

**TITLE: DRUG AND ALCOHOL TESTING**

**CODIFIED:** 89.1  
**EFFECTIVE:** 07/23/04  
**RESCINDS/AMENDS:** G 30  
**PAGES:** 9

**PURPOSE**

The purpose of this Directive is to establish a drug-free workplace within the City of Santa Fe Police Department through fair and reasonable drug and/or alcohol testing methods for the protection of department employees, the department and the public, and to offer guidelines to ensure an employee's drug-free status as a condition of employment,

**DISCUSSION**

It is essential to maintain a healthy and productive work force, safe-working conditions free from the effects of drugs and/or alcohol while providing quality services important to employers, employees, and the general public of the City of Santa Fe.

Due to the nature of the law enforcement profession, the public has certain expectations regarding the conduct and activities of all Department members. To ensure the public that the Santa Fe Police Department meets these expectations, the Department has established guidelines for drug and alcohol screening tests in order to ensure a work force free of persons who use illegal drugs or who misuse prescription drugs and/ or alcohol

**POLICY**

It is the goal and policy of the City of Santa Fe ("City") and the Santa Fe Police Officers Association ("SFPOA") for the employees of the Police Department to maintain a drug and alcohol free work environment through the use of a reasonable employee drug and alcohol testing program. The following reasons support the Policy:

- A. **PUBLIC SAFETY:** Public safety and policing are responsibilities that have dangers not present in other government functions. These dangers include the potential and actual use of firearms and other weapons; the use of force including the possible use of deadly force; the operation of emergency vehicles; the prevention of escape; the keeping of order and the enforcement of rules of conduct; and similar responsibilities. These responsibilities have inherent dangers not present in most other governmental functions. An agency charged with these kind of responsibilities cannot tolerate any kind of conduct on the part of employees which would impair their judgement or skills and thus create an unreasonable risk of harm to the public and other employees.
- B. **PUBLIC TRUST AND INTEGRITY:** The public has the right to demand that those who are charged with enforcing the law obey the law. Since the use of controlled substances (hereinafter simply "drugs") violates the law, public trust is compromised when those who enforce the law violate the law. Courts have repeatedly said that there is no other government agency in which the public must have more confidence than its public safety and correctional agencies.
- C. **WITNESS IMPEACHMENT:** Often the most important weapon in the criminal justice arsenal is the word of an employee or officer. An employee who engages in conduct that violates the law potentially places his or her credibility on the line. If an employee has used drugs in violation of the law, it may cast a fatal shadow over the employee's judgement and performance when there are issues in court.
- D. **EMPLOYEE MORALE/SAFETY:** Employees must be able to depend on their co-workers being reliable, effective, alert, and cooperative. Employees must work together in sometimes very close quarters and in tense situations with great potential for harm to the public, prisoners and other employees. Conduct on the part of employees, which impairs their ability to perform their duties places the safety of their co-workers in jeopardy. It may also have a bad effect on the morale of other employees because of a lack of trust in those who use controlled substances.

Such conduct interferes with the mission and responsibilities of the Police Department.

- E. LOSS OF PRODUCTIVITY:** The abuse of drugs and/or alcohol may lead to poor performance and increased rates of absenteeism. It also increases the risk of on the job injuries with the resultant increase in workers' compensation and other related costs.

## DEFINITIONS

**ALCOHOL** – The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol's including methyl and isopropyl alcohol.

**APPLICANT** – An individual is seeking employment in a position with the Police Department.

**CONTROLLED SUBSTANCE** – Marijuana, cocaine, opiates, amphetamines, phencyclidine, and Anabolic-Androgenic Steroid.

**DRUG TEST** – A urinalysis test to detect drugs administered under approved medical conditions and procedures.

**DRUG ALCOHOL PROGRAM MANAGER** – A city employee responsible for administering the drug and alcohol-testing program.

**EMPLOYEE** – Refers to any individual employed by the City of Santa Fe Police Department regardless of probationary status, union status, position or rank.

**MEDICAL REVIEW OFFICER (MRO)** – A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the City's drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's positive test result together with the individual's medical history and any other relevant biomedical information.

**SAFETY SENSITIVE EMPLOYEE** – An employee who performs the duties of a safety-sensitive position as identified in this policy.

**SAFETY SENSITIVE POSITION** – A position which requires the employee to perform duties which impact the safety of the public and which expose the employee to hazardous conditions and requires responsibility for the physical safety to others. The

City of Santa Fe has identified the following positions to be Safety Sensitive:

- A. All commissioned police officers, regardless of rank.
- B. Public Safety Aides.

**SUBSTANCE ABUSE PROFESSIONAL** – A licensed physician (medical doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance related disorders.

**VERIFIED NEGATIVE TEST** – A drug/alcohol test result reviewed by a medical review officer and determined not to contain alcohol or prohibited drugs or their metabolites above the cutoff standards established for laboratories approved to conduct Department of Transportation ("D.O.T.") testing.

**VERIFIED POSITIVE TEST** – A drug/alcohol test result reviewed by a medical review officer and determined to contain alcohol or prohibited drugs or their metabolites above the cutoff standards established for laboratories approved to conduct D.O.T. testing.

## PROCEDURE

### 89.1.01 PROHIBITIONS AND RESPONSIBILITIES

- A. Each employee covered by this Policy is:
1. Prohibited from possessing, selling, purchasing, manufacturing or transferring any controlled substance in violation of city, state or federal law, whether on or off duty .
  2. Prohibited from any use of any controlled substance in violation of city, state, or federal law, whether on or off duty.
  3. Prohibited from consuming or possessing alcoholic beverages on duty, except where its use is required and documented pursuant to a case plan and the standard operating procedures.
  4. Prohibited from consuming alcoholic beverages while operating a city vehicle or

four hours (4) prior to operating such vehicle.

5. Prohibited from the consumption of alcohol within four (4) hours of the employee's scheduled time to report to work, or within eight (8) hours following an accident or until the employee takes a post-accident alcohol and/or drug test, whichever occurs first.
  6. Required to submit to reasonable suspicion alcohol and/or drug testing when directed by the City of Santa Fe; and prohibited from tampering or attempting to tamper with such alcohol and/or drug test.
- B.** Each employee, under this Policy:
1. Shall be responsible for informing his/her supervisor when being prescribed medication that may impair on-the-job performance or affect their ability to perform work duties safely and efficiently.
  2. Shall use medically authorized drugs or over the counter medications in a manner which will not impair on-the-job performance or affect their ability to perform work duties safely and efficiently. Employees may be required to provide proof of lawful prescription.
  3. Shall promptly report to his/her supervisor whenever he/she observes or has knowledge of another employee who poses a hazard to the safety and welfare of others.
  4. May be temporarily re-assigned to other duties during the time he/she is required to take prescribed medication which has the potential to impair on-the-job performance or affect their ability to perform work duties safely and efficiently.
  5. Any employee who intentionally ingests, or is made to ingest, a controlled substance shall immediately report the incident to his or her supervisor so that appropriate medical steps may be taken to ensure the officer's health and safety. A *Supervisor's First Report of Accident* shall be completed within 24 hours of the incident.

### 89.1.02 EDUCATION

- A. Every employee will receive a copy of this Policy, and will receive a minimum of sixty (60) minutes of training regarding this Policy and the effects of prohibited drug use and alcohol misuse that impacts an individual's biological, emotional, and psychosocial well being. The effects of misuse can be seen in an individual's work performance, attitude and social interaction. Training shall be provided to each employee within 60 days of adoption of this Policy for current employees, and within 60 days of a new employee's date of hire.
- B. All supervisory personnel responsible for determining whether reasonable suspicion exists to require and employee to undergo alcohol and/or drug testing will also receive a minimum of one hundred and twenty (120) minutes of training on the physical, behavioral, speech, and performance indicators of probable prohibited drug use and alcohol misuse.

### 89.1.03 SUBSTANCE TESTED

- A. Alcohol
  1. Employees subject to alcohol testing will have a sample of their breath tested for the presence of the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol. A breath alcohol level of 0.04 or greater constitutes a positive test result. A confirmation test will be given if an employee's initial breath alcohol test level exceeds 0.04.
  2. Any refusal to submit to an alcohol test, and all positive alcohol tests, will be reported immediately by the testing facility to the City of Santa Fe Drug and Alcohol Program Administrator.
- B. Drugs
  1. Employees subject to drug testing will have a sample of their urine tested for the presence of six (6) drugs, as follows:
    - a. Marijuana
    - b. Cocaine
    - c. Opiates

- d. Amphetamines
  - e. Phencyclidine
  - f. Anabolic-Androgenic Steroid.
2. The testing laboratory will report all drug tests to a medical review officer (MRO) who will evaluate the results. After evaluation and interpretation, all verified positive test results will be reported by the MRO to the employee and the City of Santa Fe Drug and Alcohol Program Administrator. Any refusal to submit to a drug test will be immediately reported by the collection site to the City of Santa Fe Drug and Alcohol Program Administrator.
  3. With respect to verified positive drug tests, employees will be notified by the MRO that they have seventy-two (72) hours following this notification in which they can request, at their own expense, that split urine specimen be tested by another Department of Health and Human Services (DHHS) certified testing laboratory. In the event the split sample test is negative, the employee will be reimbursed for the test.
  4. Failure to request testing of the split specimen within seventy-two (72) hours of being notified a positive test by the MRO will result in the test results from the original specimen being accepted as the final test results.

#### 89.1.04 TYPES OF TESTING

- A. The following tests will be required of all employees in accordance with the alcohol and drug testing procedures set forth in this Policy:
  1. Pre-employment tests
  2. Post-accident tests
  3. Random tests
  4. Reasonable suspicion tests
  5. Return to duty/Follow-up tests

#### 89.1.05 ALCOHOL AND DRUG TESTING PROCEDURES

- A. This Policy incorporates the following federal regulations for alcohol and drug testing

procedures required for transportation workplace drug testing programs:

1. 49 CFR PART 40
2. Subpart A
  - 40.3 Definitions
3. Subpart B
  - 40.21 The drugs.
  - 40.23 Preparation for testing.
  - 40.25 Specimen collection procedures.
  - 40.27 Laboratory personnel.
  - 40.29 Laboratory analysis procedures.
  - 40.31 Quality assurance and quality control.
  - 40.33 Reporting and review of results.
  - 40.35 Protection of employee records.
  - 40.37 Individual access to test and laboratory certification results.
  - 40.39 Use of DHHS – certified laboratories.
4. Subpart C – Alcohol Testing
  - 40.51 The breath alcohol technician.
  - 40.53 Devices to be used for breath alcohol tests.
  - 40.55 Quality assurance plans for EBT's.
  - 40.57 Locations for breath alcohol testing.
  - 40.59 The breath alcohol testing form and log book.
  - 40.61 Preparation for breath alcohol testing.
  - 40.63 Procedures for screening tests.
  - 40.65 Procedures for confirmations tests.
  - 40.67 Refusal to test and uncompleted tests.
  - 40.69 Inability to provide and adequate amount of breath.
  - 40.79 Invalid tests.
  - 40.81 Availability and disclosure of alcohol testing information about individual.
  - 40.83 Maintenance and disclosure of records concerning EBTs and BATs.
- B. It is the intent of this policy that Police Department employees subjected to testing will be provided with the same testing procedures, safeguards, confidentiality, chain of custody provisions and integrity of the testing process provided to transit employees pursuant to the federal regulations.

**89.1.06 PRE-EMPLOYMENT TESTING**

A. Applicants selected for hire will be required to undergo pre-employment testing. Applicants will be informed that they are subject to pre-employment drug testing at the time they apply for a position. Once a conditional job offer is made, the applicant shall have a urine sample collected and tested for evidence of the substances listed in Section 6. The time, date and location of the physical examination and drug test will be announced in advance of the test. Applicants for or employees transferred into specialized units, which require the safety sensitive employee to have direct involvement in drug interdiction, will also be subjected to drug testing prior to joining the unit.

**B. Disqualification from Employment**

1. Applicants for initial hire will be disqualified from employment if they:
  - a. fail to appear for the physical examination and urine collection on the designated day unless excused by the City for good and verifiable cause; or
  - b. refuse to provide a urine sample; or
  - c. attempt to alter, taint or otherwise provide a false sample; or
  - d. test positive for the presence of one of the substances listed in Section 6.

**89.1.07 POST-ACCIDENT TESTING**

A. All employees in safety-sensitive positions as identified in this policy will be subject to post-accident alcohol and drug testing in accordance with the City's alcohol and drug testing procedures.

1. A City of Santa Fe safety representative, supervisor or other qualified person shall be responsible for making a determination whether a post-accident drug and alcohol test is required at the time any covered employee is involved in an accident where a fatality or serious injury has occurred.
2. The City of Santa Fe will any safety-sensitive employees whose performance could have contributed to the accident.

3. Employees required to submit to post-accident drug and alcohol testing will be tested as soon as possible (in all cases drug tests shall be conducted within thirty-two (32) hours following the accident and alcohol tests shall be conducted within eight (8) hours of the accident).
4. An employee required to submit to a post-accident drug and alcohol test will be transported by the City to the collection site and will be required to sign a medical authorization for an administrative alcohol and drug test. The employee must provide a urine and breath sample unless medical personnel present determine that the employee is medically unable to provide the required samples. Following the test, the employee will be relieved of duty, with pay, pending the City's receipt of the results of the tests from the MRO.
5. It is the City of Santa Fe's policy that employees who are required to submit to a post accident drug and alcohol test will be subject to discipline in accordance with Section 16 of this policy if they:
  - a. refuse to sign a medical authorization for an administrative alcohol and drug test or refuse to provide a breath and/or urine sample (such as refusal shall constitute a verified positive drug and/or alcohol test result); or
  - b. attempt to alter, taint, or otherwise provide a false sample; or
  - c. test positive for the presence of one or more of the substances listed in Section 6 of this policy.
6. Safety sensitive employees must be readily available for post-accident testing. If an employee fails to remain readily available, e.g., notifying supervisor where employee can be located if employee leaves scene of the accident prior to submitting to testing, the employee will be deemed to have refused to submit to testing which shall constitute a verified positive drug and/or alcohol test result. The requirement to immediately report for post-accident testing is stayed while an employee assists in

resolution of an accident or receives medical attention following an accident. In such cases, the employee shall report for post-accident testing immediately after the employee completes provision of necessary post-accident assistance or after necessary medical attention is provided.

#### **89.1.0.8 VOLUNTARY TESTING**

A. The City shall provide any employee an opportunity to voluntarily submit to a drug and/or alcohol screening test, at the City's expense, immediately following any incident, which may result in allegations of misconduct against the employee (s) or the department.

#### **89.1.0.9 RANDOM TESTING**

A. The City of Santa Fe will maintain a list of all employees in safety sensitive positions in the Police Department. During each calendar year, alcohol and/or drug tests will be administered to these employees on a scientifically random number selection basis. Under the random selection process each employee will have an equal chance of being selected for testing based on neutral criterion such as social security numbers. This process means that alcohol and drug tests are unannounced. Selected employees are required to report immediately for testing after notification of selection. The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year. All employees will remain in the random pool even after being selected for testing. Thus, it is possible for an employee to be selected for testing more than once within a given time period.

1. Selected employees who are off duty or on regularly scheduled days off shall be notified of their selection upon their return to work and are required to report immediately for testing after notification of selection.

B. At least 50% of the total number of safety sensitive employees shall annually be randomly tested for drugs, and at least 10% of the total number of safety sensitive employees shall annually be randomly tested for alcohol.

C. Safety sensitive employees in the following specialized units will be included in a separate pool for random selection in addition to the pool described in Paragraph A above:

1. All safety sensitive employees of the Special Operations and K9 units.
2. All safety sensitive employees assigned to the Narcotics unit or "Region 3 Drug Task Force."
3. Safety sensitive employees of any other unit whose function is the detection and interdiction of illegal drugs.
4. At least 50% of the total number of safety sensitive employees in this pool shall be randomly tested for drugs on a quarterly basis.

D. Employees selected for random alcohol and/or drug tests will be provided with transportation and will immediately report to the collection site where they will be required to provide a breath and/or urine sample.

E. It is the City of Santa Fe's policy that employees will be subject to discipline in accordance with Section 98.1.16 of the Policy if they:

1. Do not appear and complete a random drug and/or alcohol test immediately following notification to appear for such tests, refuse to sign a medical authorization for an administrative alcohol and drug test or refuse to provide a breath and/or urine sample (such as refusal shall constitute a verified positive drug and/or alcohol test result); or
2. Attempt to alter, taint, or otherwise provide a false sample; or
3. Test positive for the presence of one or more of the substances listed in Section 6 of this policy.

#### **89.1.10 REASONABLE SUSPICION TESTING**

A. All employees may be required to submit to a reasonable suspicion alcohol and/or drug test.

B. Employees who are reasonably suspected by a supervisor of violating this Policy will be required to submit to an alcohol and/or drug test in accordance with this Policy. A trained supervisor who makes a determination that a test

is required will complete a form indicating the grounds for such determination. Reasonable suspicion must be based on a belief by a trained supervisor that an employee is using or has used drugs or alcohol in violation of this Policy and is drawn from specific objective and articulated facts and reasonable inferences drawn from those facts in light of experience, and may be based upon, among other things;

1. Observable phenomena, such as direct observation of alcohol or drug use and/or the physical symptoms or manifestations of being under the influence of alcohol or a drug such as appearance, speech, or body odors;
  2. Abnormal conduct or erratic behaviors while at work, excessive absenteeism, tardiness, or deterioration in work performance;
  3. An arrest for drug related charges.
- C. An employee who is required to submit to an alcohol and/or drug test under this section must sign a medical authorization for an administrative alcohol and drug test.
- D. Employees will be transported by the City to the collection site and will be required to provide a breath and/or urine sample. Following completion of the test, employees will be transported home and relieved of duty, with pay, pending the City's receipt of the results of the test from the MRO.
- E. It is the City of Santa Fe's policy that employees will be subject to discipline in accordance with Section 89.1.16 of this Policy if they:
1. Refuse to sign a medical authorization for an administrative alcohol and drug test or refuse to provide a urine and/or breath sample (which refusal shall constitute a verified positive drug and/or alcohol test result); or
  2. Attempt to alter, taint, or otherwise provide a false sample; or
  3. Test positive for the presence of one or more of the substances listed in Section 6 of this Policy.

#### **89.1.11 RETURN TO WORK TESTING**

- A. Employees who self-referral, in accordance with Section 98.1.18 of this Policy, prior to returning to work, will be required to take a return to duty alcohol and/or drug test with a verified negative result in accordance with this policy.

#### **89.1.12 FOLLOW-UP TESTING**

- A. Employees who self-referral, in accordance with Section 98.1.16 and 98.1.18 of this Policy, upon return to work, shall be subject to a minimum of six (6) unannounced drug and/or alcohol follow up tests during the first twelve (12) months following the employee's return to work, and further testing as recommended by the substance abuse professional for up to a maximum of sixty (60) months.

#### **89.1.13 CONSEQUENCES OF THE MISUSE OF DRUGS AND ALCOHOL**

- A. Any employee testing positive for any of the drugs specified in Section 98.1.06(B) of this policy, or who has a breath alcohol concentration of 0.04 or greater, will be immediately removed from his/her position and placed on leave with pay status pending disciplinary action. Employees testing positive will be provided with information from the City's employee assistance program (EAP) regarding alcohol and/or substance abuse and the names, addresses and telephone numbers of substance abuse professionals and counseling and treatment programs. The City will have no responsibility to pay for any necessary treatment on the part of the employee.
1. Consequences of a Positive Drug and Alcohol Test:
    - a. Any job applicant who tests positive for drugs will not be hired.
    - b. Conditional Retention:
      - I. If an employee, before selection for drug and alcohol testing, voluntarily admits that he/she is using drugs or has a problem with alcohol and is not otherwise subject to termination under Section 98.1.16(A)(3) of this Policy, will be

offered conditional retention of employment if the employee:

- II. Submits to an evaluation by a substance abuse professional approved by the City's EAP; and
  - III. Signs a conditional retention of employment agreement; and
  - IV. Is determined by a substance abuse professional to require assistance in resolving problems associated with drug abuse and/or alcohol misuse (the employee must agree to attend a City of Santa Fe approved treatment program and sign a monitoring agreement with the City's EAP to ensure successful completion of the treatment program specified by the substance abuse professional); and
  - V. Upon release to return to work by the substance abuse professional, is subject to a return to duty drug and/or alcohol test and follow-up tests.
  - VI. The employee who is conditionally retained must fully comply with the conditions of retention of employment, including successful completion of the treatment program specified by the substance abuse professional. Upon notification of self-referral the employee will be relieved of this duties until released to return to work by the substance abuse professional. The employee may utilize any accrued comp time, annual and sick leave and authorized leave under the Family Medical Leave Act ("FMLA") until exhausted to cover the necessary leave.
- c. Termination: Employees will be terminated with due process if the employee:
- I. Uses, possesses, sells, purchases, manufactures or transfers any

controlled substances in violation of city, state or federal law, whether on or off duty, or consumes or is in possession of alcohol on duty (and such consumption or possession is not authorized per Section 4(A)(3)).

- II. Consumes alcoholic beverages while operating a city vehicle; or four hours (4) prior to operating such vehicle; or within four (4) hours of the employee's scheduled time to report to work; or within eight (8) hours following an accident involving a city vehicle or until the employee takes a post-accident alcohol and/or drug test, whichever occurs first.
- III. refuses to submit to an alcohol and/or drug test when so directed by the City of Santa Fe, or tampers or attempts to tamper with an alcohol and/or drug test; or,
- IV. tests positive and was involved in an accident resulting in death, serious injury or extensive property damage; or
- V. does not appear and complete a follow-up drug and/or alcohol test within two (2) hours following notification to appear for such tests, refuse to sign a medical authorization for an administrative alcohol and drug test or refuses to provide a breath and/or urine sample; or
- VI. has a confirmed positive drug or alcohol test

#### **89.1.14 CONFIDENTIALITY**

- A. All testing will be conducted in accordance with the federal regulations to ensure test results are accurate and reliable. Further, the City will carry out this Policy in a manner that respects the dignity and confidentiality of those involved. No laboratory reports or test results shall appear in



the employee's employment history unless they are a part of a disciplinary action taken. Laboratory reports and test results shall be placed in a special locked file maintained by the Drug Abuse Coordinator. Files relating to laboratory reports or test results maintained by the Drug Abuse Coordinator must be kept confidential and shall be disclosed only by consent of the patient. Test information, however, shall be released to the employee, the employer, or the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from a certified positive drug test. Upon request, an employee is entitled to obtain copies of any record pertaining to the employee's use of prohibited drugs, including any records pertaining to the employee's drug tests.

**89.1.15 EMPLOYEE ASSISTANCE PROGRAM/SELF-REFERRAL**

- A. The City of Santa Fe takes seriously its commitment to provide safe conditions to the public and its employees. Recognizing this commitment, the City maintains employee assistance programs that can provide access to professional service in an effort to aid any employee who has an alcohol or chemical dependency problem. Participation in this program is voluntary and all records regarding self-referral or acknowledgement will be kept confidential to the extent required by the law.
- B. All employees who suspect they may have alcohol or substance abuse problems are strongly encouraged to utilize employee assistance program resources before the problem affects their employment status. There will be no disciplinary action involved. Voluntary self-referral, however, shall not relieve the employee from responsibility for adequate job performance. Self-referral after notification of a required drug or alcohol test will not eliminate the requirement to take such a test and will not preclude the taking or disciplinary action against an individual who fails a required drug or alcohol test.
- C. Any costs for counseling or rehabilitation shall be the responsibility of the employee. Questions about the City of Santa Fe's employee assistance program should be addressed to the City's Safety

Officer, who serves as the drug and alcohol program administrator.

**89.1.16 APPEALS**

- A. Any employee subject to discipline as a result of drug/alcohol testing will have the right to grieve the discipline pursuant to their respective collective bargaining agreement.

**89.1.17 LEGAL ISSUES**

- A. This rule or regulation is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard or safety of care. Violations of this policy, if proven, can only form the basis of a complaint by this Department, and then only in an administrative setting.
- B. Because chemical testing is not testimonial, compulsory urinalysis or breath alcohol tests do not implicate or violate the Fifth Amendment privilege against self-incrimination. See *Schmerber v. California*, 384 U.S. 757, 761 (1966), see also *State v. Richardson*, 87N.M. 437 (Ct. App. 1975) (the privilege against self-incrimination applies to disclosures that are communicative or testimonial, and the criminal defendant was not compelled to testify against himself by the drawing of blood from his body). Nevertheless, nothing in this policy shall be deemed a waiver of an employee's constitutional protections or privileges afforded in *Garrity v. New Jersey*, 385 U.S. 493 (1967). Any statements written or verbal regarding illegal drug or alcohol use made by employees while in the course and scope of complying with the requirement of this policy shall be deemed compelled and may not be used for criminal prosecution.

DRAFTED(awm)07/03

APPROVED:   
BEVERLY K. LENNEN  
Chief of Police

DATE: 07-23-04