

# General Order

## Houston Police Department



ISSUE DATE:

October 30, 2018

NO.

300-17

REFERENCE: Supersedes all prior conflicting Circulars and Directives, and General Order 300-17, dated June 23, 2017

**SUBJECT: EMPLOYEE DRUG AND ALCOHOL TESTING**

### POLICY

It is the policy of the Houston Police Department in accordance with City of Houston Executive Order No. 1-12, *Amended Controlled Substance & Alcohol Abuse* that employees shall not sell, purchase, provide, manufacture, possess, or ingest any controlled substance, whether on or off duty, unless the substance is used as and has been legally prescribed to the employee by a person licensed to do so or unless the normally prohibited behavior falls within the scope of the employee's duties in the course of fulfilling the police mission. The Houston Police Department shall comply with all federal, state, and local laws or regulations creating or fostering a drug-free workplace.

All classified and civilian employees shall be subject to controlled substance and/or alcohol testing for any of the below listed categories as outlined in this General Order.

- a. Absent over 30 *calendar* days
- b. Assignment
- c. Department of Transportation
- d. For Cause
- e. Promotional
- f. Random
- g. Critical incident

### DEFINITIONS

**Alcohol.** The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl alcohol but excluding isopropyl rubbing alcohol.

**Alcohol Use.** Ingestion of any beverage, mixture, or preparation containing alcohol, including medication or mouthwash.

**Collection Site.** A facility designated by the City of Houston to collect samples for controlled substance and/or alcohol testing.

**Controlled Substance.** An illegal drug and/or drug listed in the Controlled Substances Act. For HPD classified personnel, probationary employees, trainees at the Academy, and Academy applicants, controlled substances include exogenous steroids.

**Controlled Substance Screening/Testing.** A procedure to identify the presence of the metabolites of controlled substances or steroids in an employee's system.

**Critical Incident.** For the purpose of this General Order, any of the following incidents that occur while on or off duty.

- a. When an officer discharges a firearm that is pointed towards a person, regardless of whether an injury is sustained.
- b. When an officer discharges a firearm while performing a law enforcement function, activity, or action whereby another person suffers an injury or death due to being struck by the officer's bullet.
- c. When an employee while performing a law enforcement function responds to resistance by using force and the person who is the subject of that response dies in the custody of the Houston Police Department.
- d. When an employee is involved in a crash while driving a City of Houston vehicle, a solo motorcycle, or a vehicle that is owned or leased by a governmental entity and the crash results in a fatality or potentially fatal injury to any person involved in the crash.

**Dilute Sample.** A urine specimen for which the concentration has been reduced by the drinking of excess fluids or by other means.

**Evidential Breath Testing Device.** A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices."

**Hair Test.** A screening/testing procedure using hair to identify the presence of metabolite(s) that may be present after use of a controlled substance.

**Laboratory.** A testing facility certified by the U.S. Department of Health and Human Services (DHHS) and authorized by the City of Houston to perform controlled substance screening/testing.

**Medical Review Officer (MRO).** A licensed physician knowledgeable about substance abuse disorders and who is responsible for reviewing an employee's laboratory results generated through the City's controlled substance testing program. The MRO determines, based on the employee's medical history, other relevant biomedical information, the standards in the industry/profession, and City of Houston Executive Order No. 1-12 and/or Executive Order No. 1-32, *CDL Drivers Alcohol and Controlled Substances Testing Procedures*, that the employee has a confirmed positive or negative test result for controlled substance(s) and/or alcohol.

**Reasonable Suspicion.** An articulable belief based on specific facts, reasonable inferences, or observations regarding the physical, behavioral, or performance indicators of alcohol or drug use, including the employee's speech, appearance, odors, actions, or performance.

**Referee Test.** A split sample test conducted to confirm the presence of a controlled substance in a sample that has been determined positive by the City's MRO. The test is conducted on a portion of the employee's original sample by a certified federal DHHS laboratory different from

the laboratory conducting the original controlled substance test. The referee test shall be performed at the expense of the employee.

**Safety Impact Position.** Employment positions involving safety-sensitive job duties which if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health and safety of the employee, coworkers, and/or the public. This generally includes, but is not limited to, positions held by employees who drive City vehicles or other motor-driven equipment, and may also include the positions of employees who drive their personal vehicles on City business. A safety impact position also includes those employment positions with associated job duties that involve contact with or access to controlled substances, or that involve carrying or handling firearms.

**Split Sample Specimen.** Sample collection divided into two containers for testing and retesting purposes.

**Steroids.** Any organic or synthetic derivative of the hormone testosterone having properties of promoting growth and repair of the body at the cellular level. All use of over-the-counter exogenous (developed or originating outside the body) steroids, non-United States market prescriptions for steroid preparations, and/or any other exogenous steroid like substances are strictly prohibited.

## 1 PRIVACY IN TESTING

Employees shall follow instructions given by and cooperate with collection site personnel. The procedures will not be designed to demean, embarrass, or cause psychological discomfort to the employee being tested. Extra street clothes, bags, briefcases, purses, and other containers shall *not* be carried into the collection area. Classified employees shall not be required to remove their firearm or duty belt while in the collection area.

## 2 CONFIDENTIALITY IN REPORTING

It is the responsibility of the notifying division commander to ensure the employee is notified in a confidential and respectful manner of controlled substance and/or alcohol testing and that the employee's name is kept confidential.

All controlled substance and/or alcohol testing information is confidential. Only those who need to know shall be informed of test results. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the employee. All records relating to the taking of a controlled substance and/or alcohol test or the order to take a controlled substance and/or alcohol test shall be deemed confidential unless written authorization has been obtained from the employee.

The records may, however, be released if they become the subject of a Civil Service Commission appeal, an administrative proceeding, or a judicial proceeding. All records relating to the taking of or ordering of a controlled substance and/or alcohol test shall be kept in a file separate from the employee's personnel file.

### **3 TESTING PROCEDURES**

Except as noted in this General Order for Department of Transportation testing, controlled substance and/or alcohol testing shall be conducted in accordance with City of Houston Executive Order No. 1-12.

It is the responsibility of the division commander to ensure the proper controlled substance and/or alcohol testing forms are completed and given to the employee. The employee shall sign the forms in the presence of the division commander or commander's designee. After notification, the employee shall proceed immediately and directly to a designated collection site with the proper forms and approved identification to complete all the requirements of the controlled substance testing process. All actions an employee takes once he or she has been notified to test shall be toward completion of the collection and testing process. In no instance shall the period of time from notification to signing in at the collection site extend beyond two hours.

Once at the testing location, the employee shall provide the controlled substance testing forms to a collection site representative and display an approved identification. After testing, the employee shall ensure the specimen is sealed. Documentation shall include a control number and the date and time the specimen was collected.

Approved identification includes only a Texas driver license or Houston Police Department identification. If the employee arrives without one of the above forms of identification, a divisional supervisor shall report to the collection site, show his identification and identify the employee. The supervisor shall determine whether or not to initiate an investigation pursuant to departmental policies.

All employees submitting to a urine collection shall provide a split sample. In the event of a positive result, the split sample may be used for *referee testing*.

If an employee is unable to provide a urine specimen at the time of collection, the employee shall be required to comply with alternate hair testing. Should the collection site technician determine the employee does not have enough body hair to collect for testing, the employee shall be directed to remain at the facility until such time as a urine sample can be provided.

The testing procedure shall be a two-step process: an initial screening step and a confirmation step. The confirmation step shall be technologically different from the initial screening test.

Up-to-date controlled substance and alcohol testing forms can be obtained from the Inspections Division, Drug Testing Unit.

### **4 ABSENT OVER 30 CALENDAR DAYS TESTING**

All classified employees and all civilian employees in safety impact positions, after an absence of over 30 *calendar* days, shall submit to a controlled substance test upon the employee's first day returning to duty.

### Procedure

The supervisor of an employee who has been absent over 30 *calendar* days shall at the start of the shift on the first day the employee returns to duty ensure the division drug testing coordinator or representative provides the employee the drug testing forms and instructs the employee to report directly to the collection site, present the testing forms, and submit to the testing.

## 5 ASSIGNMENT TESTING

As a condition of transfer, any officer selected for transfer to the Vice Division, Narcotics Division, Criminal Intelligence Division, Gang Division, Major Offenders Division, or Tactical Operations Division shall be subject to a controlled substance test. In addition, assignment testing is required for officers applying for a proactive investigative assignment per General Order 300-02, **Transfer of Classified Employees**.

The test will be given *after* the officer has been selected. However, prior to being approved for transfer, an officer may withdraw the application without being subject to a controlled substance test based on assignment. In these situations officers shall not be allowed to transfer to the new assignment. An officer's decision to withdraw the application shall NOT be the basis for an Internal Affairs Division (IAD) investigation.

Civilian employees must pass a controlled substance test before transferring to a safety impact position in the department.

### Procedure

The division commander of the receiving division shall notify the employee he must report for and pass a controlled substance test before transferring to the division. The employee shall obtain and complete all required forms, report to the collection site, present the testing forms, and submit to the testing.

## 6 DEPARTMENT OF TRANSPORTATION (DOT) TESTING

Employees in positions that require a commercial driver license (CDL) are subject to alcohol and controlled substance testing as mandated by the United States Department of Transportation (DOT) and in accordance with City of Houston Executive Order No. 1-32, *CDL Drivers Alcohol and Controlled Substances Testing Procedures*.

When a crash occurs involving a City vehicle driven by an employee in the employee's capacity as a commercial operator, the employee shall be subject to testing if any of the following occurs:

- a. There is a fatality.
- b. An injury is treated away from the scene.
- c. A citation is issued to the employee for a moving violation.

- d. A vehicle is required to be towed from the scene.

### Procedure

Employees subject to Department of Transportation testing shall be directed by the division commander to report to a controlled substance testing collection site and provide a breath alcohol and urine specimen. The site selected for these tests shall have an evidential breath testing device. The below procedures shall be followed:

- a. The employee shall complete the required *DOT Regulated Alcohol and Controlled Substance Testing* form available from the affected employee's division or the HPD Drug Testing Unit. The employee shall then report directly to the collection site, present the testing forms, and submit to the testing.
- b. An alcohol test shall be administered first when both alcohol and controlled substance tests are required.
- c. If the employee has not submitted to an alcohol test within two hours following a crash, the supervisor shall document stating the reason a test was not immediately administered for DOT reporting requirements.
- d. If an alcohol test has not been administered within eight hours following a crash, all attempts for such test shall cease. The supervisor shall document stating the reason a test was not administered within the eight hours for DOT reporting requirements.
- e. If the employee has not submitted to a controlled substance test within 32 hours following a crash, attempts for such tests shall cease. The supervisor shall document stating the reason a test was not administered within the 32 hours for DOT reporting requirements.
- f. If the employee is involved in a non-fatality crash, and no citation is issued immediately at the scene, but is issued before eight hours have elapsed, both alcohol and controlled substance tests shall be given so long as the alcohol test can be given before eight hours have elapsed.
- g. If a citation is issued after eight hours and before 32 hours after a crash, only the controlled substance test shall be given.
- h. If a citation is issued after 32 hours following a crash, no test shall be given. The supervisor shall document the date and time the citation was issued and the reason(s) the alcohol and/or controlled substance tests were not given within eight or 32 hours of the crash for DOT reporting requirements.
- i. An employee who is subject to post-crash testing and fails to remain available for such testing shall be considered to have refused to submit to mandatory screening tests. An employee subject to post-crash testing shall not consume alcohol for eight hours following a crash or until he or she submits to an alcohol test, whichever comes first.
- j. If the employee refuses to submit to a controlled substance and/or alcohol screening test, an investigation shall be pursued and the employee shall be relieved of duty immediately.

## 7 FOR CAUSE TESTING

All For Cause testing of department personnel shall be conducted under the direction of IAD. All employees shall be subject to a controlled substance or alcohol test when *reasonable suspicion* indicates possible alcohol or drug use as outlined below. Notification shall be made by either an on-scene supervisor, an IAD supervisor, or a supervisor in the employee's chain of command.

### Reasonable Suspicion

*Reasonable suspicion* means an articulable belief based on specific facts and reasonable inferences drawn from those facts that an employee has engaged in alcohol use while on duty, drug abuse, or illegal drug use. Circumstances that constitute a basis for determining *reasonable suspicion* may include, but are not limited to:

- a. A pattern of abnormal or erratic behavior
- b. Information provided by a reliable and credible source
- c. Direct observations of drug possession or use
- d. Presence of the physical symptoms of drug use (e.g., glassy or bloodshot eyes, slurred speech, poor coordination or reflexes)
- e. Violent or threatening behavior
- f. Absenteeism or tardiness
- g. Unexplained loss of City property
- h. Post-accident

*Reasonable suspicion* may be developed through direct observation by a supervisor or a confidential investigation by IAD. Should any supervisor be of the opinion that a subordinate is unable to perform his assigned duties because of drug abuse, alcohol use, or illegal drug use, the supervisor should adhere to the following procedures:

- i. The supervisor shall take immediate precautions to ensure that the employee does not injure himself or others.
- j. The supervisor shall contact the shift or division commander and relay all relevant information. The information should be derived through articulable beliefs based on specific facts. The supervisor shall document the basis for the reasonable suspicion and forward correspondence to the shift or division commander. Since time is of the essence, the applicable correspondence shall be submitted via email.
- k. The shift or division commander shall assess all relevant information and interview the affected employee. If the employee relates that his condition is due to prescribed or over-the-counter medication, all relevant information regarding the drug shall be documented in writing. The documentation shall include the name of the medication in question, dosage,

strength of the drug, prescription number, pharmacy name and address, and name of the physician prescribing the drug.

- I. After being apprised of the aforementioned, the division or shift commander shall immediately notify the division commander of IAD. If the situation occurs after normal business hours, the IAD on-call lieutenant shall be notified through the Crime Analysis and Command Center Division. Authorization to proceed with a For Cause drug or alcohol screening test shall be given after the IAD division commander or the on-call IAD lieutenant analyzes the information and determines that an alcohol or controlled substance test is warranted.

### **Procedure**

Once the decision has been made that an employee shall be tested For Cause, an IAD investigation shall be initiated. The IAD supervisor and the assigned investigator shall take all responsibility for ensuring the employee is escorted to the collection site and submits to testing.

The IAD supervisor shall advise the employee of the option of consenting or being ordered to submit to a controlled substance or alcohol screening test. If the employee refuses to submit to testing and/or refuses to sign the testing consent form, an investigation shall be pursued and the employee shall be relieved of duty immediately.

## **8 PROMOTIONAL TESTING**

Every classified employee selected for promotion shall be subject to a controlled substance test. Civilian employees must pass a controlled substance test before promoting to a safety impact position.

### **Procedure**

The department's Transfers and Promotions Unit shall notify classified employees selected for promotion to report for controlled substance testing. The Employee Services Division, Civilian Employment Unit shall notify civilian employees selected for promotion to a safety impact position to report for controlled substance testing.

IAD shall be notified of any candidate refusing promotional testing. Any candidate refusing to test shall be immediately relieved of duty and subject to disciplinary action up to and including indefinite suspension or termination. The promotion shall be suspended until IAD completes the investigation.

## **9 RANDOM TESTING**

All classified employees, regardless of rank or assignment, and civilian employees in safety impact positions, shall be subject to random controlled substance testing.

The random selection process will be determined by a computer program developed by an independent contractor outside the Houston Police Department. The information supplied to the contractor shall not identify the employees by name. The City of Houston Human Resources

Department will be notified by the vendor of the selected group of employees. The Human Resources Department will notify the department's Drug Testing Unit, which shall then notify the appropriate division(s).

### **Procedure**

Division commanders shall ensure that the division drug testing coordinator immediately notifies the employee if the employee is on duty. Employees selected for random testing, but who are absent due to vacation, training, sick leave, other leave, or City business approved by the department, shall not be notified to test until the first day they return to work after random selection, even if the first day back occurs in the subsequent month.

Upon completion of the appropriate controlled substance testing forms, the employee shall report directly to the collection site. Upon arrival at the collection site, the employee shall provide the controlled substance testing forms to a collection site representative to verify that the employee did appear as directed and submit to the test.

## **10 CRITICAL INCIDENT TESTING**

Employees involved in *critical incidents* as defined herein shall be subject to drug testing as soon as practicable after the incident.

IAD shall be responsible for ensuring that the involved employee is tested as soon as practicable after the critical incident. However, if IAD does not make the scene, the highest ranking supervisor making the scene for the investigating division shall be responsible for ensuring the employee is drug tested.

### **Procedure**

Employees subject to critical incident testing shall be directed to report to a controlled substance testing collection site and provide a urine specimen. The below procedures shall be followed:

- a. The employee shall report directly to the collection site as directed by the Internal Affairs Division or the supervisor from the investigating division, present the testing forms, and submit to the testing.
- b. If the employee has not submitted to a controlled substance test within 32 hours following a critical incident, attempts for a urine sample shall cease. After 32 hours following the critical incident, the involved employee shall be required to submit to a hair test. The supervisor shall document the reason a test was not administered within the 32 hours.
- c. If the employee refuses to submit to a controlled substance screening test, an investigation shall be pursued and the employee shall be relieved of duty immediately.

## 11 TEST RESULTS

All controlled substance test results shall be forwarded to the City's medical review officer (MRO). The MRO will notify the Drug Testing Unit of all test results within 30 *calendar* days. No employee shall be promoted until the results have been reviewed by the MRO and forwarded as required.

### Negative results

The Drug Testing Unit shall notify employees of negative test results via U. S. Postal Service to the employees' home address within 30 *calendar* days of receiving the information.

### Positive results

All confirmed positive test results will be reported directly from the testing lab(s) to the MRO. The results of a positive controlled substance test shall not be released until they are confirmed by the MRO. It is the MRO's responsibility to review the positive result and determine if the substance is an illegal drug or a prescribed medication being used as directed. If a prescription drug is being used as prescribed, no further action shall be taken.

If the positive test is a result of illegal drug use or unauthorized prescription drug use, the MRO will advise the affected employee that he has three business days from such notification to request a *referee test* from a portion of the original sample. The request for a *referee test* shall be coordinated by the MRO, the City of Houston Physical Exam & Drug Testing Section, and the affected employee.

The MRO will send all confirmed positive test results stemming from the use of unauthorized prescribed medications or illegal drugs directly to Inspections Division, Drug Testing Unit. The Drug Testing Unit shall forward all positive results and paperwork from the initial drug test to IAD. Positive results shall be subject to a Class I investigation by IAD.

If an employee's positive test result has been confirmed, the employee is subject to disciplinary action up to and including indefinite suspension or termination.

### Dilute Sample Results

Drug testing laboratories test samples to detect dilution. Dilution of a urine sample can be accomplished by inadvertently drinking too much liquid prior to a drug test or deliberately attempting to flood the body so the test results will be negative. Therefore, the department shall retest using the hair testing method any employee who has provided a sample that has been reported as both negative and diluted or that is considered a no-test (no result obtained) for any reason.

## 12 REFUSING A DRUG TEST

Any employee who refuses to submit to a drug test is subject to disciplinary action up to and including indefinite suspension or termination.

If, *after* arriving at the collection site, an employee refuses to cooperate with the usual requests of the collection vendor for a test sample, signatures, positive identification, etc. thereby preventing a test from being properly completed, the employee's actions shall be considered as evidence the employee has refused to comply. Additionally, any actions or omissions by the employee that interfere with the timely administration of the screening test shall also be taken as evidence of refusal and the aforementioned procedures shall be initiated.

If an employee refuses to comply with the direct order to submit to a drug test, a supervisor shall contact IAD. IAD shall report to the location and relieve the employee of duty *immediately* and shall initiate a Class I investigation.

### **13 RELATED GENERAL ORDERS AND REFERENCE MATERIAL**

300-02, **Transfer of Classified Employees**

300-09, **Absence from Duty – Classified**

300-28, **Use of Intoxicants**

400-02, **HPD Badges and Identification Cards**

600-09, **Crash Investigations**

900-01, **Absence from Duty – Civilian**

Executive Order No. 1-12, **Amended Controlled Substance & Alcohol Abuse**

Executive Order No. 1-32, **CDL Drivers Alcohol and Controlled Substances Testing Procedures**



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