traced to three primary factors: (1) poor quality control in the handling of specimens, (2) a low threshold setting, and (3) the lack of an adequate confirmation test.⁸

To protect against quality control errors, two specimens will be taken from you by an observer (observer will be of the same sex as the officer). You will observe the sealing of both specimens with tamper-proof labels. One specimen goes to the private lab. The police department will retain and freeze the second specimen in a secure location.

If the private lab reports a positive result, the frozen sample at HPD that matches the control number of the positive result will be sent to a different private lab by the HPD Personnel Officer. In addition, at least 10 percent of frozen specimens that had negative results will be sent along with the other specimens to the second lab. Only personnel in the Personnel Division involved in drug testing will know which samples are

positive or negative. The second private lab must report the same result as the first private lab for each positive and negative specimen sent to them.

In the setting of low thresholds, the EMIT is sensitive enough to report a positive of someone who had secondary or passive inhalation which could happen, for example, at a burn site of marijuana in a Green Harvest operation. To avoid this, the threshold or sensitivity level will be set at very high levels which will give positive results that can only be interpreted that the drug has been ingested in the blood.⁹ For example, the level for THC (marijuana) content in the HPD program will be set at 100 nanograms for the detection of drug metabolites in the urine sample.¹⁰ A reading of 75 to 80 nanograms can be interpreted as coming from a user and 20 to 25 nanograms from passive inhalation. In comparison, the Pentagon will allow 75 nanograms as a threshold.¹¹

With regard to the confirmation test, the GC/MS result by a certified operator is the most reliable state of the art and is acceptable in court for the identification of drugs in a urine sample.¹² Other programs that had problems did not use the GC/MS because of its high cost to purchase or contract out and the need for highly trained operators.

Q. What about the report of the soldier who drank "Inca" Herbal Tea and had a positive reading?

A. The "Inca" brand tea from coca leaf is no longer available for purchase in the United States. Before coca-leaf herbal tea can be sold in the U.S., it must go through a cocaine-derivative extraction process in accordance with Federal Drug Administration regulations.¹³ The packaging will generally indicate this. If you have herbal tea that has not gone through this process then you are in violation of Federal and State drug laws.

Q. What about the poppy seed positive reading controversy?

A. It is possible for someone who consumed sufficient quantities of European-type poppy seeds to show a positive urine result for opiate derivatives at trace or low levels. However, U.S. drug testing laboratories have not reported positive readings based on poppy seed consumption tests.¹⁴ In any event, our specifications in the contract with the testing lab will eliminate any possibility for an opiate derivative false-positive.

Q. Are there any other foods or medications that can cause a false-positive result?

A. In general, no. There are some medications with similar chemical structures that could produce positive results in certain types of tests. However, these medications and their interference levels have been tested on the EMIT system. None of the foods and medications tested have been found to produce a false positive in the cannabinoid (marijuana) or cocaine metabolite tests.¹⁵

Furthermore, this is the reason the EMIT is confirmed with a chromatography method. In addition, we will cross-validate or cross-check the confirmation using the second specimen with the GC/MS. The GC/MS is the most sophisticated scientific instrumentation available for specific and reliable drug identification.

Q. What happens if I test positive?

A. For tenured personnel who have a confirmed first-time positive result, an administrative investigation will be conducted and submitted to the Disciplinary Review Board for review. You will be placed on leave in

accordance with Civil Service regulations. You will be required to enter a departmental approved substance abuse program. Upon completion of the program you will be placed in a mandatory test group for 1 year. You may be disciplined for violation of Rule A-4 of the Standards Of Conduct. You can take sick, vacation, or compensatory time off during the substance abuse program.

You may also be placed on light duty during the substance abuse treatment if your division commander can find a temporary position for you that does not require driving or your firearm; for example, Communications Division. The cost for the substance abuse program will have to be absorbed by you or your medical plan.

Personnel on initial probationary status are not covered under this procedure and their dispositions will be determined in accordance with civil service rules.

For a second-time confirmed positive result, an administrative investigation will be conducted. If the investigation and administrative review sustains the use of an illegal drug violation, the Disciplinary Review Board may recommend discipline that may include dismissal. The final decision on discipline will rest with the Chief of Police.

Q. What if I refuse to submit a specimen?

A. An administrative investigation will be conducted for refusing to obey a directive and/or a direct order. Within 5 days, you will be ordered to submit to another test. A second refusal shall count as a second and separate violation. You will be given a third order within 5 days and another refusal will be counted as a third and separate violation. Three disciplinary actions within any 12-month period will bring you into an extended action condition that may result in dismissal.

Personnel on initial probationary status are not covered under this procedure and their dispositions will be determined in accordance with civil service rules.

Q. Can I grieve any disciplinary action?

A. The collective bargaining agreement and civil service rules provide for a grievance process if you believe you were denied a contractual or civil service right.

Personnel on initial probationary status are not covered under this procedure and their dispositions will be determined in accordance with civil service rules.

Q. What authority does the department have in doing this?

A. Two court decisions received from the Corporation Counsel and the HPD Standards Of Conduct are used as the basic authority for this program. In Allen v. City of Marietta, 601 F. Supp. 482 (N.D. Ga. 1985), the court determined that the city has a right to conduct warrantless searches including urinalysis tests of its employees for the purpose of determining whether they are using drugs which would affect their ability to perform their work safely with hazardous materials or when their work poses substantial threat to the health and safety of the general public. In The Committee for G.I. Rights v. Callaway, 518 F.2nd 466 (D.C. Cir. 1975), it was ruled that compulsory and random urinalysis tests do not violate the expectation of privacy of military personnel due to the nature of their enlistment in the service. The Corporation Counsel is of the opinion that the factors of Callaway can apply to police work. Finally, the use of illegal drugs and narcotics is in violation of Article VIII, Rule A-4 of the HPD Standards Of Conduct.

ARE THERE ANY OTHER QUESTIONS? IF SO, PLEASE FEEL FREE TO CALL ANY OF THE FOLLOWING PERSONNEL: MAJOR JERROLD BROWN 943-3336, INSPECTOR ERSEL KILBURN 943-3286, OR ASST. CHIEF DAVID HEAUKULANI 943-3275.

Notes

1. Dennis E. Nowicki, "Police Officer Drug Abuse: An Issue of Public Safety," presentation at the IACP 92nd Annual Conference, Houston, Texas, October 14, 1985.
2. Ronald Hy, Douglas Feig, and Robert Regoli, "Simple Random Sampling," Research Methods And Statistics (Cincinnati: Anderson Publishing), 1983, p. 93.
3. IACP News, "IACP Issues Model Drug Testing Policy For Police Agencies," August 13, 1986; and "Memorandum," August 27, 1986.
4. Proposed Drug Test Regulations, Section 4, Boston Police Department, James F. Hart (legal advisor), Boston Police Department, June 12, 1986.
5. Immunoassays are drug-specific antibodies to discriminate between positive and negative samples. The antibody is prepared by injecting laboratory animals, often sheep, with a specially modified form of the drug which the antibody will be directed against. The animal's immune system will then respond to this drug by making drug-specific antibodies in the same way that it would make specific antibodies to a foreign bacteria or virus. The antibodies are purified from the animal blood for use in immunoassay kits. These kits are used for the tests on urine samples. From Hugh W. Allen, "Drug Screening Methodologies," PharmChem Newsletter 12:5, September-October, 1983, p. 4.
6. In Thin-Layer Chromatography, the separation and identification of drugs usually takes place on a glass plate coated with a very thin layer of silica gel or alumina. The urine sample to be analyzed is purified and concentrated so that it can be applied in a small spot on the bottom of the TLC plate. The plate is positioned in solvent. This interaction creates a capillary action which moves drugs and other compounds along the plate at different characteristic rates. The drugs in the sample will separate according to their different physical properties and distinctive interaction in the mobile and stationary phases of the test. Gas-Liquid Chromatography works on the same principle as Thin Layer. After the sample is purified and concentrated, it is injected into the Gas Chromatograph (GC). The GC contains a special column which separates the sample and allows it to flow through a detector at a specific time called the retention time. Each drug has a characteristic retention time. From Hugh W. Allen, Ibid., pp. 1-3.
7. The Gas Chromatography/Mass Spectrometry allows the analyst to determine the molecular weight of the compound as well as to confirm the identity of the compound by comparing its unique fragmentation spectra to that of an analytical standard. From Hugh W. Allen, Ibid., p. 3.
8. J. Michael Walsh, Employee Drug Screening, U.S. Department of Health and Human Services, Publication No. (ADM)86-1442, 1986.
9. Opinion by Dr. Clyde Kaneshiro, Chief Chemist, Accupath Laboratory, Honolulu, September 1986.
10. A nanogram is one-billionth of a gram.
11. "Army Drug Test Made Tougher," ARNEWS, September 1986.

12. Dr. Alvin Omori, Medical Examiner, City and County of Honolulu, September 1986. Cf. also, Robert T. Angarola, "Drug Detection Programs in Industry," PharmChem Newsletter 13:4, July-August 1984, p. 7; and Testing to Detect Drug Use, National Institute of Justice, Technology Assessment Program report 1:3, June 1986.

13. Donald D. Engen, Drug Testing Program, Federal Aviation Administration memorandum attachment, September 15, 1986, p. 2.

14. Ibid.

15. Frequently Asked Questions About Syva and Drug Abuse Testing, Syva company report, undated, p. 5.

Employee assistance programs

Chicago Police Department

PAX-501

Volume 84

1 October 1984

Number 2

In recent years, we have seen a proliferation of substance abuse in our society. Drugs, legal and illegal, are readily accessible to anyone who seeks them. The newspapers abound with accounts of drug abuse by professional athletes, TV and movie personalities, and other public figures. Some of us may have experienced personal pain and futility if family members or friends have become involved with drugs. We have all read accounts or heard stories about police officers becoming involved with drugs.

Drug abuse by any segment of society cannot be condoned, especially by police officers. Police officers are the sworn protectors of the law and public order. To carry out their duties as protectors of the public, officers must have physical coordination and unimpaired judgment to react prudently and effectively to the demands of police service.

Officers who abuse drugs violate their oath of office. Illegal drug activity in any form will not be tolerated. When a police officer is found to be using drugs illegally it usually means that he/she has obtained them by illegal means as well.

The abuse of drugs by police officers is abhorrent to all law-abiding citizens as well as police professionals. Any member of the Chicago Police Department found to be engaged in such activities shall be dealt with severely.

In recognition of the frailty of humans, the Chicago Police Department has established the Professional Counseling Office (Phone: 744-5492, PAX-204) to assist with a variety of problems including substance abuse. Anyone with a drug problem is urged to seek this or other professional assistance.

Fred Rice
Superintendent of Police

**Chicago Police Department
Alcohol and drug assistance unit**

Addendum to General Order 80-4
Effective November 22, 1980

I. Purpose

This addendum:

- A. Sets forth Department policy regarding alcoholism and the abuse of alcohol and legally prescribed drugs.
- B. Establishes an Alcohol and Drug Assistance Unit, within the Professional Counseling Service, Bureau of Administrative Services.

II. Policy

The Department is committed to develop and encourage participation in programs designed to alleviate the problems caused by alcoholism, alcohol abuse, and the abuse of legally prescribed drugs.

III. Scope

- A. The Alcohol and Drug Assistance Unit is established within the Professional Counseling Service as an objective, nonjudgmental program through which active Department members or members of his/her family may voluntarily and confidentially seek advice and assistance.
- B. In addition, when a member's job performance problems indicate abuse of alcohol and/or legally prescribed drugs, supervisors should direct subordinates to utilize the services of the Alcohol and Drug Assistance Unit.
- C. The Unit will conduct an in-service educational program which is specifically designed to instruct and guide supervisory personnel in those areas of evaluating job performance which are influenced by alcoholism and/or legally prescribed drug abuse.

IV. Definition

Alcoholism and legally prescribed drug abuse is defined, for the purpose of this order, as an illness in which the member's use of any alcoholic beverage and/or legally prescribed drug definitely and repeatedly interferes with his/her job performance and/or his/her health.

V. Organization and Operation of the Program

- A. The Alcohol and Drug Assistance Unit will be administered by a unit commanding officer who is under the direct supervision of the Administrator, Professional Counseling Service. The Unit will be staffed by trained and experienced counselors who are specially selected Department members.

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- B. Any active Department member or member of his/her family desiring the services of the Alcohol and Drug Assistance Unit may contact a counselor of the Unit between 0800-1700 hours, Monday through Friday, by telephoning 733-0207, 733-0208, or PAX 9-4169.
 - C. All records of the Unit are the responsibility of the Administrator, Professional Counseling Service. Any record of the counseling exchange will be considered strictly confidential. Records containing statistical information will be submitted monthly to the Deputy Superintendent, Bureau of Administrative Services. Confidential records will be destroyed 3 months after the termination of counseling.
 - D. When a supervisor initiates disciplinary action or a disciplinary investigation as a result of the use, by a subordinate, of alcohol or legally prescribed drugs in a manner which impedes satisfactory job performance, the member's participation or lack of participation in the Alcohol and Drug Assistance program will not delay the initiation of the disciplinary action or completion of the investigation.

134-80 SOD

Chicago Police Department
Social service assistance and referral program

General Order 80-4
Effective February 22, 1980

I. Purpose

This order:

- A. Outlines the Social Service Assistance and Referral Program available to Department members.
- B. Explains the purpose of the program.
- C. Describes the services available.
- D. Provides procedures for program referrals.

II. Social Service Assistance and Referral Program

- A. The Social Service Assistance and Referral Program has been established to assist active Department members and retired sworn members in dealing with personal problems which are often the result of domestic, financial, and/or interpersonal difficulties.
- B. The program will provide counseling and referral services to active Department members and retired sworn members that will enable them to recognize and resolve their unfavorable reactions to stress situations.
- C. The program is directed by a professional counselor, with offices at 1121 South State Street, Room 109. The counselor will report to and be under the command of the Administrator of Personnel Services.
- D. The program will provide service to members who are experiencing difficulty in the following areas:
 - 1. Personal emotional problems.
 - 2. Marriage and family problems.
 - 3. Abuse of intoxicants (i.e., alcohol or drugs).
 - 4. Stress related illnesses.
 - 5. Emotional overreactions, and/or erratic or unusual performance of duty.

6. Traumatic experiences of sworn members that occur because of their profession, e.g., hostage situations, squad car accidents, being fired upon or wounded, reactions to other occurrences involving the use of firearms, or incidents involving physical struggles.

III. Services Available

- A. The counselor will ascertain the resources available throughout the city and within the community in which the member resides. Referrals will be made to an appropriate counseling service, taking into consideration the needs and desires of the member and his family. However, the counselor may determine that counseling with the Department member will be more appropriate in the following cases:
 1. Short-term counseling to accurately identify central problems.
 2. Providing immediate assistance during personal crises.
 3. Assisting members and their families in obtaining long-term help elsewhere.
- B. Nonvoluntary diagnostic services requested by supervisory and/or command staff will not be provided through the Social Service Assistance and Referral Program. The Psychiatric Advisory Board will provide diagnostic referrals when requested by the Department.

IV. Authority to Initiate Social Assistance and Referral Requests

- A. Any active Department member or retired sworn Department member may contact the office of the counselor by letter, telephone, or in person for information or a counseling appointment.
- B. All command and supervisory personnel have the authority and the responsibility to recommend social service referral to members under their control, when appropriate. It must be understood that the Social Service Assistance and Referral Program is VOLUNTARY and that the member cannot be ordered to participate. The member will be assured that the consultation has been arranged solely for his benefit and will be CONFIDENTIAL.
- C. Recommendations of referrals to this program will not be used as a substitute for normal disciplinary processes.
- D. Unit commanders and/or supervisors may contact the professional counselor for information or to initiate the referral process.

V. Confidential Files and Records

- A. Recognizing that this is a highly sensitive and confidential service, files and records of the counseling exchange will be under the strict control of the professional counselor. The records of the counselor will not be utilized in any investigation concerning a Department member.
- B. Other records containing statistical information will be under the control of the Administrator of Personnel Services.
- C. ALL CONFIDENTIAL FILES WILL BE AUTOMATICALLY PURGED AND DESTROYED WITHIN 3 MONTHS OF CLOSING REFERRAL CASES.

**Miami Police Department
Training Bulletin #11**

September 1986

Counseling Services for MPD Personnel

The Chief of Police recognizes the need and fully supports the efforts to provide the services of a Crisis Intervention Counselor to the employees of the Police Department.

Personal problems can have an adverse effect on an employee's ability to function at a desired level of performance. Under the services of the Crisis Counselor, Employee Developmental Services has been established to help deal with these pressures. The purpose of these services are to reduce the effects of personal problems on the job and retain valued employees.

Employee Developmental Services is designed for the Police Department employees having difficulties with a range of human problems to include family problems, marital discord, alcohol or drug dependency, financial difficulties, and spiritual guidance during times of crisis.

Confidential assistance and referral to community resources, if needed, are available through the Employee Developmental Services, which includes the Chaplaincy Corps.

Information regarding the nature of the personal problem will be guaranteed the right of confidentiality, and will not be subject to review by anyone not specifically authorized by the employee involved. Additionally, this information will not appear in the employee's personnel file for any reason.

Employees may voluntarily seek assistance on their own, or a friend may encourage the use of the services when difficulties arise.

Participation in the program will not jeopardize an employee's job security, promotional opportunity, nor reputation.

For further information, please contact Rev. Gene Self, at ext. #6449 in Training area, Room #309-Q, beeper #691.

Fraternal Order of Police

Jerrard F. Young Lodge D.C.--1
Washington, D.C.

NOVEMBER 1986

SIMULCAST

Officer Assistance Program

O.A.P.

The Officer Assistance Program is in full swing! Since our last article we have had calls from members of several other agencies who want to become involved in our program and refer their members to the O.A.P. While this program was originally set up to help MPD officers, in the tradition of the FOP we will be glad to help any law enforcement officer and his family. Feel free to call.

We really expected to get off to a slow start, but in just this short time we have received numerous calls from officers seeking help. We have even had officials alert some of the Chief Stewards to officers with potential disciplinary problems that were stemming from personal pro-

blems. This enabled the Chief Steward to approach the officer and recommend he/she contact the O.A.P.

On the third Tuesday each month, the O.A.P. will offer a mini seminar from 6:30 to 8:30 p.m. on the second floor of the Lodge (512 Fifth St., N.W.). Guest speakers will present a different issue each month. These informal sessions will be open to anyone who would like to attend. Each month's topic will be posted by the 10th so contact the FOP office on 628-0600 for information. If you have any suggestions on areas you would like discussed, please let us know.

For a **CONFIDENTIAL** referral, call 783-5555, leave your name and telephone number and an O.A.P. counselor will get in touch with you ASAP; or contact your chief steward or one of the below listed peer counselors who might be in your

district.

MPD

Rufus Archer (3D)
Lania Bryant (CRD)
Peter Carroll (SOD)
Janet Hankins (CRD)
Tom Lewis (Ret.)
Larry Linville (Ret.)
Melvin Mason (3D)
Patty Pflieger (FOB)
Diane Spencer (4D)
Cliff Stokes (4D)

USSS-Uniform Division

Kevin Haller
Ron Regulski

Capitol Police

Kitty Robbins

Spouses/Civilians

Lillian Linville
Eva Mason
Rose Jean-Phillippe