

ARUNDEL CENTER
P.O. BOX 2700 ANNAPOLIS, MARYLAND 21404
Phone: 410-222-1821 Fax: 410-222-1155
www.aacounty.org

STEVEN R. SCHUH
County Executive

EXECUTIVE ORDER NUMBER 16

ALCOHOL AND DRUG ABUSE CONTROL POLICY AND ORDER

WHEREAS, authority is vested in the County Executive by Section 405 of the Charter to supervise, direct and control, subject to law and the Charter, the executive branch of County Government.

NOW, THEREFORE, I, Steven R. Schuh, County Executive, by virtue of the authority vested in me by the Charter and laws of Anne Arundel County, Maryland, hereby order and direct on this 19 day of April, 2016, as follows:

I. Alcohol Abuse Control

A. Purpose

The County Executive establishes the following policy and Order to create a system for addressing the abuse of alcohol by County employees and public safety volunteers by means of Critical Event and Reasonable Suspicion-based testing of all employees and public safety volunteers and Pre-employment/Pre-promotional/Pre-certification/Pre-transfer, and Random testing for employees and public safety volunteers who are required to possess a Commercial Driver's License (CDL) or who are identified by the County as performing Public Safety or Safety Sensitive functions; to establish criteria for identification, testing, treatment, and discipline for employees and public safety volunteers who violate certain prohibitions; and to comply with applicable federal and State regulations. The administration and implementation of this Policy and Order is through Section J-1 of the Anne Arundel County Employee Relations Manual.

B. Policy

It is the policy of the Anne Arundel County Government to pursue all reasonable and lawful means to regulate and eliminate the use of alcohol that would affect job performance or present a safety threat to the public or to its employees or volunteers. This Order applies to all employees of the Executive Branch of County Government with specific additional requirements addressed to employees who are required to possess a CDL, those whose positions or classifications are defined as Public Safety or Safety Sensitive by the Personnel Officer, and public safety volunteers acting on behalf of the County.

This policy and Order authorizes testing for the presence of alcohol in accordance with the Omnibus Transportation Employee Testing Act of 1991 and Department of Transportation (DOT) Rules. Random breath alcohol tests will be administered to all employees who are required to hold a CDL. Breath alcohol tests will be administered on a random basis to all employees holding positions categorized as Public Safety or Safety Sensitive. Breath alcohol tests will also be administered to those employees, including holders of CDLs, who are ordered to be tested on the basis of Reasonable Suspicion, involvement in a Critical Event, or while participating in a Last Chance Rehabilitation Agreement with the County. Tests indicating a breath alcohol level in excess of the limits set forth below shall be considered positive and the employee or volunteer tested shall be considered to be in violation of this Order. In the event of a positive reading of a breath test, a second test will be administered immediately as verification of the result.

Violation of this Order shall be considered a separate offense in and of itself and does not supersede or replace the imposition of discipline with respect to any related or unrelated misconduct, off duty or on, that otherwise warrants discipline.

Notwithstanding any other provisions of this Order, a violation of this Order shall be considered a material breach of the terms of the employment agreement for any person employed under §802 (a)14 or (a)17 of the Anne Arundel County Charter and will result in the immediate termination of that agreement and employment.

Public safety volunteers found to be in violation of this Order shall be sanctioned in accordance with Section I.H. of this Order.

C. Alcohol Definitions

With respect to this Order the following definitions will be applied:

1. **Alcohol:** the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

2. **Alcohol concentration/content:** the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.
3. **Alcohol use:** the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

D. Prohibited Conduct

1. All employees of Anne Arundel County Government, Executive Branch and all public safety volunteers performing service on behalf of Anne Arundel County are prohibited from performing their duties under the following conditions:
 - a. While using alcohol in any form;
 - b. Within four (4) hours of having used alcohol;
 - c. Being on duty while having an alcohol concentration of .04 or greater or performing safety sensitive duties while having an alcohol concentration of .02 or greater in his or her system as indicated by an approved alcohol test;
 - d. In possession of an open container of alcohol while on duty, on County property, at a worksite, in County vehicles or while conducting County business; or
 - e. Employees or public safety volunteers shall not consume alcohol in any form within eight (8) hours of having been involved in a Critical Event (as defined herein) without first having been tested.
2. Failing to report to their supervisor when they have taken, or intend to take, any medication or combination of medication which they may reasonably expect to affect their job performance.

E. Alcohol Testing

Alcohol tests registering positive require an immediate retest as verification. The following situations will give rise to an employee or public safety volunteer being ordered to submit to a test for the presence of alcohol in their systems:

1. **Pre-employment/Pre-promotional/Pre-transfer:** When the position to be filled by a candidate is for a position requiring that employee hold a CDL, candidates will be referred for an alcohol test.

2. Random Testing: Random alcohol testing will be administered when the position an employee occupies requires possession of a CDL. Employees holding positions categorized as Public Safety, Safety Sensitive, and public safety volunteers will be required to submit to random alcohol and CDS testing as ordered.
3. Suspicion-based: When the circumstances surrounding an employee or public safety volunteer's work performance or behavior give rise to a reasonable suspicion of alcohol use, the employee or public safety volunteer will be required to submit to an alcohol test along with a CDS test.
4. Critical Event: When an employee or public safety volunteer is involved in an accident in which bodily harm or significant property damage has occurred. Significant property damage involves damage that renders the equipment temporarily or permanently inoperable.

Note: A Critical Event test for Controlled Dangerous Substances (CDS) as described in Section II.E.4. of this Order shall be ordered in addition to the alcohol test.

5. Return to Duty Testing: Tests for alcohol and CDS that are required as a condition of returning to work in the capacity of a Safety Sensitive or Non-Safety Sensitive employee after the recommendation of an approved EAP treatment provider.
6. Last Chance Rehabilitation Agreement: Under a Last Chance Rehabilitation Agreement, an employee will be required to undergo follow-up and also random drug and alcohol testing. During the year following the execution of an Agreement, the employee will be required to undergo unannounced follow-up testing every month; and, thereafter, as directed by the County.

F. Voluntary Alcohol Rehabilitation

1. Anne Arundel County encourages employees abusing alcohol or who recognize they might be addicted to alcohol to voluntarily seek treatment and rehabilitation through the Employees Assistance Program or other provider.
2. Employees who voluntarily disclose an alcohol abuse problem and who conscientiously seek treatment to resolve that problem, without other related or unrelated misconduct, will receive support and assistance from Anne Arundel County Government.

3. Disclosure of an alcohol problem will not excuse employees from disciplinary consequences for violations of the Anne Arundel County Charter or Code, work rule violations or work performance deficiencies.
4. Employees who fail to resolve substance abuse problems through voluntary acknowledgement and/or successful treatment shall be required to enter into a Last Chance Rehabilitation Agreement with the County as a condition of employment.
5. Employees who fail to fulfill the Last Chance Rehabilitation Agreement with the County will be terminated.
6. Public safety volunteers do not have the option of voluntary rehabilitation under this Order.

G. Refusal to Comply With a Test Order

An employee or public safety volunteer may not refuse to submit to a required test. An employee who refuses to fully comply with an order issued by a Certified CDS Manager to submit to an alcohol test shall be deemed to have refused to obey an order and shall be terminated. In the case of a public safety volunteer, such refusal shall result in the individual being barred from all future participation in service on behalf of Anne Arundel County.

An employee or public safety volunteer who deliberately attempts to alter testing procedures or who, in the County's opinion, unreasonably delays submission to a test, shall be considered to have refused to comply with the test order and will be terminated, or in the case of a public safety volunteer, will be immediately and permanently dismissed from any activities on behalf of Anne Arundel County.

H. Sanctions

Supervisors or those responsible for taking disciplinary action shall discipline an employee or public safety volunteer who is found to be in violation of this Order according to the safety category of the position he or she holds. Provided an employee is not terminated for related or unrelated acts of misconduct, the following sanctions shall be applied:

1. The following applies to employees in Public Safety and Safety-Sensitive positions, including those who are required to hold a CDL, who are found to be in violation of this Order:
 - a. First Offense: A period of suspension for a minimum of 5 days, but no more than 30 days, as deemed appropriate by the Appointing

Authority, provided the employee signs a mandatory Last Chance Rehabilitation Agreement with Anne Arundel County to:

- Locate and follow a treatment program approved through the Employees Assistance Program or other provider, participating for at least one year;
- Provide medical information and reports related to such treatment as required by the County;
- Participate in random drug and alcohol testing for the duration of his/her employment with Anne Arundel County; and
- Undergo and successfully pass any requirement(s) mandated by DOT Rules and Regulations for return to duty as required for the employee's position.

In the event an employee refuses to sign a mandatory agreement, the employee will be terminated.

In the case of a public safety volunteer, that individual will be removed from the Fire Department Volunteer Certification Database, or any other register of public safety volunteers including the Police Reserve Officer Corps for a period of at least thirty (30) days and will be counseled to seek treatment and rehabilitation on his or her own.

Temporary, seasonal and contractual employees and non public safety volunteers may be subject to immediate termination of employment or volunteer status if a positive alcohol test is obtained or there is evidence of alcohol abuse as defined in this policy.

- b. Second Offense: immediate termination of an employee; permanent removal from the Fire Department Volunteer Certification Data Base, permanent dismissal from the Police Reserve Officer Corps and any other public safety volunteer service to Anne Arundel County Government.
2. The following applies to employees in Non-Sensitive positions who are found to be in violation of this Order:
 - a. First Offense: Progressive disciplinary action up to a 5 day suspension, as deemed appropriate by the Appointing Authority and referral to the Employees Assistance Program or other provider for counseling, treatment and rehabilitation.
 - b. Second Offense: Suspension for a minimum of 5 days but no more than 30 days and mandatory participation in a Last Chance

Rehabilitation Agreement with the County for treatment and rehabilitation. In the event an employee refuses to sign a mandatory agreement, the employee will be terminated.

- c. Third Offense: Termination from employment.

II. **Drug Abuse Control**

A. **Purpose**

The County Executive establishes and adopts the following policy and Order to create a system to ensure a work place free of drugs and alcohol for employees, public safety volunteers, and service recipients of the Anne Arundel County Government; to address the abuse of Controlled Dangerous Substances (CDS) by means of Critical Event and Reasonable Suspicion based testing of all employees and public safety volunteers, and Pre-employment/Pre-promotional/Pre-certification/Pre-transfer, and Random testing for employees and volunteers who are required to possess a Commercial Drivers License (CDL) or who are identified by the County as performing Public Safety or Safety Sensitive functions; and to encourage employees using CDS to seek treatment to overcome use and addiction. The administration and implementation of this Policy and Order is in accordance with Section J-1 of the Anne Arundel County Employee Relations Manual.

B. **Policy**

It is the policy of Anne Arundel County to pursue all reasonable and lawful means to eliminate the use of CDS by employees and public safety volunteers of the Executive Branch. This Order applies to all employees of the Executive Branch and public safety volunteers of Anne Arundel County Government. This policy and Order authorizes testing for the presence of CDS in accordance with the Omnibus Transportation Employee Testing Act of 1991 and Department of Transportation (DOT) Rules. It is a violation of this Order to sell, distribute, use, possess, or be under the influence of CDS including use of prescription medication prescribed to someone else and use of one's own medication other than as medically prescribed, while on duty, on County property, at a worksite, in County vehicles, or while conducting County business. Further, this Order specifically authorizes Pre-employment/Pre-promotional/Pre-transfer/Pre-certification testing and Random testing for employees and volunteers in Public Safety or Safety Sensitive positions including all who possess or are required to possess a CDL. This Order also authorizes testing of all employees and public safety volunteers who have been involved in a Critical Event and/or when there is a Reasonable Suspicion that a test will produce a positive result.

Violation of this Order shall be considered a separate offense in and of itself and does not supersede or replace the imposition of discipline with respect to any related or unrelated misconduct, off duty or on, that otherwise warrants discipline.

Notwithstanding any other provisions of this Order, a violation of this Order shall be considered a material breach of the terms of the employment agreement for temporary, seasonal, contractual employees or any person employed under §802 (a)14 or (a)17 of the Anne Arundel County Charter and will result in the immediate termination of that agreement and employment.

Public safety volunteers found to be in violation of this Order shall be sanctioned in accordance with Section II.I. of this Order.

C. Controlled Dangerous Substances (CDS)

1. CDS means a drug, a substance, or intermediate precursor as set forth in Schedules I-V, Criminal Law Article §§5-402 through 5-406 of the Annotated Code of Maryland, and including CDS substances controlled under federal law as provided in Maryland law.

D. Prohibited Conduct

The illegal use, possession, sale or distribution of a CDS while on duty, on County property, at a worksite, in County vehicles, or while conducting County business, including participation as a public safety volunteer is prohibited.

The illegal use, possession, sale or distribution of a prescribed medication that was prescribed for the use of someone other than the employee or public safety volunteer and/or the use of one's own prescription medication other than as medically prescribed, is prohibited while on duty, on County property, at a worksite, in County vehicles, or while conducting County business including participation in any volunteer activity on behalf of the County.

E. Testing

CDS testing administered to determine the presence of a CDS shall only be performed in the following circumstances:

1. Pre-employment/Pre-promotional/Pre-transfer/Pre-certification: All candidates for initial employment, or candidates who transfer, are promoted or demoted from non-safety sensitive positions to job classes or positions with Public Safety responsibilities or identified as Safety-Sensitive positions shall submit to a drug test. Volunteer Fire Fighters and Police Reserve Officers are required to undergo testing as a condition of being certified as operational responders in the Fire Department Volunteer

Certification Database or being registered as an Anne Arundel County Police Reserve Officer.

2. Random Testing: Employees who hold or are required to hold a CDL and employees and volunteers in Public Safety or Safety Sensitive positions shall be required to submit to random CDS and alcohol testing as ordered.
3. Suspicion-based: When, after a review of the specific facts and circumstances in a particular employee or volunteer's case, there exists a reasonable suspicion that an employee or public safety volunteer has engaged in or is engaging in prohibited conduct under this Order, the subject employee or volunteer shall submit to a CDS test along with an alcohol test.
4. Critical Event: When an employee or public safety volunteer is involved in an accident in which bodily harm or significant property damage has occurred. Significant property damage involves damage that renders the equipment temporarily or permanently inoperable.

Note: A Critical Event alcohol test as described in Section I.E.4 of this Order shall be ordered in addition to the CDS test.

5. Return to Duty Testing: Tests for alcohol and CDS that are required as a condition of returning to work in the capacity of a Safety Sensitive or Non-Safety Sensitive employee after the recommendation of an approved EAP treatment provider.
6. Last Chance Rehabilitation Agreement: Under a Last Chance Rehabilitation Agreement, an employee will be required to undergo follow-up and also random drug and alcohol testing. During the year following the execution of an Agreement, the employee will be required to undergo unannounced follow-up testing every month; and, thereafter, as directed by the County.

F. Prescribed Medications

Employees and public safety volunteers are required to report immediately the use of prescribed or over-the-counter medications, or combination of medications, that could impair the employee or volunteer's ability to perform his/her duties safely.

G. Voluntary Drug Rehabilitation

1. Anne Arundel County encourages employees using CDS or who recognize they are drug-dependent to voluntarily seek treatment through the Employees' Assistance Program.

2. Employees who voluntarily disclose a substance abuse problem, without related or unrelated misconduct, who conscientiously seek to resolve that problem, and who agree to enter into a Last Chance Rehabilitation Agreement with the County, will receive support and assistance from the Anne Arundel County Government.
3. Voluntary disclosure of a substance abuse problem will not excuse employees from disciplinary consequences for violations of the Anne Arundel County Charter or Code, work rule violations, or work performance deficiencies.
4. Employees who fail to fulfill the Last Chance Rehabilitation Agreement or who refuse such an agreement with the County will be terminated.
5. This voluntary rehabilitation option is not available to public safety volunteers.

H. Refusal to Obey a Test Order

Employees or public safety volunteers may not refuse to submit to a required test. An employee who refuses to comply with an order issued by a Certified CDS Manager to submit to a CDS test shall be deemed to have refused to obey an order and shall be terminated. A public safety volunteer who refuses such an order will be dismissed from any activity on behalf of Anne Arundel County.

An employee who adulterates, tampers with, attempts to substitute a different urine sample, or otherwise attempts to cause disruption of or delay the proper collection of a sample shall be considered to have refused to submit to the required test and will be terminated. A public safety volunteer who adulterates, tampers with, or attempts to substitute a different urine sample, or otherwise attempts to cause disruption of or delay the proper collection of a sample shall be immediately and permanently dismissed from volunteer service to the County.

I. Sanctions

1. Candidates for employment who test positive for CDS, or are found to have engaged in prohibited conduct as described in Section II.D. shall be automatically disqualified from appointment to the position for which testing and review was undertaken. Candidates for certification as volunteer fire fighters and candidates for registration as Anne Arundel County Police Reserve Officers who test positive for CDS, or are found to

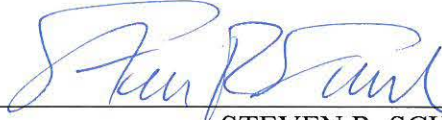
have engaged in prohibited conduct as described above shall not be certified/registered.

2. Any employee or public safety volunteer who is found to be illegally in possession, use, or to be engaging in the sale or distribution of a CDS while on duty, on County property, at a worksite, in County vehicles, or while conducting County business will be terminated or, in the case of a volunteer, permanently prohibited from any participation in volunteer activities on behalf of the County.
3. Employees in Public Safety or Safety Sensitive Positions who test positive for CDS or who are found to have used a CDS in violation of Section II.D. shall be terminated from employment. Volunteers performing public safety functions on behalf of the County will be permanently prohibited from engaging in such functions.
4. The following applies to employees in Non-Sensitive Positions who test positive for CDS or are found to have used a CDS in violation of Section II.D. of this Order:
 - a. First Offense: Provided an employee is not terminated for other related or unrelated acts of misconduct, a 30-day suspension and mandatory participation in a Last Chance Rehabilitation Agreement with the County to:
 - Locate and follow a treatment program approved through the Employees' Assistance Program, participating for at least one year;
 - Provide medical information and reports related to such treatment as required by the County;
 - Undergo a drug and alcohol test and test negative before returning to duty; and
 - Participate in random drug and alcohol testing for the duration of his/her employment with Anne Arundel County.

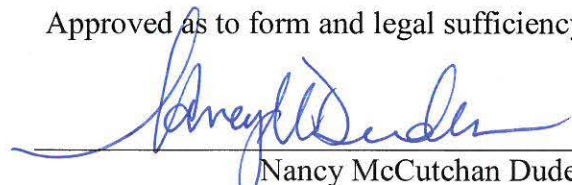
In the event an employee refuses to sign a mandatory agreement, the employee will be terminated.
 - b. Second Offense: Termination from employment.

The County Executive empowers the Chief Administrative Officer to develop and distribute procedures consistent with and necessary to implement this Order.

This Executive Order shall be archived at the Office of Law and remain in existence until altered or terminated by a subsequent Executive Order.


STEVEN R. SCHUH
County Executive

Approved as to form and legal sufficiency:


Nancy McCutchan Duden
County Attorney