

	MARICOPA COUNTY SHERIFF'S OFFICE POLICY AND PROCEDURES	
	Subject DRUG, MEDICATION, AND ALCOHOL TESTING	Policy Number GC-21
		Effective Date 03-28-12
Related Information	Supersedes GC-21 Drug Use and Testing Policy (11-25-94)	

PURPOSE

The purpose of this Policy is to establish administrative drug, medication, and alcohol testing procedures for employees and prospective employees of the Office.

POLICY

Office employees share the responsibility of ensuring that the workplace is free from drugs and alcohol. Use of illegal drugs, misuse of medication, and abuse of alcohol shall not be tolerated.

It is the policy of the Office to test prospective employees for the use of drugs as a condition of employment, and to test employees who, based on a good faith suspicion, may be impaired as a result of drug, medication, or alcohol use. To promote the health and safety of its employees, the Office also has mandatory random drug testing for designated safety and security sensitive assignments.

DEFINITIONS

Alcohol: A beverage containing ethanol, isopropanol or methanol.

Drug: Any substance considered unlawful under the schedules of the Controlled Substances Section of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, or pursuant to Arizona Revised Statutes Title 13, Chapter 34, or the metabolite of the substance.

Employee: A person currently employed with the Office in a classified, unclassified, full-time, part-time, contract, or probationary status.

Good Faith: Reasonable reliance on fact, or that which is held out to be factual, without the intent to deceive or be deceived and without reckless or malicious disregard for the truth. A good faith belief may be based on any of the following:

1. Observed conduct, behavior, or appearance.
2. Information reported by a person believed to be reliable, including a report by a person who witnessed the use or possession of drugs, drug paraphernalia, or alcohol, or the misuse of medication, at work.
3. Written, electronic, or verbal statements.

4. Lawful video surveillance.
5. Records of government agencies, law enforcement agencies, or courts.
6. Results of a test for the use or misuse of alcohol, medication, or drugs.
7. Other information reasonably believed to be reliable or accurate.

Impairment: Symptoms that an on-duty employee may be under the influence of drugs, medication, or alcohol that may decrease or lessen the employee's performance of the duties or tasks of the employee's job position. These include irregularities of the employee's speech, walking, standing, physical dexterity, agility, coordination, actions, movement, demeanor, appearance, clothing, odor, irrational or unusual behavior; negligence or carelessness in operating equipment, machinery, production or manufacturing processes; and disregard for the safety of the employee or others. Signs of impairment may also include involvement in an accident that results in serious damage to equipment, machinery or property; disruption of a production or manufacturing process; any injury to the employee or others; or other symptoms causing reasonable suspicion of the use or misuse of drugs, medication or alcohol.

Medication: Any chemical substance intended for use in the medical diagnosis, cure, treatment, or prevention of disease.

On-Duty: Any time an employee is actively engaged in the performance of regularly assigned duties, when in the performance of a special mission for the Sheriff's Office, or when involved in any incident that requires the employee to act in the capacity of a peace officer.

Prospective Employee: Any person who has made application for employment to the Office, whether written or oral.

Safety and Security Sensitive Assignments: Those assignments that include tasks and duties that the Office, in good faith, believes could affect the safety or health of the employee performing the tasks, or others. Examples of such assignments are those that require the possession of a commercial driver's license (CDL), sworn personnel assigned to Special Investigations, or personnel assigned to the Property Division.

PROCEDURE

1. **Personnel to be Tested:** All employees and prospective employees are subject to drug, medication, and alcohol testing.
2. **Testing Circumstances:** The circumstances in which employees and prospective employees may be subject to drug, medication, and alcohol testing include, but are not limited to, the following:
 - A. Upon application for employment or rehire.
 - B. Good faith suspicion that an employee may be under the influence of drugs, medication, or alcohol when on duty or reporting for duty.
 - C. Investigation of an accident in the workplace that causes serious injury or major property damage. Employees may be required to undergo drug, medication, or alcohol testing if the test is taken as soon as practicable after an accident, and the tests are administered to employees who are reasonably believed to have contributed to the accident.

- D. Upon transfer to a safety and security sensitive assignment.
3. **Substances Subject to Testing:** Substances for which testing may be required include the following:
- A. Drugs.
 - B. Alcohol, when reporting for duty or while on duty.
 - C. Medication, when reporting for duty or while on duty.
4. **Employee Searches:** Office employees, while on duty, or on County property, are subject to physical search anytime good faith suspicion has been established. County property is also subject to search and includes vehicles and employee desks and lockers. Searches must be approved by a command officer of the rank of captain or above.
5. **Supervisor Responsibilities when an Employee is Suspected of Impairment:** A supervisor who has a good faith belief that an employee that is on duty or reporting for duty smells of, or is under the impairment of, drugs, medication, or alcohol to any degree, may directly order the employee to submit to a drug, medication, or alcohol test. A supervisor may also directly order an employee to submit to testing during the course of an administrative investigation, if there is a good faith belief that the employee is impaired.
- A. The supervisor shall advise their chain of command before initiating any drug, medication, or alcohol testing and shall use tact and discretion regarding the use of any such tests.
 - B. Prior to questioning the employee or discussing the employee's participation in drug, medication, or alcohol testing the supervisor shall ensure the following occur:
 - 1. Any questioning is done as specified in GH-2, *Internal Investigations*.
 - 2. The *Garrity Warning* and *Notice of Investigation* are given to the employee as specified in GH-2, *Internal Investigations*.
 - 3. The employee is given an opportunity to have an observer present during any interview as specified in GH-2, *Internal Investigations*.
 - C. An employee ordered to submit to drug, medication, or alcohol testing shall be informed that the result of the test cannot be used in any subsequent criminal prosecution and that the purpose of the test is administrative in nature. Since the result of the test will be used solely for administrative purposes, there is no infringement on the Fifth Amendment Right against self-incrimination, and the employee has no right to counsel regarding the administration of the test.
 - D. If the employee refuses to participate in the drug, medication, or alcohol test, the employee must be made aware that the penalty for refusal to take a test ordered by a supervisor shall be dismissal. If the employee refuses to submit to a test, the supervisor shall explain the consequences of refusal and ensure that, if the employee again refuses, it is a conscious and informed decision.
 - E. The supervisor shall initiate a memorandum directed to the Chief Deputy through the chain of command, detailing the facts and circumstances of the incident. Test results information shall be included if the information is available. The memorandum shall not be delayed due to the lack of test results, but shall include a short explanation as to why the results are not noted.

- F. The supervisor shall initiate an Administrative Investigation and obtain a case number from the Internal Affairs Division, as specified in GH-2, *Internal Investigations*.
- G. The supervisor shall keep all test results confidential, as specified in this Policy and GH-2, *Internal Investigations*.
- H. Employees who test positive, or fail to submit to testing, shall be placed on administrative leave with pay, as specified in GC-17, *Employee Disciplinary Procedure*, and be driven home by another Office employee or other suitable person.

6. Drug, Medication, and Alcohol Testing and Collection Procedures:

- A. Testing shall be conducted during regular work hours or immediately before or after regular work hours.
- B. Testing will be deemed work hours for the purposes of compensation and benefits for employees.
- C. The Office shall pay all costs associated with testing required of employees and prospective employees.
- D. The Office shall arrange transportation or pay reasonable transportation costs to employees, if their required test is conducted at a location other than the employee's normal work site.
- E. All testing shall be performed according to the following conditions:
 - 1. The collection of samples shall normally be performed under reasonable and sanitary conditions.
 - 2. Sample collections for drugs, medication, and alcohol shall be documented and the documentation procedures shall include both of the following:
 - a. Labeling of samples in order to reasonably preclude the possibility of misidentification of the person tested in relation to the testing provided.
 - b. An opportunity for the person to be tested to provide notification of any information that may be considered relevant to the test, including identification of currently or recently used prescription or nonprescription medication, or other relevant medical information.
 - 3. Drug and Medication Testing:
 - a. Drug testing shall be authorized by the Human Resources (HR) Bureau for prospective employees. Drug and medication testing for employees shall be authorized by the employee's division commander and coordinated through the HR Bureau.
 - b. Drug and medication testing shall be conducted by an Office authorized medical provider and consist of a urinalysis or blood test.

- c. The HR Bureau shall receive the test result from the Office authorized medical provider regarding prospective employees.
 - d. The division commander who authorized the test shall receive the results from the Office authorized medical provider and ensure the information is made part of the Administrative Investigation.
 - e. The Office authorized medical provider shall ensure the following:
 - i. Sample testing shall comply with scientifically accepted analytical methods and procedures. Drug testing shall be conducted at a laboratory approved or certified by the United States Department of Health and Human Services, the College of American Pathologists or the Department of Health Services.
 - ii. Sample collection and storage are performed in a manner reasonably designed to preclude the possibility of sample contamination, adulteration, or misidentification.
 - iii. Drug and medication testing include confirmation of any positive tests for employees by utilizing a second test. Confirmation of positive test results for employees shall be by use of a different chemical process than was used in the initial screen. The second or corroborative test shall be a chromatographic technique such as, a gas chromatography-mass spectrometry or another comparable, reliable, analytical method.
4. Sobriety or Intoxilyzer[®] Test:
- a. Field Sobriety Tests: When administering field sobriety tests (FSTs), officers shall use the *DUI/OUI Packet*. Only officers certified by the Arizona Peace Officer Standards and Training Board (AZPOST), or in the AZPOST certified training course, may perform Horizontal Gaze Nystagmus (HGN) testing. If the officer believes drugs or medication are the cause of the impairment, a test shall be administered as specified in this Policy. The *DUI/OUI Packet* shall be provided to the supervisor upon completion of the test and made part of the Administrative Investigation.
 - b. Intoxilyzer[®] Tests: The operator conducting the Intoxilyzer[®] tests must possess a valid permit, issued by the Arizona Department of Health Services, for the device being used. The operator must follow the operational checklist, as approved and outlined by the Department of Health Services for the specific model of Intoxilyzer[®] test instrument being used.
 - i. Deprivation/Observation Period: A fifteen minute deprivation period shall precede the first test. The employee may not take anything by mouth during the deprivation period. The deprivation period does not have to be monitored by a certified Intoxilyzer[®] test operator and can be conducted under an officer's indirect attention.
 - ii. Testing: All Intoxilyzer[®] tests shall be duplicate tests. Both tests must be successfully completed. The second test must be no less than five and no

more than ten minutes after the first, and must be consecutive. Deficient samples do not meet this criterion. The results of the two tests must be within $\pm .020$ Alcohol Content (AC). If they are not, additional tests must be given until two consecutive tests are within $\pm .020$ AC.

- iii. If the results of the test are substantially lower than expected for the level of impairment shown, a drug and medication test shall be administered as specified in this Policy.
- iv. Results from the Intoxilyzer[®] testing shall be provided to the supervisor upon completion of the test and made part of the Administrative Investigation.

- F. Employees have the right to a copy of the test results.
- G. Employees have the right to explain positive test results by submitting a written statement to their supervisor. The written statement shall be made part of the Administrative Investigation and remain confidential, as specified in this Policy and GH-2, *Internal Investigations*.

7. **Random Drug and Medication Testing:**

- A. The HR Bureau shall provide the Office authorized medical provider with the names of those employees who are in safety and security sensitive assignments.
- B. The Office authorized medical provider shall make the random selection of employees to be tested and conduct the tests.
- C. The Office shall pay all costs for testing required of employees.
- D. The Office shall arrange for transportation or pay reasonable transportation costs to employees, if their required tests are conducted at a location other than the employee's normal work site.

8. **Violation of Policy and Disciplinary Action:**

- A. Prospective employees who refuse testing shall be disqualified from processing for employment.
- B. Employees who refuse to participate in testing shall be subject to dismissal.
- C. The presence of any amount of drugs or alcohol, or a finding of misuse of medication, as determined by an Office approved test, is *prima facie* evidence of a violation of this policy and constitutes grounds for discipline, up to and including dismissal.
- D. Personnel working covert operations shall adhere to the procedures, as specified in ED-2, *Covert Operations*, regarding the consumption of alcoholic beverages and testing.

9. **Confidentiality:** All communications relevant to the drug, medication, or alcohol test results and received through the employer's testing program are confidential communications. The results may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in a proceeding related to an action taken by an employer or employee under this article, or with the exception of disclosure to:

- A. The tested employee or prospective employee, or any other person designated by that employee or prospective employee.
- B. Individuals designated by the employer to receive and evaluate test results or hear the explanation of the employee or prospective employee.
- C. An arbiter or mediator, or a court or governmental agency, as authorized by state or federal law.