MILWAUKEE POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

770 – DRUG TESTING

GENERAL ORDER: 1996-01 **ISSUED:** January 1, 1996	**EFFECTIVE:** January 1, 1996	**REVIEWED/APPROVED BY:** Captain Regina Howard **DATE:** July 31, 2015
ACTION: Creates SOP		**WILEAG STANDARD(S): 2.4.5, 2.4.6, 10.1.1**

770.00 DRUG TESTING POLICY STATEMENT (WILEAG 2.4.6)

The Milwaukee Police Department is charged with enforcing all laws and ordinances and with maintaining a safe and peaceful community. The pervasive risk of harm caused by drug trafficking and illegal drug use by members of the police department creates a clear and present danger to the safety of the public and fellow law enforcement officers. The illegal use of drugs cannot, and will not, be tolerated within the Milwaukee 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 who are 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 for corruption created by drug use.

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

770.05 PROGRAM DESCRIPTION (WILEAG 2.4.5)

770.05(01) The term "department" as used herein shall mean the Milwaukee Police Department. The term "member" shall mean a law enforcement department employee (e.g., a non-civilian member).

770.05(02) Members shall be subject to drug testing under the following circumstances:

A. Where facts or circumstances are sufficient to constitute reasonable suspicion that a department member is illegally using drugs.

Note: Reasonable suspicion exists when evidence or information which appears reliable is known to the police supervisor and is of such weight and persuasiveness as to make the supervisor, based upon/his/her personal judgment and experience, reasonably suspect that 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 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 (2) supervisors must make observations.

B. Whenever a member is directly involved in an incident that results in death, or great bodily harm as defined by state statute.

C. Whenever a member is on probation, the member shall be tested prior to completion of the member's probation period. Completion of the member's probation period shall be contingent upon passing the drug test.

D. Whenever a member is eligible for promotion (including reclassifications), the member shall be tested prior to promotion. Promotion shall be contingent upon passing the drug test.

E. Whenever a member is returning from a leave of absence that exceeds 90 consecutive calendar days in duration. Reinstatement to the department from the leave of absence shall be contingent upon passing the drug test.

F. RANDOM DRUG TESTING

1. Periodically a list of department members selected for drug testing shall be generated by an independent secure random selection process. The frequency of random testing and sampling rate, shall be as prescribed from time to time by the Chief of Police. The independent agency providing the random selection process shall be prescribed by the Chief. 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 the commanding officer of the Internal Affairs Division know the identity of the department members.

2. The Chief may increase the frequency of random testing, and sampling rate over and above the frequency of random testing and sampling rate he prescribes from time to time under paragraph 770.05(02) F. 1., hereof, for members assigned to the following department units: Narcotics Division, Tactical Enforcement Unit, Property Control (only those persons directly involved in the custody and handling of illegal drugs) and the Internal Affairs Division. If subsequent departmental reorganization results in modifications to any of these units, the function performed by a unit as it is presently constituted, shall continue to be covered hereunder no matter how such unit is constituted following a future reorganization.

3. Members selected to be tested shall be notified by their commanding officer, who shall give them a written order to report for testing. A copy of such written order shall not be entered into a member's personnel file, but shall be retained by the department in a file kept at the Internal Affairs Division.

4. All members on paid leave who are selected for drug testing pursuant to paragraphs

770.05(02) F. 1. or F.2., hereof, shall not be required to participate in such test, except those members having the following status as of the notice of selection:

a. Members on sick or injury leave who have received permission to leave the residence to further recuperation,

b. Members on compensatory time off authorized after the selection notice, or

c. Members on "suspended with pay" or "dismissed with pay pending appeal" status.

5. Members on regular off days shall not be subject to random drug testing.

6. Any member selected for testing who claims inability to participate due to medical reason 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/she shall be rescheduled for testing as soon as possible, irrespective of any random sampling selection.

G. Members having sensitive assignments, referenced in paragraph 770.05(02) F. 2., hereof, shall be subject to drug testing upon entering and leaving these assignments, as well as on an annual basis while serving in such assignments.

770.05(03) **Refusals** 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 no more than 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. Failure to submit a sample shall be considered a refusal to submit a drug test.

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770.15 ACCESS TO TEST RESULTS (WILEAG 10.1.1)

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

- Chief of Police
- Commanding officer of the Internal Affairs Division (WILEAG 10.1.1.3)

770.20 ADMINISTRATION/DISCIPLINARY ACTION

770.20(01) A member, who has been ordered to take and has taken, a drug test based on

either reasonable suspicion, or the requirements of paragraph 770.05(02) B., hereof, shall not be subject to disciplinary action until the test results are received by the department. During that period, however, the member may be required to surrender his/her weapon, badge, I.D. card, cap shield, and callbox key, and may be suspended with pay. This action shall be accomplished most discreetly and, whenever possible, without advising other personnel of the reasons.

770.20(02) 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 test result by a member shall not affect or delay the effective date of discipline imposed against the member pursuant to this section. The department's position is that any member proven to have illegally used drugs should be dismissed for such use, subject only to the discretion of the Chief and review of the Fire and Police Commission.

770.25 EXCLUSION OF TEST RESULTS FROM CRIMINAL PROCEEDINGS

Drug test results obtained through the Milwaukee Police Department Drug Testing Program may not be used as evidence against an officer in a criminal proceeding.

770.30 CONFIDENTIALITY (WILEAG 10.1.1)

770.30(01) Except as provided in paragraph 770.30(02), below, there shall be no dissemination of an individual member's drug test results (including documentation or information contained therein) to the public.
(WILEAG 10.1.1.3)

770.30(02) The provisions of paragraph 770.30(01), hereof, shall not apply to an individual member's drug test results in the following circumstances:

A. Disciplinary hearings, or appeals therefrom, occasioned by such individual member's drug test results.

B. Non-disciplinary administrative hearings, or appeals therefrom, when such individual member's drug test results would be relevant to such hearings/appeals.

770.35 CIVILIAN EMPLOYEE DRUG TESTING (WILEAG 10.1.1)

770.35(01) Civilian Employee Defined All members of the police department who are not designated by charter ordinance as members of the police force shall be known as civilian employees. The term "employee" as used in section 770.35 shall mean civilian employee.

770.35(02) Reasonable Suspicion Employees shall be subject to drug testing where facts or circumstances are sufficient to constitute reasonable suspicion that an employee is illegally using drugs.

Note: Reasonable suspicion exists when evidence, or information which appears reliable, is known to the supervisor and is of such weight and persuasiveness

as to make the supervisor, based upon/his/her personal judgment and experience, reasonably suspect that an employee is illegally using drugs. A reasonable suspicion that an employee is illegally using drugs must be supported by specific articulable facts from which rational inference may be drawn. Reasonable suspicion cannot be based upon mere "hunch" or solely upon poor work performance. If suspicion of drug use is based upon observation of the suspected employee's physical appearance, at least two (2) supervisors must make observations.

770.35(03) Refusals 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 employee being tested shall be deemed a refusal to submit to a drug test. When the employee 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 employee shall be permitted no more than 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. Failure to submit a sample shall be considered a refusal to submit a drug test.

770.35(04) Testing Procedure and Access to Test Results The drug testing procedure and access to drug test results shall be as provided in sections 770.10 and 770.15 of this standard operating procedure.

770.35(05) Disciplinary Action Not to be Taken Before Test Results are Received An employee, who has been ordered to take, and has taken, a drug test based on reasonable suspicion shall not be subject to disciplinary action until the test results are received by the department. During that period, the employee may be suspended. This action shall be accomplished most discreetly and, whenever possible, without advising other personnel of the reasons.

770.35(06) Discipline to be Administered by Chief of Police All discipline involving an employee 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 test result by an employee shall not affect or delay the effective date of discipline imposed against the employee pursuant to this section. The department's position is that any employee proven to have illegally used drugs should be dismissed for such use, subject only to the discretion of the Chief.

770.35(07) Exclusion of Test Results from Criminal Proceedings Drug test results obtained through the Milwaukee Police Department Drug Testing Program may not be used as evidence against an employee in a criminal proceeding.

770.35(08) Confidentiality

A. Except as provided in paragraph 770.35(08) B. below, there shall be no dissemination of an individual employee's drug test results (including documentation or information contained therein) to the public.
(WILEAG 10.1.1.3)

B. The provisions of paragraph 770.35(08) A., hereof, shall not apply to an individual employee's drug test results in the following circumstances:

1. Disciplinary hearings, or appeals therefrom, occasioned by such individual employee's drug test results.

2. Non-disciplinary administrative hearings, or appeals therefrom, when such individual employee's drug test results would be relevant to such hearings/appeals.

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