

NOPD CONSENT DECREE MONITOR  
NEW ORLEANS, LOUISIANA



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File Number: 37PA-191555

Deputy Superintendent Danny Murphy  
Compliance Bureau, New Orleans Police Department  
714 Broad Street  
New Orleans, LA 70119

Dear Superintendent Murphy:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on Chapter 13.21 - Alcohol and Drug Use/Testing. The OCDM has no objection to the policy as written.

We believe that Chapter 13.21 - Alcohol and Drug Use/Testing, incorporates all requirements of the Consent Decree and sets forth clear and appropriate rules to guide officer conduct. We will continue to assess the adequacy of this policy following its implementation. If we identify any concerns following implementation, we will present those concerns to you and the Department of Justice. Additionally, we note that, pursuant to the Consent Decree, NOPD has agreed to review and revise policies and procedures as necessary upon notice of a significant policy deficiency. We also note NOPD's obligation to review this policy after a year of implementation to ensure it "provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law." Consent Decree at ¶ 8.

We appreciate your team's effort, cooperation, and responsiveness throughout this process.  
Very truly

Very truly yours,

David L. Douglass  
For SHEPPARD MULLIN RICHTER & HAMPTON LLP\*  
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CC: HONORABLE SUSIE MORGAN (VIA ELECTRONIC MAIL)  
JUDE VOLEK, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)  
SUNNI LEBEOUF, CITY ATTORNEY (VIA ELECTRONIC MAIL)



# NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

## CHAPTER: 13.21

### TITLE: ALCOHOL AND DRUG USE/TESTING

**EFFECTIVE:**

**REVISED: Replaces Policy/Procedure 1012**

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#### PURPOSE

To establish a Department policy concerning the inappropriate use of drugs, alcohol and controlled substances by employees, volunteers, or applicants, and to explain the Department's drug testing procedures.

The **Rules of the Civil Service Commission – City of New Orleans, Rule V Section 9** and **Chief Administrative Office (CAO) Policy Memorandum #89 (Revised)** establish a testing program and requirements for all City employees. These guidelines apply to all Classified and Unclassified Service employees, inclusive of regular full-time, part-time, commissioned, probationary, temporary, or contract employees, and to applicants for employment with the City. The New Orleans Police Department has extended the regulations outlined in this Chapter to all commissioned members of the Department, including Reserve Officers.

#### POLICY STATEMENT

1. The protection of the public, as well as its members, is of prime concern to the New Orleans Police Department (NOPD). The Department recognizes that substance abuse can have an adverse impact on the general public, City government, and the Department's operations and adversely affect the image, general health, welfare, and safety of Departmental members.
2. To maintain the public's confidence and trust in the Department and its members, as well as to protect the safety of the public and Departmental members, **all members must remain free from any physical and/or mental impairment** related to the unauthorized use of any drug or controlled substance. The unauthorized use of any alcohol, drug or controlled substance is prohibited and may result in denial of employment, termination, or other disciplinary action. The Department shall have the right and authority to require members to submit to testing pursuant to Civil Service Rules.
3. The consumption of alcohol or other drugs while on duty is prohibited unless prescribed by and taken in accordance with directions of a licensed medical practitioner and reported as required by this Chapter.
4. The consumption of alcohol may be necessary in the performance of an official special assignment but only after approval by a supervisor of the rank of Deputy Chief or higher. Personnel who consume alcohol as part of a special assignment shall not do so to the

extent of noticeably impairing on-duty performance. Personnel who consume alcohol as part of a special assignment shall not operate a vehicle after his/her consumption for a minimum of eight hours.

5. Members who have consumed alcohol or taken any drugs, even legally prescribed drugs, that could adversely affect their normal sensory and/or motor body functions are prohibited from reporting for duty or remaining on duty. The potentially affected member shall notify his/her shift supervisor or unit commander as soon as the member is aware that he/she will not be able to report to work. If the member is unable to make the notification, every effort should be made to have a representative contact the supervisor. For purposes of this Chapter, a blood alcohol concentration (BAC) of .02 or greater is presumptive proof of a violation of this Chapter.

## DEFINITIONS

**Category I Testing**—For positions that require carrying of a firearm and continuing certification in its proper use (security sensitive position).

**Category II Testing**—For positions where the safety of the public, co-workers and the individual employee are at risk (safety sensitive position).

**Category III Testing**—For reasonable suspicion to believe that the employee's fitness for duty is questionable (see **Civil Service Rule V, Sec. 9.12** for criteria.)

**Controlled Substance**—Any substance which is illegal to consume, possess, manufacture or distribute or any psychoactive substance, drug or medication that requires the prescription of a licensed medical practitioner or is covered under 21 CFR 1308.11-15 and/or R.S. 40:964.

**Drug**—Any substance, including alcohol, which is restricted or prohibited by this Chapter. This includes illegal drugs, drugs unlawfully obtained, designer and synthetic drugs, and unauthorized or prohibited drugs as defined in CAO Policy #89 (R). Can also include legally prescribed pharmaceuticals used by the person prescribed, in the manner prescribed.

**Substance abuse (drug abuse)**—Consumption of drugs or substances in amounts or with methods that causes harm to the individual or others, including addiction or dependence, serious physiological injury (such as damage to kidneys, liver, or heart), physical and mental functional impairment (such as altering judgment, perception, attention, memory, coordination, reflexes, and vision) and/or death.

**Drug Test (Test)**—The compulsory production and submission of urine, blood, or saliva, or submission to a breathalyzer, or other test, in accordance with departmental procedures, to detect the presence of substances regulated by this Chapter.

**Probationary employee**—For the purposes of this Chapter only, a probationary employee shall be considered to be a member who has been appointed to, and who is conditionally employed (has not completed the working test period as defined by Civil Service) with the department.

**Sensitive employment positions**—(Category II - Safety sensitive position) Non-sworn employees working in positions that allow access to restricted or confidential information and who are designated as such by collective bargaining agreement, state law or the Superintendent.

**Random Selection**—A method of selection in which each member in a selected employee classification has an equal chance to be selected for drug testing each time a selection is conducted.

**PURCHASE OR POSSESSION OF DRUGS OR ALCOHOL ON-DUTY**

6. Department members shall not purchase or possess alcohol or other controlled substances on City property, at work or while on-duty except when required in the performance of their duties or a special assignment as described in this Chapter.

**MEMBER RESTRICTIONS AND REQUIREMENTS**

7. Members shall:
  - (a) Comply with all applicable laws regulating the manufacture, distribution, dispensation, use or possession of illegal drugs, alcohol, or prescription drugs.
  - (b) Not be under the influence of alcohol or drugs off-duty that would violate **Rule 3, paragraph 9 – Use of Alcohol / Off-Duty**.
  - (c) Not report for duty in violation of **Rule 3, paragraph 8 – Use of Alcohol / On-Duty**.
  - (d) Ensure that their ability to perform their job duties is not negatively affected due to the use of drugs or alcohol when scheduled to report to work or when on "on call" status.
  - (e) Submit immediately to a drug or alcohol test when requested by their supervisor.
8. No member shall illegally possess any controlled substance.
9. No member shall ingest any controlled substance unless prescribed for them by and taken in accordance with directions of a licensed medical practitioner.
10. Members who are medically required to take any prescription medication which they have been informed or are otherwise aware has side effects with the potential to impair job performance or which might impair their ability to fully and safely perform all requirements of their position shall report the need for such medication to their supervisor in writing prior to reporting for duty. The member shall advise the supervisor of the known side effects of such medication and the prescribed period of use. The employee may be temporarily reassigned to other duties where appropriate.
11. No member shall be permitted to work on or drive a vehicle owned or leased by the Department while taking potentially impairing medication without a written notation from his/her treating physician indicating that the medication will not impede the member's ability to perform the functions safely and properly. A specific notation of such on a Departmental Form 50 is sufficient to meet this requirement.
12. Members shall advise their supervisor if they are unable to perform their job duties or should they be requested to report to work for a safety sensitive job earlier than their normal or previously assigned time, if they have consumed alcohol within the last four hours prior to reporting for duty. If the member had received prior notice that he or she is on call, the member may be subject to disciplinary action regarding his/her inability to report for duty as determined by his or her chain of command.
13. Any member who unintentionally ingests, or is made to ingest, a drug or controlled substance shall immediately report the incident to his/her supervisor so that appropriate medical steps may be taken to ensure the officer's health and safety.
14. Any member having a reasonable basis to believe that another member is illegally using or is in illegal possession of any controlled substance or drug shall immediately report the facts and circumstances to his/her supervisor.

15. No member shall consume alcohol or drugs, other than prescription drugs as approved using the procedure outlined above, while on duty, on call or on city/police premises unless authorized by a supervisor of the rank of Deputy Chief or higher in the course of his/her employment.

### **SUPERVISOR'S RESPONSIBILITIES**

16. When notified by a member that he/she is taking prescribed medication which may affect job performance, the supervisor shall:
  - (a) Document this information through the use of an internal memorandum (Interoffice 105) to his/her Commander. This memo shall be maintained in a secured file.
  - (b) The member may be temporarily reassigned to other duties, where appropriate. (See: **AR-1 Form - Administrative Reassignment Notification**).
17. If a supervisor reasonably believes, based upon objective facts, that a member's ability to perform his/her duties safely and efficiently:
  - (a) May be impaired by the consumption of alcohol or other drugs, the supervisor may ask the member whether he/she has consumed any alcohol or other drugs and, if so:
    - i. The amount and types of alcohol, or other drugs consumed and the time of consumption.
    - ii. If a controlled substance was consumed, the name of the person who prescribed its use.
  - (b) Is impaired by the consumption of alcohol or other drugs, the Department shall prevent the member from continuing work and shall transport him/her or cause him/her to be transported safely away from the Department and to a place of safety or treatment.
  - (c) The supervisor shall immediately notify the Public Integrity Bureau (PIB).

### **EMPLOYEE ASSISTANCE PROGRAM**

18. There are voluntary employee assistance or personal counseling programs to assist employees who wish to seek help for alcohol and drug problems. Employees may contact the Personnel Department, their insurance provider or the Officer Assistance Program Director for additional information (see: **Chapter 22.2.6 – Officer Assistance Program Member Mental Health Service**).
19. Employees who experience drug or alcohol problems are encouraged to seek referral for rehabilitation through an employee assistance program or their insurance provider. It is the responsibility of each employee to seek assistance before alcohol or drug problems lead to performance problems.
20. The Department recognizes the confidentiality and privacy rights of its members. Disclosure of any information relating to substance abuse treatment, except on a need to know basis as determined by the Superintendent of Police or his/her designee, shall only be with the express written consent of the member involved or pursuant to lawful process.
21. CAO Policy #89 (R) Section XII governs the relationship between the City's Substance Abuse Policy, this Chapter and employee assistance programs offered by the City and the NOPD. Proactive, voluntary use of self-help programs prior to testing and/or disciplinary action may affect the final disposition of disciplinary actions.

**LEGAL STANDARDS FOR TESTING**

22. The Department may request a member to submit to a testing (R.S. 49:1015 – Public Employee Drug Testing) if:
- (a) It is reasonable to believe, based upon objective facts that the member is under the influence of alcohol or drugs which are impairing his/her ability to perform duties safely and efficiently.
  - (b) The member is involved in a motor vehicle crash or accident with injury or complaint of injury during the course and scope of employment.
  - (c) The test is part of a monitoring program established to assure compliance with terms of a prior rehabilitation agreement, and the member is informed of the test in writing, with the following details:
    - i. Whether the test will be for alcohol or drugs, or both.
    - ii. That the result of the test is not admissible in any criminal proceeding against him/her.
    - iii. That he/she may refuse the test, but that his/her refusal may result in disciplinary action up to and including termination.

**DEPARTMENT MANDATORY TESTING**

23. Testing shall be conducted in accordance with the following:
- (a) **Yearly testing (random)**—In compliance with the Rules of the Civil Service Commission – City of New Orleans, all members whose positions are identified as Category I or II, or Reserve members, shall be tested at least once during each calendar year. Each day, the members being tested shall be randomly selected from a pool of all eligible members, including members who have already been tested that year. A computer program shall be used to generate a randomized list of those members to be tested. Members may be tested multiple times if their names are randomly selected more than once.
  - (b) **Promotional and probationary period**—All members, with the exception of Reserve members, shall be required to participate in testing when promoted and during all probationary periods. The Education and Training Division shall be responsible for scheduling testing for all probationary police recruits. The Compliance Bureau shall be responsible for scheduling testing for all other promotions and probationary positions.
  - (c) **Reserve Academy**—All Reserve members shall participate in testing during the Reserve Academy training process. The Commander of the Reserve Section shall be responsible for scheduling testing for all reserve members while in the Reserve Academy.
  - (d) **Reasonable suspicion**—All members shall be tested when there is reasonable suspicion to believe that there is illegal use or abuse of any substance that is impairing their ability to perform duties safely and efficiently. (This is NOT to be confused with reasonable suspicion for the commission of a crime.)
  - (e) **Crash Accident/injury**—All members shall be tested when there is reasonable suspicion to believe that substance abuse may be present and the member is involved in a motor vehicle crash or causes or sustains an injury during the performance of duties, including driving a motor vehicle in such an unsafe manner as to cause bodily injury to him/herself or another person or substantial damage to property.
  - (f) **Non-Crash Accident/injury**—All members shall be tested when there is reasonable suspicion to believe that substance abuse may be present and the member causes or sustains an injury that requires medical treatment away from the scene of the accident if it occurred during the performance of duties or caused substantial damage to property.
  - (g) **Members entering sensitive positions (Category II)**—All members shall be

tested when assigned to a sensitive position, assignment or task. Members entering **Category II** (sensitive positions) shall be tested regardless of whether they enter the position by original entrance, promotion, demotion, lateral transfer, or reinstatement.

- (h) **Fitness for duty (Category III)**—Any member shall be tested as determined and directed by the Superintendent of Police or Bureau Deputy Chiefs.
- (i) **Return to Duty**—All members, with the exception of Reserve members, shall be required to participate in testing when returning to duty after an absence, for any reason, of more than 30 days. The returning member shall contact the Compliance Bureau Performance Standards Section immediately upon return to duty and will be tested within 24 hours of return to duty.
- (j) **Firearm Discharge**—Off-duty hunting discharges when no person is struck are exempted from mandatory testing. The Department shall drug test a member after a firearm discharge, including discharges when no person or animal is struck, in any of the following instances:
  - i. **On duty**, excluding range and training firings and the humane destruction of animals. Members who are exercising their police powers when discharging the weapon are counted as “on duty” for purposes of this provision, even if they are not “on the clock.” For example, if an officer who is driving a take-home unit sees a traffic violation that is particularly dangerous and pulls the violator’s vehicle over to issue a warning or citation, which subsequently leads to the officer discharging their firearm, that officer would need to submit to drug testing.);
  - ii. **Authorized police secondary employment** (paid detail);
  - iii. **Departmental overtime** (includes enforcement grants); and
  - iv. **Discharge of a departmentally issued firearm**, whether the member was on or off duty.

24. This testing will be conducted at a facility designated by the City of New Orleans under Rule V, Sec. 9.7. Members who have been notified to report for testing and fail to appear within the allotted time may be subject to disciplinary action including termination.

### TESTING TEST REFUSAL

25. A member is subject to disciplinary action if he/she:
- (a) Fails or refuses to submit to a test as directed.
  - (b) After taking a test which indicates the presence of a controlled substance, fails to provide proof, within 72 hours after being requested by his/her appointing authority, that he/she had taken the controlled substance as directed pursuant to a current and lawful prescription issued in his/her name. The proof of prescription or legitimate use shall be submitted to the Medical Review Officer for the City of New Orleans.

### CONFIDENTIALITY

26. The written results of any test may be provided to the member but will remain confidential and separate from the member's other personnel files.

### YEARLY TESTING (RANDOM)

27. Supervisors of the member selected from the random generated list of members shall be advised of the member's selection by the Compliance Bureau. The supervisor shall instruct the member to report to the testing location within 60 minutes of notification for the purpose of submitting a urine sample for testing. Reserve members, who are in the metropolitan area and not engaged in their normal job duties which might preclude their

availability, shall report within 12 hours of notification. A representative from the Compliance Bureau shall meet that member at the designated testing facility for the completion of the required administrative documents. Departmental transportation shall be provided if the selected member does not have access to Departmental transportation.

28. Members failing to appear within the allotted time may be subject to disciplinary action.

### **PROBATIONARY AND PROMOTIONAL TESTING**

29. Members advised of a probationary or promotional testing shall report for testing at the testing location within sixty minutes of notification for the purpose of submitting a urine sample for testing. A representative from the Compliance Bureau shall meet that member at the designated testing facility for the completion of the required administrative documents.

30. Members failing to appear within the allotted time may be subject to disciplinary action.

### **REASONABLE SUSPICION TESTING**

31. If a supervisor has reasonable suspicion to believe that a member is using drugs and/or alcohol while on duty (Category III), he/she shall immediately take that member out of service and notify the Public Integrity Bureau (PIB) of his/her suspicions. The supervisor will document the circumstances and his/her suspicions in an interoffice communication (105) thru his/her chain of command to the Commander of the Public Integrity Bureau before the end of his/her shift. PIB shall be responsible for all Category III testing. (See Civil Service Rule V, Sec. 9.12 for reasonable suspicion criteria at [https://www.nola.gov/getattachment/Civil-Service/Resources/Rules/Rules-6-20-2017-\(BMG-Revisions\).pdf/](https://www.nola.gov/getattachment/Civil-Service/Resources/Rules/Rules-6-20-2017-(BMG-Revisions).pdf/))

### **ACCIDENT/INJURY SUBSTANCE TESTING**

32. Members of the department are responsible for reporting any motor vehicle crash involving a city vehicle occurring on or off-duty and any other injury, not necessarily related to a vehicle crash, occurring on-duty to his/her immediate supervisor as soon as possible after occurrence.
33. All NOPD members shall receive medical attention when needed or requested before submitting to a substance abuse test. The requirements for testing will apply once the member has been released from medical care or the treating facility for injury sustained during the crash.
34. When injuries dictate that an NOPD member be taken to a hospital the supervisor shall inquire at the hospital if blood and urine will be collected for testing. If the hospital refuses to collect blood and urine for testing, the supervisor shall transport the member to the testing facility for testing after the required medical treatment is received.
35. Supervisors are responsible for ensuring the member is tested for substance abuse and must prepare the applicable First Report of Injury form (**Employer's Report of Occupational Injury or Disease, Form #WC 1007**) and the Supervisor's Report of Accident (Form 210). If a ranking officer from the member's chain of command is not available in a timely manner, a ranking officer from the district of occurrence shall be responsible for any incumbent testing and required reports.



36. It shall be the responsibility of the supervisor to initiate NOPD Form SAT 4 when notified of a motor vehicle crash or injury. Members shall print their name, employee ID number, and sign the form at the bottom left side. The form shall be completely filled out.
37. The supervisor shall not allow the member to drive a motor vehicle to the testing facility. Supervisors shall drive the member to the testing facility where NOPD Form SAT 4 shall be presented to a drug testing company representative.
38. The supervisor shall remain with the member at all times until the testing process is completed once notified of the motor vehicle crash, accident, or injury requiring testing.
39. The representative shall make a copy of the form and return the original to the supervisor.
40. The supervisor shall ensure all paper work required by the testing site is completed by the member and that the member complies with all the testing procedures.
41. The member shall be required to submit to a breathalyzer and/or saliva test, which tests for alcohol. If this test shows the presence of alcohol, the member shall be required to submit a blood sample for blood alcohol testing.
42. If the breath test is negative, a blood test is not required.
43. The member shall also be required to submit a urine sample for drug testing. Supervisors shall remain on site until testing is complete.
44. Upon completion, the supervisor shall deliver the original SAT4 form to the Compliance Bureau within 24 hours.

#### **CRASHES OUTSIDE ORLEANS PARISH**

45. If a motor vehicle crash involving the operation of a city vehicle occurs outside Orleans Parish, while on or off duty, reporting supervisors shall include a copy of the completed SAT4 form and their inspection of the vehicle in their administrative report of the incident.
46. In instances where supervisory personnel do not make the scene of a motor vehicle crash occurring outside Orleans Parish, members are responsible for submitting to a testing immediately upon completion of the investigation by the responding / investigating agency.
  - (a) Members shall report to the nearest NOPD police district, informing a supervisor that they were involved in a motor vehicle crash.
  - (b) Supervisory personnel from that district shall accompany the member to the appropriate testing facility for the purpose of administering the SAT 4 test. The SAT 4 form shall be distributed as indicated, with an additional copy being forwarded to the tested individual's place of assignment.
  - (c) Supervisors from the member's place of assignment shall be responsible for any additional administrative report requirements.
47. All NOPD members shall receive medical attention when needed or requested before submitting to a test. The requirements for testing will apply once the member has been released from medical care or the treating facility for injury sustained during the crash.
48. When injuries dictate that an NOPD member be taken to a hospital the supervisor shall inquire at the hospital if blood and urine will be collected for testing. If the hospital

refuses to collect blood and urine for testing, the supervisor shall transport the member to the testing facility for testing after the required medical treatment is received.

#### **MEMBERS INVOLVED IN A DWI IN A POLICE CONVEYANCE**

49. Supervisors are responsible for observing any member who was the operator of a police conveyance (automobile, motorcycle, bicycle, horse, boat, etc.) and involved in a motor vehicle crash for indications of alcohol or drug use. If alcohol use is suspected, through admission, smell, actions, speech, Field Sobriety Test, etc., of the suspect member, NOPD Form SAT4 SHALL NOT be initiated, and a criminal investigation shall proceed, as per LA. R.S. 14:98 and LA. R.S. 32:661 through 669. Supervisors shall immediately notify the Public Integrity Bureau.

#### **PUBLIC INTEGRITY BUREAU INVESTIGATORS**

50. The Public Integrity Bureau shall have the responsibility of overseeing the investigation of suspected criminal offenses by members. If the member, after being arrested and advised of his/her rights from the standard departmental forms used for DWI arrests, agrees to take the breath test, those results shall be used in the criminal investigation, as well as in the administrative investigation which will follow.
51. If the member refuses to submit to any testing, including breath, saliva, urine, or blood, in the criminal investigation, and his/her conduct does not fall within the guidelines for mandatory testing as outlined in the Revised Statutes, then a separate Public Integrity Bureau Investigator must be called out to conduct an administrative investigation. This Investigator will then order the member to submit to testing for administrative purposes as part of the administrative investigation.
52. The responsibility to prepare the motor vehicle crash report shall remain with the assigned investigator (Traffic Section investigator, or district supervisor).

#### **MEMBERS INVOLVED IN DWI OUTSIDE ORLEANS PARISH OR INVESTIGATED BY ANOTHER LAW ENFORCEMENT AGENCY FOR DWI**

53. If the suspect member is under investigation by another law enforcement agency within Orleans Parish or within another jurisdiction for a DWI involving a departmental vehicle, that agency shall complete its responsibilities before any further N.O.P.D. supervisory action. The notified NOPD supervisor shall not interfere with the official investigation, but may offer assistance until its conclusion. The conclusion of the agency's investigation or the release of a suspect member by another jurisdiction does not preclude the completion of the administrative testing procedures by NOPD.
54. Supervisors shall complete an SAT 4 Form, and either the First Report of Injury report (Employer's Report of Occupational Injury or Disease, Form #WC1007) or the Supervisor's Accident Report (Form 210). The SAT 4 Form shall become part of the report.