



City of Racine Police Department  
**Policy and Procedure**

**Number: 109**

Subject: <b>Drug Testing of Sworn Officers</b>		
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## POLICY

In its mission to deliver police services to the City of Racine, the Racine Police Department must enforce all laws and ordinances and maintain a safe and peaceful community. The Racine Police Department recognizes that the critical mission of law enforcement justifies the maintenance of a drug-free work environment through the use of a reasonable employee drug testing policy.

Illegal drug use by members of the Racine Police Department compromises the safety of the public and the safety of fellow law enforcement officers. Consequently, illegal drug use cannot and will not be tolerated within the Racine Police Department.

The law enforcement profession has several uniquely compelling interests that justify the use of employee drug testing. The public has the right to expect that those sworn to protect them are at all times both physically and mentally prepared to assume these duties. There is sufficient evidence to conclude that the use of controlled substances and other forms of drug abuse can seriously impair an employee's physical and mental health, and thus, job performance. Where law enforcement officers participate in illegal drug use and drug activity, the integrity of the law enforcement profession and public confidence in that integrity is destroyed. This confidence is further eroded by the potential corruption created by drug use.

Therefore, in order to ensure the integrity of the Racine Police Department and to preserve public trust and confidence in a fit and drug free law enforcement agency, the Racine Police Department shall implement an expanded drug testing program to detect illegal drug use by members. Officers of all ranks, from Patrolman to Chief of Police, will be tested in such numbers as to ensure that a credible deterrent exists to illegal drug use.

## DEFINITIONS

**CRITICAL INCIDENT** – Any use of deadly force by a member resulting in serious bodily injury or death to any person.

Any use of deadly force by a member, including discharge of a firearm toward another person, whether or not the person is injured.

Any in-custody death.

Any incident in which a member is actively engaged, that results in the death or serious injury of any person including the member (e.g., a vehicular pursuit or traffic crash involving a department vehicle).

**OFFICER INVOLVED DEATH** – The death of an individual, that results directly from an action or an omission of a law enforcement officer while the officer is on duty or while the law enforcement

officer is off duty but performing activities that are within the scope of his or her law enforcement duties. WI State SS 175.47(1)(c).

**INVOLVED MEMBER** – A sworn member whose personal actions or omissions were directly involved in a critical incident whether the member was on or off duty.

**DHHS** – Department of Health and Human Services

**MEMBER** – Sworn police officer of the Racine Police Department

**MRO** – Medical Review Officer, a licensed physician with knowledge of substance abuse disorder.

**NIDA** – National Institute of Drug Abuse

**PROBATION** – The first eighteen months of employment for new sworn officers when they are conditionally employed.

**SMHSA** – Substance Abuse Mental Health Services Administration

**SUPERVISOR** – Non-RPA member with the rank of Sergeant or above. For purposes of reasonable suspicion under DRUG TESTING PROGRAM DESCRIPTION #1, a supervisor must be at least the next rank above the member under suspicion.

## PROHIBITED ACTIVITIES

### MEMBER

1. No member shall use, possess, dispense, distribute, or receive alcohol, intoxicants, illegal drugs, or other controlled substances while on-duty or while engaged in Department business unless required as part of police duties.
2. No member shall illegally possess, manufacture, distribute, conceal, transport, promote, or sell any controlled substance or illicit drug.
3. No member shall report to work under the influence of alcohol, intoxicants, illegal drugs, or other controlled substances in their system.
4. No member shall use or possess any controlled substance unless as prescribed by a licensed medical practitioner. No member shall use any prescribed or over-the-counter medication in amounts beyond the recommended dosage.
5. Any member who unintentionally takes, or is made to take a controlled substance shall immediately report the incident to their supervisor so that appropriate medical steps may be taken to ensure the member's health and safety.
6. Any member having a reasonable basis to believe that another member is illegally using, or in possession of a controlled substance shall immediately report the facts and circumstances to their immediate supervisor.
7. No member shall refuse to undergo or cooperate in any required alcohol or controlled substance testing required by this policy.
8. No member shall provide false information in connection with a test or falsify test results through tampering, contamination, adulteration, or substitution.

## DRUG TESTING PROGRAM DESCRIPTION

Members shall be subject to drug testing under the following circumstances:

1. Where facts or circumstances are sufficient to constitute reasonable suspicion that a Department member is illegally using drugs. Reasonable suspicion exists when evidence or information which appears reliable is known to a police supervisor and is of such weight and persuasiveness as to make the supervisor, based upon his or her personal judgement and

experience, reasonably suspect that a member of the Department is illegally using drugs. A reasonable suspicion that a member is illegally using drugs must be supported by specific articulable facts from which rational inference may be drawn. Reasonable suspicion cannot be based upon a mere “hunch” or solely upon poor work performance. If suspicion of drug use is based upon observation of the suspected member’s physical appearance, at least two supervisors must make the observation. Indicators of reasonable suspicion include odors, slurred speech, impaired balance, unsteady walk, flush appearance, blood shot eyes, confused behavior, drastic mood swings, uncharacteristic severe acne, rapid muscle or weight gain, paranoia, increased hyperactivity, etc. A written summary of the facts supporting an order shall be made available to the member prior to the actual test. This section applies to everyone without regard to the number of tests already submitted to either randomly or because of circumstances outlined in paragraphs 3 or 4 below.

2. Whenever a member is directly involved in a critical incident. In this case, a blood test is required. This section applies to everyone without regard to the number of tests already submitted to either randomly or because of circumstances outlined in paragraphs 3 or 4 below.
3. Whenever a member is returning from a leave that exceeds 180 consecutive calendar days in duration. Reinstatement to the Department from the leave of absence shall be contingent upon passing the drug test.
4. Random Drug Testing – Twenty-five percent of the budget-authorized work force will be tested yearly on an entirely random basis.
  - a. Periodically an independent secure random selection process shall generate a list of Department members selected for drug testing. The frequency of random testing, and sampling rate, shall be as prescribed from time to time by the Chief of Police. The Chief shall prescribe the independent agency providing the random selection process. Such independent agency shall be provided with a list of all Department members covered by random drug testing encoded so that only the Chief of Police and Internal Affairs know the identity of the Department member.
  - b. Members selected to be tested shall be notified by their Commanding Officer, who shall give them a written order to report for testing.
  - c. All members on paid leave who are selected for drug testing pursuant to paragraphs 4a or 4b hereof, shall not be required to participate in such test, except those members having the following status as of notice selection:
    - (1) Members on compensatory time authorized after the notification order.
    - (2) Members on administrative leave status.
  - d. Any member selected for testing who claims inability to participate due to medical reasons shall be examined by a physician designated by the Chief. The physician shall determine if such member may be excused from the test. If such member is excused from a scheduled test, he or she shall be rescheduled for testing as soon as possible, irrespective of any random sampling selection.

**NOTE:**

No member shall be required to submit to more than three (3) drug tests in a 12 month period, either randomly or because of circumstances outlined in paragraphs 3 or 4 above, provided the member previously tested negative during the year.

**It is required that all personnel being tested show their Department photo Identification Card to the representative of the testing facility when reporting for the testing process.**

**REFUSAL TO SUBMIT**

Refusal to submit to a drug test shall result in immediate suspension and discipline up to and including dismissal from the Department. Attempts to alter or substitute a test sample provided by the member being tested shall be deemed a refusal to submit to a drug test. When the member appears unable to give a specimen at the time of the test, testing personnel shall

document the circumstances on the drug-test report form. The member shall be permitted two (2) hours to give a sample, during which time he/she shall remain in the testing area, under observation. Reasonable amounts of water may be given to the employee to encourage urination. A member who is still unable to provide a urine sample shall have two business days to provide medical documentation as to any medical reason (subject to review by the City's Medical Review Officer) why he/she is unable to comply with the testing procedure. Failure to submit a sample shall be considered a refusal to submit a drug test.

## TESTING PROCEDURE

1. A DHHS-certified laboratory shall administer the testing procedure. Nothing herein shall prohibit the Chief of Police from changing the provider of this procedure, so long as the new provider is DHHS-certified and performs the procedure pursuant to DHHS standards.
2. Two-Step Procedure – the testing or processing phase shall consist of a two-step procedure to include an initial screening test (immunoassay drug screening test) and a confirmatory test (gas chromatography/mass spectrometry GC/MS testing).

a. Initial Test. The initial test shall use an immunoassay, which meets the requirements of the Food and Drug Administration for commercial distribution, which are in effect on the day the aliquot is obtained. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these drugs or classes of drugs. [Initial Test Level (ng/ml)]

(1) Amphetamines	1000
(2) Barbiturates	300
(3) Benzodiazepines	300
(4) Cocaine Metabolites	300**
(5) Marijuana Metabolites	50*
(6) Methadone	300
(7) Methaqualone	300
(8) Opiates	300
(a) Morphine	300
(b) Codeine	300
(c) Hydrocodone	300
(d) Hydromorphone	300
(e) Oxycodones	100
(f) Oxymorphone	100
(g) Oxycodone	100
(9) Phencyclidine	25
(10) Propoxyphene	300

b. Confirmatory Test. All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff values listed in this paragraph for each drug. Concentrations of a drug at or above the following levels shall be considered a positive test result when performing confirmatory GC/MS test on a urine specimen that tested positive in the initial test. [Confirmatory Test Level (ng/ml)]

(1) Amphetamines	500
(2) Barbiturates	200
(3) Benzodiazepines	200
(4) Cocaine Metabolites	150**
(5) Marijuana Metabolites	15*
(6) Methadone	200
(7) Methaqualone	200
(8) Opiates	300
(a) Morphine	300
(b) Codeine	300
(c) Hydrocodone	300
(d) Hydromorphone	300
(e) Oxycodones	100
(f) Oxymorphone	100

(g) Oxycodone	100
(9) Phencyclidine	25
(10) Propoxyphene	200

- \* Delta-9-tetrahydrocannabinol-9-carboxylic acid
- \*\* Benzoyllecgoine

3. Substances to be tested include:

- a. Amphetamines
- b. Barbiturates
- c. Benzodiazepines
- d. Cocaine Metabolites
- e. Marijuana Metabolites
- f. Methadone
- g. Methaqualone
- h. Opiates
  - (1) Morphine
  - (2) Codeine
  - (3) Hydrocodone
  - (4) Hydromorphone
  - (5) Oxycodones
  - (6) Oxymorphone
  - (7) Oxycodone
- i. Phencyclidine
- j. Propoxyphene

**NOTES:**

Nothing herein shall prohibit the Chief of Police from amending this list of substances, so long as the added substance is one for which a DHHS has adopted a quantitative standard for a positive test finding for the substance. The Department will notify the RPA and SOA of amendments to this list of substances.

The types of drugs tested and the levels considered a positive result may be modified pursuant to NIDA guidelines

- 4. Split Samples – At the collection site, the technician shall either collect the specimen in two containers or shall collect the specimen in one container and shall then split the specimen into two containers. The City-designated testing laboratory shall test one sample (primary sample). The other sample (the split sample) shall be stored by the testing laboratory should a verified confirmed positive result from the test of the first sample.
  - a. If a verified, confirmed positive result is obtained from the test of the primary sample, the member shall be informed that he/she has 72 hours to notify the Medical Review Officer (MRO) that he/she wishes to challenge the test result by means of independent testing of the split sample. The member must notify the MRO in writing or by email within 72 hours of the member being notified that his/her test was verified confirmed positive for the presence of drugs. Upon such a challenge, the split sample retained by the testing laboratory for use by the member shall be forwarded by the testing laboratory to a DHHS-certified laboratory selected by the member from a list of two such laboratories designated by the City.
  - b. All costs associated with the testing of the split sample shall be borne by the Department, provided, however, if the test of the split sample does indicate a positive drug result, then the member shall reimburse the Department for the costs of testing the split sample. Testing of the split samples shall be conducted pursuant to the retesting provision described in NIDA Guidelines.
- 5. All test results shall be reviewed and interpreted by a Medical Review Officer (MRO) who shall be a licensed physician with knowledge of substance abuse disorders. The Chief shall designate the MRO. The MRO shall examine alternative medical explanations for any confirmed positive test result. This action may include conducting a medical interview with

the member, review of the member's history, or review of any other biomedical factors. The MRO shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from a legally prescribed medication. The MRO shall forward the results of his/her review to the Chief of Police and Internal Affairs.

6. Compensation –
  - a. Although every effort will be made to collect test samples during a member's normal working hours, members will be compensated in accordance with the labor agreement if the collection/testing extends beyond the member's scheduled working hours or if it is necessary to conduct collection/testing outside of a member's normal working hours.
  - b. Medical Review Officer (MRO) Contact – For purposes of maintaining confidentiality, the MRO will contact members at their home or residence, via telephone, when seeking an alternative medical explanation for a positive test indication. Although it is in the member's best interest to take the MRO's phone call, a member is not obligated to speak with the MRO. Consequently, no compensation will be provided for taking the MRO's initial phone call.
  - c. If a member does meet with the MRO, following the initial phone call, and provides information or documentation to the MRO at the meeting, that subsequently causes the MRO to change an initial positive test result to a negative test result, the member will be compensated in accordance with the labor agreement after the member makes application for compensation and the City confirms with the MRO the changed test results.

### **ACCESS TO TEST RESULTS**

Confirmed positive drug test results verified by the MRO shall be made available only to the following:

1. Chief of Police
2. Internal Affairs
3. The affected member

### **ADMINISTRATIVE/ DISCIPLINARY ACTION**

1. A member, who has been ordered to take and has taken, a drug test based upon reasonable suspicion, or the requirements of this policy, hereof, shall not be subject to disciplinary action until the Department receives the test results. During that period, however, the member may be placed on administrative leave with pay and required to surrender equipment per Procedure 507. This action shall be accomplished most discreetly and, whenever possible, without advising other personnel for the reason.
2. All discipline involving a member who has a confirmed positive test for illegal drug use, verified by the MRO, shall be administered by the Chief. Such discipline may include dismissal from the Department. A challenge to a confirmed positive shall not affect or delay the effective date of discipline imposed against a member pursuant to this section. No discipline will occur until after the results of the split sample retest are received and the investigation is completed. Based on the circumstances, a member may be placed on administrative leave pending the test results and the investigation.
3. The Department's position is that any member proven to have illegally used drugs on a first offense shall be given the opportunity to enter into the City's Employee Assistance Program as an alternative discipline. Refusal on the part of the member to participate or unsatisfactory participation or failure to complete the program shall result in disciplinary action up to and including termination. Any member shall have only one opportunity to attend and successfully complete the Employee Assistance Program. Further positive tests will result in disciplinary action up to and including termination.

## EXCLUSION OF TEST RESULTS FROM CRIMINAL PROCEEDINGS

Drug test results obtained by the Racine Police Department Drug Testing program shall not be used as evidence against a member in a criminal proceeding or in a municipal ordinance violation.

## CONFIDENTIALITY

Except as provided below, there shall be no dissemination of an individual member's drug test results (including documentation or information contained therein) to the public. The above provision shall not apply in the following circumstances.

1. Disciplinary hearings or appeals therefrom, occasioned by such individual member's drug test results.
2. Nondisciplinary administrative hearings, or appeals therefrom, when such individual member's drug test results would be relevant to such hearings/appeals.
3. The following is a list of hearings to which test results may be relevant:
  - a. Unemployment Compensation
  - b. Workers Compensation
  - c. Disability
  - d. Labor Arbitration

[Table of Contents](#)

[615 - Critical Incidents](#)