

# **HELENA POLICE DEPARTMENT**



## **DRUG & ALCOHOL TESTING POLICY AND PROCEDURE**

**EFFECTIVE JUNE, 2012**

**Updated effective January 2015**

# Table of Contents

<b>Purpose</b> .....	3
<b>Covered Employees</b> .....	3
<b>Designated Employer Representative</b> .....	3
<b>Prohibited Substance use or Misuse</b> .....	4
<b>Prohibited Alcohol use or Misuse</b> .....	4
<b>Testing Procedure</b> .....	5
Specimen Temperature Outside of Range .....	5
Insufficient Urine Specimen Volume .....	5
Shy Bladder.....	5
Alcohol Testing.....	6
Drug Testing .....	6
<b>Types of Testing</b> .....	7
Pre-employment Testing .....	7
Reasonable Suspicion Testing .....	7
Post-Incident Testing .....	8
Random Testing.....	9
<b>Test Refusal</b> .....	9
<b>Initial Positive Result Process &amp; Split Sample Testing</b> .....	10
<b>Dilute Sample</b> .....	10
<b>MRO Contact with Employee</b> .....	10
<b>Consequences</b> .....	11
<b>Safe Harbor – Notification if Unfit for Duty</b> .....	11
<b>Records &amp; Retention</b> .....	12
<b>Additional Provisions</b> .....	12
<b>Definitions</b> .....	13
<b>References</b> .....	15

The Helena Police Department (HPD) is committed to protecting the safety, health, and well being of all sworn and civilian employees and the individuals we come into contact with as we fulfill our mission of serving the City of Helena. Therefore, we have established an alcohol and drug-free workplace program that balances our respect for individuals with the need to maintain an alcohol and drug-free environment. In meeting these goals, it is our policy to (1) assure that department employees are not impaired in their ability to perform assigned duties in a safe, productive and healthy manner; (2) create a workplace environment free from the adverse effects of drug and alcohol abuse or misuse; (3) prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and (4) to encourage employees to seek professional assistance any time personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.

Every covered employee will receive a copy of this policy and will have ready access to the corresponding regulations (available from the Human Resource office or online). HPD may request group or individual training on this policy which will be conducted by one of the Designated Employer Representatives (DER).

## Purpose of Policy

The purpose of this policy is to provide an alcohol and drug-free workplace for the protection and well being of the Helena Police Department, its employees, and the public it serves along with City property, equipment, and operations. Employees are expected to report to work alcohol and drug free in order to enable safe and efficient job performance. This policy summarizes the regulations in 41 USC Chapter 10, “The Drug Free Workplace Act of 1988”. All drug testing is conducted in accordance with the regulations in 49 CFR Part 40. All covered employees are required to submit to drug and alcohol tests as a condition of employment.

## Covered Employees

This policy applies to: all sworn officers, including supervisors and management up to and including the Chief of Police; all Support Services division employees, including records clerks and public safety emergency telecommunication staff; all other regular or temporary employees of the Helena Police Department allowable under MCA Title 39, Chapter 2 definition of employee; and any prospective job applicant for such positions after a job offer has been made. Reserve officers are subject to pre-employment, reasonable suspicion testing and post-incident only.

## Designated Employer Representative

Anyone having questions regarding this policy or any other aspect of the Drug-free and Alcohol-free City of Helena Program should contact the following representatives:

Sheri Hall  
HR Specialist  
316 N Park Ave, Rm 106  
Helena, MT 59623  
(406) 447-8404  
[shall@helenamt.gov](mailto:shall@helenamt.gov)

James Fehr  
Human Resources Director  
316 N Park Ave, Rm 106  
Helena, MT 59623  
(406) 447-8405  
[jfehr@helenamt.gov](mailto:jfehr@helenamt.gov)

# Prohibited Substance Use or Misuse

Pursuant to the Drug-free Workplace Act of 1988, all City of Helena employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of prohibited substances in the work place including City-owned premises and vehicles, while in uniform or while on company business. Employees who violate this provision may be recommended for immediate termination. Law enforcement will be notified, as appropriate, where criminal activity is suspected. Additionally all employees are required to notify a Designated Employer Representative of all criminal drug or alcohol statute conviction(s) within five days after such conviction. Failure to do so may result in termination.

The following substances are prohibited from being consumed/used, manufactured, cultivated, distributed, dispensed or in possession of (other than as official collection of evidence) **at all times**:

- Marijuana, including medical marijuana
- Most Amphetamines (certain prescriptions will be allowed base on medical reason and position duties) or Methamphetamines such as Ecstasy (MDMA), Love Drug (MDA) & MDEA
- Heroin
- Phencyclidine
- Any other drug listed as a Schedule 1 drug by the DEA

Any drug listed as a Schedule II – V drug by the DEA may only be used if legally prescribed or administered by a doctor during the course of medical treatment, used only as prescribed, and does not interfere with the employees' ability to perform their duties in a safe manner. If an employee has an adverse reaction to a medication that does not contain a warning, the employee should contact the supervisor immediately as well as discuss the reaction with their doctor to determine if a different medication can be used. The misuse or abuse of legal drugs while performing job functions is prohibited.

An employee legally using any medication which has side effects that might impair or affect the employee's job performance while on duty shall notify their supervisor and one of the Designated Employer Representatives as soon as possible. An employee using such medications on a long-term or ongoing basis will provide a written explanation of the circumstances, including a copy of the prescription, to one of the Designated Employer Representatives for consideration of the employee's work assignment while using such medication.

Employees taking over-the-counter medication that could cause impairment shall notify a supervisor when reporting for duty, the name, dosage and frequency of use. Any adverse reaction to such medication should be reported prior to reporting for duty.

A supervisor may relieve an employee from duty if it is determined that a legally used medication is causing impairment to an employee's ability to perform the functions of his or her job. The employee will be required to utilize his/her accrued sick, vacation or compensatory leave time until such time that the employee is no longer impaired by the medication. If the employee has no available accrued leave or runs out of leave, then he/she may be placed on unpaid leave. Employees are not eligible to apply for donated sick leave under this circumstance.

# Prohibited Alcohol Use or Misuse

All covered employees are prohibited from consuming alcohol while performing job functions (including paid training), while on-call to perform job functions or while in control of a City owned or leased vehicle. Possession or handling of alcoholic beverages is only allowable during normal policing activities, such as for evidentiary purposes, during work hours. Employees are prohibited from reporting for duty with the odor of alcoholic beverages on his/her breath or while under the influence of any intoxicant. In the event that an off-

duty member is ordered to return to work by a supervisor, the member will advise the supervisor if he or she has consumed any intoxicants within the last four hours or believes they may still be under the influence of an intoxicant used prior to the last four hours. It will be left to the supervisor's judgment whether to allow the member to report for duty. Officers in plain clothes assignments shall not consume intoxicating beverages unless prior approval is obtained from the officer's supervisor and consumption is done in the performance of his or her duties.

## Testing Procedure

All testing will be conducted as required in 49 CFR Part 40, as amended. Specific internal procedures are listed below and within each of the 4 categories: Pre-employment Testing, Reasonable Suspicion Testing, Post Incident, and Random Testing.

The Department will use a 9-Panel drug panel and test for the following substances:

- 1) Marijuana;
- 2) Cocaine;
- 3) Amphetamines (Amphetamines and Methamphetamines);
- 4) Opiates (Morphine, Codeine, Heroin, Hydrocodone, Hydromorphone, Oxycodone);
- 5) Phencyclidine (PCP);
- 6) Methadone;
- 7) Barbiturates;
- 8) Benzodiazepines; and
- 9) Propoxyphene

Employees should be aware that use of hemp oil products will not be an acceptable defense for a positive Delta-9-tetrahydrocanna-binol-9-carboxylic acid (THC) test.

## Specimen Temperature Outside of Range

If the temperature of the specimen is outside the range of 32-38 degrees C / 90-100 degrees F or shows signs of contaminants, then there is reason to believe the donor may have altered or substituted the specimen, and another specimen shall be collected for testing under the direct observation of a representative from the collection facility.

## Insufficient Urine Specimen Volume

45mL of urine is required to constitute sufficient testing volume. If the employee does not provide sufficient volume, the following "shy bladder" procedures will apply. If the employee declines to complete or does not complete these procedures, it will be treated as a test refusal.

For purposes of this section, permanent or long-term medical conditions are those physiological, anatomic, or psychological abnormalities documented as being present prior to the attempted collection, and considered not amenable to correction or cure for an extended period of time, if ever. Examples would include destruction (any cause) of the glomerular filtration system leading to renal failure; unrepaired traumatic disruption of the urinary tract; or a severe psychiatric disorder focused on genito-urinary matters. Acute or temporary medical conditions, such as cystitis, urethritis or prostatitis, though they might interfere with collection for a limited period of time, cannot receive the same exceptional consideration as permanent or long-term conditions.

## Shy Bladder Procedure:

1. The insufficient specimen will be discarded. Specimens may not be combined.

2. Employees will be advised to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a sufficient urine specimen, whichever occurs first. The employee may decline to drink, but will still be required to provide a sufficient urine specimen.

3. The employee shall remain in the testing area under observation during the three hour period.

4. If the employee has not provided a sufficient specimen within three hours of the first unsuccessful attempt to provide the specimen, the collection attempt will be discontinued, and the employer will be notified.

5. The employee will be directed to obtain, within seven calendar days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen.

6. After completing the evaluation, the referral physician must provide a written statement of his/her recommendations and the basis for those to the MRO. Detailed information on the employee's medical condition beyond what is necessary to explain the conclusion must not be in this statement. The MRO will seriously consider and assess the referral physician's recommendations in making a determination about whether the employee has a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. The MRO will notify Human Resources as soon as a determination is made.

a. If the employee refuses to obtain the evaluation, the test will be deemed a refusal.

b. If the evaluation determines the employee has a medical condition, and the medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine, the test will be cancelled.

c. If the evaluation determines that the employee's medical condition is a serious and permanent or long-term disability that is highly likely to prevent the employee from providing a sufficient amount of urine for a very long or indefinite period of time, the MRO will conduct a further medical evaluation to determine if there is clinical evidence that the employee is using a controlled substance or illegally using drugs. During this evaluation, a blood test may be required.

(1) If the medical evaluation reveals no clinical evidence of controlled substance use or illegal use of drugs, the test result shall be negative.

(2) If the medical evaluation reveals clinical evidence of controlled substance use or illegal use of legal drugs, the test result shall be cancelled. (Because this is a cancelled test, it does not serve the purposes of a negative test, *i.e.*, the employer is not authorized to allow the employee to begin or resume duty, because a negative test is needed for that purpose).

d. If the evaluation determines that there is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine, the test will be considered a refusal.

## Alcohol Testing

All alcohol tests will be breath testing only. The test will be administered by an HPD supervisor and the same procedure will be used as is for collecting an evidentiary test in a criminal case. Any concerns an employee has should be brought forth at the time to the supervisor or to Human Resource staff.

## Drug Testing

At the testing site, the employee will strictly follow all directions given from the collection site personnel before, during and after collection. The employee will show photo identification upon arrival such as MT Drivers License or Department ID card. All extra outer garments such as jacket or coat must be removed and any bags, purses or other such items. Items can be stored in a secure location at the collection site. Observed tests will only be performed as specified in this policy. Employees are required to sign the tamper labels placed

on the split specimen. Do not leave the collection site until told to do so by the site personnel. The employee is encouraged to observe the entire collection procedure. If the employee has any concerns regarding the testing process, they should advise the collection site staff, supervisor or Designated Employer Representative.

# Types of Testing

## Pre-employment Testing

A negative pre-employment drug test result is required before a potential employee officially starts employment or a current employee (moving from another department) can first perform the new duties. Failure of a drug test will disqualify an applicant for employment. Assigned command staff or Human Resources will schedule an acceptable time with the potential employee. The potential employee will be responsible for getting themselves to the test collection site on the scheduled date and time. Once negative results are received, Human Resources will notify the department to proceed with the hiring process. If positive results are received, Human Resources will notify the potential employee that the employment offer has been rescinded.

All covered employees that are away from work for more than ninety (90) consecutive calendar days are subject to a pre-employment drug test with negative results prior to being allowed to return to work.

## Reasonable Suspicion Testing

The City of Helena shall conduct a drug and/or alcohol test when there is reasonable suspicion to believe that a covered employee has used a prohibited drug and/or engaged in alcohol misuse. Reasonable suspicion determinations will be made by a supervisor or other authorized individual who is trained in detecting the signs and symptoms of drug use and alcohol misuse. The supervisor will contact the HR office to schedule testing and the employee will be taken to the test collection site by the supervisor or other authorized individual for immediate testing if there is reasonable suspicion.

The determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, job performance and/or body odors of the covered employee. Although reasonable suspicion testing does not require certainty, mere hunches alone are not sufficient to meet the standard for a test. Documentation justifying reasonable suspicion will be made by the appropriate supervisor on an approved form provided by the HR office. It is preferable to have 2 supervisors witness or observe examples of reasonable suspicion when possible. If only one supervisor has made the initial observations, then he/she is required to have concurrence from another supervisor such as the Chief of Police, Assistant Chief of Police, Captain, Lieutenant, Sergeant, Corporal or a representative from Human Resources. Examples of reasonable suspicion include, but are not limited to the following:

- Direct observation of drug or alcohol use or possession or such items not related to job duties.
- Abnormal conduct or erratic behavior.
- Adequate documentation of unsatisfactory work performance or on-the-job behavior.
- Physical signs and symptoms consistent with prohibited substance use.
- Evidence of the manufacture, distribution, dispensing, possession or use of controlled substances, drugs, alcohol or other prohibited substances.
- Occurrence of a serious or potentially serious accident that may have been caused by human error.
- Newly discovered evidence that a covered employee has tampered with a previous alcohol or drug test.
- Information provided by reliable and credible sources or which is independently corroborated.

- Fights (to mean physical contact), assaults and flagrant disregard or violations of established safety, security or other operating procedures.
- Flagrant disregard or violations of established safety, security or other operating procedures.

When there are indications that an employee is affected by the use of an intoxicant while on duty, or has reported to duty with the odor of alcoholic beverages on his/her breath, the employee shall be required to immediately submit to tests for intoxicants, including, but not limited to, a breath alcohol test. The employee has the right to have a witness; however the test will not be delayed more than twenty (20) minutes in the event a witness is requested.

The employee shall remain on duty, but shall not be allowed to operate a vehicle or perform certain job functions until the circumstances are evaluated, and the supervisor receives concurrence.

The appropriate supervisor will, within 48 hours, prepare a written report detailing the circumstances that formed the basis to warrant the testing. This report should include the appropriate dates and times of reported alcohol or drug related incidents, reliable/credible sources of information, rationale leading to the test, and the action taken. All documentation related to the determination shall be forwarded to one of the Designated Employer Representatives in Human Resources.

## Post-Incident Testing

Employees involved in critical incidents, all officer involved shootings, on-the-job accidents, or who engage in unsafe on-duty job-related activities that pose a danger to themselves or others or the overall operation of the Department may be subject to testing. The Chief of Police or designee may initiate testing when such circumstances involve:

- Death;
- Serious bodily injury requiring immediate medical treatment away from the scene;
- Disabling damage\* to one or more motor vehicles, requiring towing or other method away from the scene if employee driver was or may have been a contributing factor;
- Damage to government or private property estimated in excess of \$1,500; or
- At the request of the employee to protect the City or themselves from liability.

*\*Disabling damage--damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs. Includes where the vehicle could have been driven, but would have been further damaged if so driven. Excludes damage that can be remedied temporarily at the scene of the accident without special tools or parts; tire disablement without other damage even when no spare is available; headlamp or tail light damage, damage to turn signals, horn or windshield wipers.*

An employee subject to post-incident testing shall remain readily available for such testing up to the limits set forth below. He/she will notify supervisor of his/her location if he/she leaves the accident scene. An employee who fails to do so shall be deemed to have refused to submit to testing and disciplined as such. If there were extenuating circumstances that kept the employee from submitting to a test within the required times below, the Chief of Police or his designee in coordination with a Designated Employer Representative shall evaluate those circumstances and make the final determination as to whether or not it will be deemed a refusal. Nothing herein shall be construed to require the delay of necessary medical attention for the injured or to prohibit an employee from leaving the accident scene for the time period required to obtain emergency assistance.

If a post-incident alcohol test is not administered within four (4) hours of the occurrence, the supervisor will cease attempts to have the alcohol test administered and will record the reasons.

If a post-incident controlled substances test is not administered within twenty-four (24) hours of the occurrence, the supervisor will cease attempts to have the controlled substances test administered and will record the reasons.

An employee subject to post-incident testing shall not consume any alcohol or drugs, either legal or illegal, prior to the testing. Exceptions may be made for previously prescribed maintenance medications and/or medications administered to treat any personal injury.

Any drug or alcohol testing, during the course of covered employee's work duties, performed by another law enforcement agency may be used in place of testing required in this policy. Results from this test will be treated as if performed under this policy.

## Random Testing

All covered employees will be subject to random controlled substances testing. All random tests will be unannounced and unpredictable with the dates for administering spread throughout the year. These tests will occur: during an employee's regular working hours, just before starting work, or just after finishing work.

Covered employees are divided into 2 separate testing pools; one being all sworn officers, the second all other covered employees. Each testing pool's maximum testing requirement is no more than fifty percent (50%) of the average number of filled positions.

The selection of employees for random controlled substances testing shall be made by a scientifically valid method, administered by a 3<sup>rd</sup> party. Under the quarterly selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

Just prior to or at the beginning of each quarter, the full lists of covered employees are updated with the 3<sup>rd</sup> party administrator. After the random selection is made, the DER is notified of the selection. The supervisor or designee is notified and provided the selected names. Scheduled testing times will be made by the supervisor or designee. An employee will not be given advance notice of upcoming testing. Upon notification by the supervisor, the employee shall proceed immediately to the testing site.

Supervisors that release testing information prior to authorization may be disciplined.

## Test Refusal

You have refused to take a test if you:

- Fail to appear for any test (except a pre-employment test) within a reasonable time after being directed to do so by the employer
- Fail to remain at the testing site until the testing process is complete
- Fail to attempt to provide a specimen for any drug or alcohol test required
- Fail to provide a sufficient volume of urine or breath for any drug or alcohol test required without a valid medical explanation
- Fail to permit an observed or monitored collection when required
- For an observed collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants to mid-thigh and to turn around to permit the observer to determine if any type of prosthetic or other device is being used to interfere with the collection process
- Fail or decline to take an additional test when required
- Fail or decline to undergo a medical exam as directed by the employer or the medical review officer as part of the verification process, or "shy bladder" or "shy lung" procedures
- Fail to cooperate with any part of the testing process (ie obstructive behavior, refusal to empty

- pockets when requested, failure to wash hands after directed to do so by collector, etc)
- Possess or wear a prosthetic or other device that could be used to interfere with the collection process
  - Admit to the collector or MRO that you adulterated or substituted the specimen
  - Have an adulterated or substituted test result verified by the MRO
  - Fail to sign the certification at Step 2 of the ATF
  - Fail to remain readily available for post-accident drug and alcohol testing until a decision is made that no testing is required or until testing is complete.

Any test refusal as described above or in §40.191 and §40.261, as amended, will be considered a verified positive test result. Discipline will follow the policy for positive illegal drugs.

## Initial Positive Result Process and Split Sample Testing

All urine tests are collected and stored as sealed split samples. If the test results of a primary drug test are positive, the employee may request through the MRO (within 72 hours of notice of the initial test result) that an additional analysis be conducted. This analysis will be conducted on the split sample that was provided at the same time as the original sample, but will be analyzed at a different testing DHHS-certified laboratory. All costs for such testing are paid by the employee, after testing is complete, unless the second test invalidates the original test. Any requests to the MRO after 72 hours of notice of the initial test result will only be accepted if the delay was due to documentable facts that were beyond the control of the employee.

## Dilute Sample

If the test is reported as a positive test that was dilute, the test is treated as verified positive.

If a test is reported as a negative test that was dilute:

- The MRO may direct employer to conduct a recollection under direct observation (i.e., because creatinine concentration was equal to or greater than acceptable range). Recollection must be performed immediately or;
- The employee will be required to take another test immediately. Such recollection will not be directly observed.
- Result of the test will be treated as the result of record.
- If the result of the second test is also negative and dilute, the employee will not be required to take an additional test (unless 2nd test was not observed and MRO determines a direct observed sample is required). The result will be recorded as negative. If the employee declines to take a test as required above, it will be considered a test refusal.

## MRO Contact with Employee

If there are any questions regarding a drug test or if a test initially shows positive, the Medical Review Officer will first try to contact the employee. If the MRO is unable to make contact with the employee within 24 hours, they will contact the DER and request the employer to make contact. The DER will attempt to contact the employee, using procedures that protect, as much as possible, the confidentiality of the MRO's request that

the employee contact the MRO. In this case, the employer must attempt to contact the employee at least 3 times, spaced reasonably within 24 hours of MRO notification.

As soon as successful contact is made, the employer will notify the employee that they have 72 hours to contact the MRO. The employer will also notify the MRO of the date/time contact was made.

If DER is unable to make direct contact with the employee within 24 hours, the DER must leave a message for the employee by any practicable means (e.g., voicemail, e-mail or letter), all attempts will be documented. Employer will notify MRO that attempts were unsuccessful and decide whether to place the employee on temporary medically unqualified status until final determination is made by MRO.

If DER is unable to make direct contact with the employee within 24 hours, the DER must leave a message for the employee by any practicable means (e.g., voicemail, e-mail or letter), all attempts will be documented. Employer will notify MRO that attempts were unsuccessful and decide whether to place the employee on temporary medically unqualified status until final determination is made by MRO.

## Consequences

The City of Helena discipline procedures for violations of this policy are as follows:

- Any covered employee who **tests positive for the presence of illegal drugs or prohibited substance use** will be immediately removed from their position *and will be recommended for termination of employment to the City Manager.*
- Any covered employee **who tests positive for alcohol above .02 in any testing situation** will be immediately removed from their position and a meeting with command staff and a DER will be held to determine course of action. *Action taken may range from the consequence listed below (positive under .02) up to and including termination. Severity of action will depend on duties of position and level of alcohol. Use of annual leave or compensatory time is allowed, but use of sick leave is not allowed.*
- Any covered employee **who tests positive for alcohol at or below .02 under any testing situation** will be immediately removed from their position until the start of the next regularly scheduled duty, but no less than 8 hours after test. *A meeting with command staff will be held to determine course of action. Repeated offenses may result in further progressive disciplinary action and may include a recommendation for termination of employment to the City Manager. Use of annual leave or compensatory time is allowed, but use of sick leave is not allowed.*

Other violations of this policy include, but are not limited to:

- Direct observation of prohibited alcohol or illegal drug use, or misuse of prescription medication;
- Evidence obtained from an arrest or criminal conviction for a drug or alcohol related offense; or
- Voluntary admission after being notified to test or during reasonable suspicion investigation;
- If an employee is found to be in actual and illegal possession of a controlled substance, illegally used drug, and/or related paraphernalia, he/she may be prosecuted under the applicable state or federal law.

## Safe Harbor – Notification if Unfit for Duty

Employees must voluntarily identify him/herself to the Assistant Chief, Chief, or Human Resources staff, if they believe that they are unfit for duty due to the use of prohibited substances. (Alcohol consumption while on-call or off duty and requested to work is addressed in Prohibited Alcohol Use or Misuse section)

Admission must be **PRIOR** to any notification for testing or identified through other means such as reasonable suspicion.

The employee will be removed from duties *and meet with Supervisor, Department Head and Human Resource Director (at a minimum) to determine steps that will be taken for rehabilitation. This may include, but is not limited to counseling, treatment programs and follow-up drug/alcohol testing. Repeated issues could result in disciplinary action up to and including termination.*

Drug or alcohol related incidents that are subject to discipline and occurred prior to seeking Safe Harbor are not covered by Safe Harbor protections.

The cost of any required counseling or treatment program will be the responsibility of the employee. Part or all of costs may be covered under the employees insurance or EAP program. Employees will be allowed to use accrued leave (sick first followed by vacation and/or compensatory leave) to complete rehabilitation until such leave is exhausted; at which time the employee may be allowed to go on unpaid leave. The employee is not eligible for donated sick leave.

The Department may initiate action to terminate an employee for refusing to obtain or complete counseling and/or rehabilitation through a Substance Abuse Professional (SAP) or a state licensed facility as recommended by SAP.

## Records & Retention

All records created, developed or received pursuant to the operation of the Substance Abuse Policy will be maintained in a secure location in the Human Resources Office with controlled access and will be retained according to Federal and/or State law whichever is longer. Results of test, information, interviews, reports, statements and memoranda may not be disclosed to an outside entity without the prior written consent of such employee except for disclosure to the tested employee, MRO, SAP, Human Resources, any supervisor or management staff, pursuant to the order of a court of competent jurisdiction or as required by the Department to defend against any challenges or adverse personnel action by the City.

## Additional Provisions

**Notification of Arrest, Charge, and/or Convictions.** Any employee who is arrested for, charged with, and/or convicted of a criminal drug or alcohol related violation must notify the Chief of Police or designee and the Human Resources Director immediately following an arrest, charge, and/or conviction. A conviction, a plea of guilty, a plea of no contest, receiving a suspended imposition of a sentence, and a withheld judgment will all be considered the same as a conviction. This obligation to report applies irrespective of whether adjudication is withheld.

**New Employee Notification.** Applicants for covered positions will be informed about the drug-free workplace policy and requirement for pre-employment testing on the vacancy announcement. Upon hiring, new employees will receive a copy of this policy.

**Employee Policy Acknowledgment.** Employees will be required to sign an acknowledgment that confirms that he/she has received a copy of the alcohol and drug-free workplace policy. The statement will be maintained in the employee's personnel file.

**Cost.** Testing must be at the employer's expense. If an employee contests the verification test results, another test will be conducted. If that test is positive, the employee will be responsible for payment. If it is negative, the employer will be responsible for payment. Employees will be compensated at the employee's regular rate, including benefits, for time attributable to the testing program.

**Voluntary Testing.** Employees may volunteer for testing as part of a Department investigation. The employee must cooperate with all parts of the test and complete all requirements of collection site personnel. Positive results from voluntary testing will result in the same consequences as previously listed.

**Association/Union Representation.** Employees may have an association/union representative present during the testing process. The testing shall be delayed no more than 20 minutes to await the arrival of an association/union representative. If an association/union representative is not available, testing shall proceed.

## Definitions

**Adulterant** – Adulterating substance or agent aimed to corrupt, debase, or make impure.

**Adulterated specimen** – A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

**Alcohol** – means an intoxicating agent in alcoholic beverages, food, or medication; ethyl alcohol, also called ethanol; or the hydrated oxide of ethyl.

**Alcohol concentration** – The alcohol in a volume of is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath-testing device.

**Alcohol Use** – The ingesting of any beverage, liquid mixture, or preparation, including any medication, containing alcohol.

**Cancelled test** – A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test. Having a cancelled test does not relieve the employee of the responsibility to provide a test that produces a measured outcome.

**Chain of Custody** – The procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal drug Testing Custody and Control Form (CCF).

**Collection site** – A place designated by the employer where employees present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs or providing a breath sample to be analyzed for the presence of alcohol.

**Confirmation test** – In drug testing, a second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or drug metabolite. In alcohol testing, a second test that provides quantitative data of alcohol concentration.

**Controlled Substance** – means any drug, substance, or precursor included in Schedules I through V as defined by Section 812 of Title 21 of the United States Code (21 USC 812) or any drug, substance, or precursor included within the definition of "Dangerous Drug" in Title 50 Chapter 32 Part 2, Montana Code Annotated (for example, but not limited to: cocaine, marijuana, methamphetamine, and anabolic steroids.) For the purpose of this policy, the term ‘controlled substance’ does not include the use of prescribed drugs, which have been legally obtained and are being used in the manner and for the purpose for which they were prescribed. The term does not include distilled spirits, wine, malt beverages, or tobacco.

**Critical Incident** – means any incident in which someone is killed or is seriously injured, such as a police shooting incident.

**Dilute specimen** – means a urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

**Direct observation** – means an employee being directly observed while providing a urine sample. The procedure will include direct inspection of the employee with shirt lifted and trousers lowered and will include direct observation of urine leaving the body and entering the collection container.

**Employee** – any employee of the Police Department where drug/alcohol testing is allowable under MCA Title 39, Chapter 2 definition of employee; .

**Employee Assistance Program (EAP)** – A program provided by the City of Helena to assist employees and their families in dealing with drug or alcohol dependency and other personal problems.

**Employer** – means the City of Helena.

**Illegal Drugs** – Any drug which is not legally obtainable, or which is legal but has been illegally obtained, or is not being used for its prescribed purpose or in the prescribed manner (this includes use of prescription drugs prescribed to someone else).

**Insufficient urine specimen** – means less than the 45mL of urine required to constitute a sufficient testing volume. An insufficient specimen will prompt “shy bladder” procedures.

**Invalid Drug Test** – The result reported by an HHS-certified laboratory in accordance with the criteria established by HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test, as verified by the MRO.

**Legal Drugs** – Legally obtained drugs (prescription and non-prescription remedies) used according to directions to alleviate a specific condition.

**Medical Review Officer (MRO)** – A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer’s drug testing program and evaluating medical explanations for certain drug test results.

**Metabolite**– The specific substance produced when the human body metabolizes a given drug as it passes through the body and is excreted in urine.

**Precursors** – means a biochemical substance which can be processed or synthesized into one of the categories of drugs to be tested under this policy.

**Non-negative Test** – A urine specimen that is reported as adulterated, substitute, positive (for drug(s) or drug metabolites) and/or invalid. Non-negative results are considered a positive test or refusal to test if the MRO cannot determine legitimate medical explanation.

**Positive Alcohol Test** – The confirmed presence of alcohol in the body system at a concentration of 0.02 or greater as measured by a Portable Breath Tester (PBT) and/or intoxilyzer device. Refusal to take a breath test without a valid medical explanation also constitutes a positive alcohol test.

**Positive Drug Test** – The result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations as verified by the MRO. A refusal to take a drug test without a valid medical explanation also constitutes a positive drug test.

**Referral Physician** – means a licensed physician, acceptable to the MRO, who has expertise in the medial issues raised when an employee provides and insufficient urine specimen. The MRO may act in this capacity if he/she has appropriate expertise.

**Re-entry Agreement** – means an agreement between the employer and an employee that allows an employee continued employment under stringent guidelines prohibiting use of drugs and alcohol. An employee’s failure to meet the terms of the agreement may result in termination.

**Sample** – means a breath or urine specimen that is used to determine the presence of a controlled substance, illegally used drug, or breath alcohol content.

**Shy bladder procedure** – means the procedure that is followed when an employee does not provide a sufficient urine volume (45mL) for testing.

**Split specimen** – means, in drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

**Substance Abuse Professional (SAP)** – A licensed physician or a licensed certified psychologist, social worker, employee assistance professional, or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of drug- and alcohol-related disorders. A person who evaluates employees who have violated a drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing and aftercare.

**Supervisor** – means an employee of the Police Department holding the rank of Corporal or above up to and including the Chief of Police and Human Resources Director.

**Unannounced test** – means a test for alcohol, control substances, and/or illegally used drugs previously scheduled and announced only to the employee just prior to the scheduled time, allowing only appropriate time for the employee to immediately proceed directly to the scheduled testing site.

## REFERENCES:

Montana Workforce Drug and Alcohol Testing Act  
39-2-205 through 39-2-211 Montana Code Annotated (MCA)

Procedures for Transportation Workplace Drug and Alcohol Testing Programs  
Title 49 Part 40 (and Part 382) Code of Federal Regulations (CFR)

Federal Controlled Substances Act  
Title 21 United States Code (USC)

Offenses Involving Dangerous Drugs and Procedural Provisions  
Title 45 Chapter 9 Montana Code Annotated (MCA)

Model Drug Paraphernalia Act  
Title 45 Chapter 10 Montana Code Annotated (MCA)

Controlled Substances Codes  
Title 50 Chapter 32 Montana Code Annotated (MCA)

Helena Police Department Standard Operating Procedures

# ACKNOWLEDGMENT

I, \_\_\_\_\_, acknowledge receipt of a copy of the  
PRINT NAME  
Helena Police Drug & Alcohol Testing Policy and Procedures, effective June 2012 and last revised in January 2015.

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_