

1 S 746. DRUG AND ALCOHOL TESTING OF POLICE OFFICERS. 1. A POLICE
2 OFFICER SHALL SUBMIT TO A CHEMICAL TEST IN ACCORDANCE WITH PROVISIONS OF
3 THIS SECTION OF ONE OR MORE OF THE FOLLOWING: BREATH, BLOOD, URINE OR
4 SALIVA, FOR THE PURPOSE OF DETERMINING THE ALCOHOLIC AND/OR DRUG CONTENT
5 OF HIS OR HER BLOOD WHEN ANY ONE OR MORE OF THE FOLLOWING CIRCUMSTANCES
6 APPLIES:

7 (A) SUCH POLICE OFFICER, WHILE IN THE COURSE OF HIS OR HER EMPLOYMENT
8 AS A POLICE OFFICER, DISCHARGES A FIREARM AND SUCH DISCHARGE RESULTS IN
9 SERIOUS PHYSICAL INJURY OR DEATH OF ANOTHER, AND, IN THE COURSE OF THE
10 INITIAL INVESTIGATION OF SUCH DISCHARGE, ANY CREDIBLE EVIDENCE SUGGESTS
11 THAT SUCH DISCHARGE MAY HAVE BEEN CARRIED OUT UNLAWFULLY OR IMPROPERLY;

12 (B) SUCH POLICE OFFICER, WHILE IN THE COURSE OF HIS OR HER EMPLOYMENT
13 AS A POLICE OFFICER, DISCHARGES A FIREARM AND SUCH OFFICER HAS HAD A
14 PRIOR DETERMINATION OF MISCONDUCT INVOLVING AN EXCESSIVE USE OF FORCE OR
15 AN ABUSE OF POLICE POWERS; OR

16 (C) REASONABLE SUSPICION EXISTS TO BELIEVE THAT SUCH POLICE OFFICER,
17 WHILE IN THE COURSE OF HIS OR HER EMPLOYMENT AS A POLICE OFFICER, HAS
18 UNLAWFULLY INGESTED DRUGS, OR HAS CONSUMED ALCOHOL WHILE IN THE COURSE
19 OF HIS OR HER EMPLOYMENT AS A POLICE OFFICER, OR HAS CONSUMED ALCOHOL TO
20 SUCH A DEGREE THAT HIS OR HER ABILITY TO SAFELY PERFORM THE DUTIES
21 ATTENDANT TO SUCH EMPLOYMENT HAVE BEEN IMPAIRED.

22 THE PROVISIONS OF PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION SHALL NOT
23 APPLY TO ANY POLICE OFFICER WHO DISCHARGES A FIREARM DURING THE COURSE
24 OF FIREARMS PROFICIENCY TRAINING OR FIREARMS PROFICIENCY QUALIFICATION.

25 2. CHEMICAL TESTING AUTHORIZED BY THIS SECTION SHALL BE ADMINISTERED
26 AS SOON AS POSSIBLE BUT IN NO EVENT MORE THAN THREE HOURS AFTER ANY OF
27 THE CIRCUMSTANCES DESCRIBED IN SUBDIVISION ONE OF THIS SECTION HAVE
28 OCCURRED. FAILURE BY SUCH POLICE OFFICER TO COMPLY WITH SUCH CHEMICAL
29 TESTING REQUIREMENTS IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION
30 SHALL SUBJECT SUCH OFFICER TO DISCIPLINARY PROCEEDINGS.

31 S 747. TESTING PROCEDURES. 1. THE EMPLOYER SHALL PROVIDE ALL EMPLOYEES
32 WITH A WRITTEN POLICY IDENTIFYING THOSE INSTANCES UNDER WHICH A DRUG AND
33 ALCOHOL TEST SHALL BE ADMINISTERED AND THE PROCEDURES TO BE FOLLOWED.

34 2. ALL SAMPLE ANALYSIS SHALL BE CONDUCTED BY A LABORATORY WHICH
35 PERFORMS FORENSIC DRUG TESTING.

36 3. ALL EMPLOYERS AND LABORATORIES ENGAGED IN THE COLLECTION, HANDL-
37 ING, TESTING OR STORAGE OF SAMPLES FOR THE PURPOSES OF THIS ARTICLE
38 SHALL ADHERE TO THE PROCEDURES FOR THE CUSTODY, INTEGRITY AND SECURITY
39 OF SUCH SAMPLES THAT COMPLY WITH REGULATIONS PROMULGATED BY THE DIVISION
40 OF CRIMINAL JUSTICE SERVICES.

41 4. AT THE REQUEST OF THE EMPLOYEE, THE EMPLOYER SHALL PERMIT A REPRE-
42 SENTATIVE OF THE EMPLOYEE'S COLLECTIVE BARGAINING UNIT TO BE PRESENT AT
43 THE TIME OF ANY SAMPLE COLLECTION. IN THE EVENT THAT SUCH A REPRESENT-
44 TATIVE IS NOT AVAILABLE WITHIN A REASONABLE PERIOD OF TIME, A CO-EMPLOY-
45 EE WITHIN THE SAME COLLECTIVE BARGAINING UNIT MAY BE DESIGNATED BY THE
46 EMPLOYEE TO ACT AS A REPRESENTATIVE FOR THIS PURPOSE.

47 5. THE EMPLOYER SHALL SIMULTANEOUSLY COLLECT TWO SAMPLES IN SEPARATE
48 CONTAINERS AND PROMPTLY SUBMIT BOTH TO A LABORATORY. ONE SAMPLE SHALL BE
49 PRESERVED IN A SECURE FACILITY IN SUCH A WAY THAT IT MAY BE SUBSEQUENTLY
50 TESTED FOR THE PRESENCE OF A CONTROLLED SUBSTANCE IN THE EVENT TESTING
51 OF THE OTHER SAMPLE INDICATES A POSITIVE RESULT FOR THE PRESENCE OF SUCH
52 A SUBSTANCE.

53 6. ANY SAMPLE THAT INITIALLY TESTS POSITIVE FOR THE PRESENCE OF A
54 CONTROLLED SUBSTANCE OR ALCOHOL SHALL, WHERE APPLICABLE, ALSO BE
55 SUBJECTED TO A CONFIRMATORY TEST BY GAS CHROMATOGRAPHY WITH MASS SPEC-
56 TROMETRY OR AN EQUIVALENT SCIENTIFICALLY ACCEPTED METHOD THAT PROVIDES

1 QUANTITATIVE DATA REGARDING THE DETECTED CONTROLLED SUBSTANCE,
2 CONTROLLED SUBSTANCE METABOLITES OR ALCOHOL.

3 7. A LABORATORY SHALL REPORT TO AN EMPLOYER THAT A SAMPLE IS POSITIVE
4 ONLY IF BOTH THE INITIAL TEST AND THE CONFIRMATION TEST ARE POSITIVE FOR
5 THE PRESENCE OF A CONTROLLED SUBSTANCE.

6 8. WITHIN THIRTY DAYS OF RECEIVING A REPORT INDICATING A POSITIVE TEST
7 RESULT, THE EMPLOYER SHALL PROVIDE THE EMPLOYEE TESTED WITH AN OPPORTU-
8 NITY TO HAVE THE OTHER PRESERVED SAMPLE TESTED FOR THE PRESENCE OF A
9 CONTROLLED SUBSTANCE OR ALCOHOL AT A LABORATORY DESIGNATED BY THE
10 EMPLOYEE. THE TEST MAY BE AT THE EXPENSE OF THE EMPLOYEE. THE SAMPLE AND
11 TEST IN SUCH EVENT SHALL REMAIN SUBJECT TO THE TESTING, PRESERVATION AND
12 REPORTING REQUIREMENTS OF THIS SECTION AND THE RESULT OF ANY SUCH TEST
13 SHALL BE PROVIDED TO THE EMPLOYEE AND, AT THE EMPLOYEE'S WRITTEN
14 REQUEST, HIS OR HER COLLECTIVE BARGAINING REPRESENTATIVE.

15 9. ALL TEST RESULTS FROM THE LABORATORY SHALL BE IN WRITING AND SHALL
16 CONTAIN, AT A MINIMUM, THE FOLLOWING INFORMATION:

17 (A) THE METHOD OF ANALYSIS FOR BOTH THE INITIAL AND ANY CONFIRMATORY
18 TEST;

19 (B) THE RESULTS OF EACH TEST;

20 (C) THE SENSITIVITY OF THE METHODOLOGY EMPLOYED FOR CONFIRMATION, THE
21 DETECTION LEVEL, MEANING THE CUT-OFF OR MEASURE USED TO DISTINGUISH
22 POSITIVE AND NEGATIVE SAMPLES, ON BOTH THE INITIAL SCREENING AND CONFIR-
23 MATION PROCEDURES IF THE SAMPLE IS FOUND TO BE POSITIVE;

24 (D) THE ACCURACY AND PRECISION OF THE QUANTITATIVE DATA REPORTED FOR
25 THE CONFIRMATION TEST; HOWEVER, IN THE CASE OF A NEGATIVE TEST, THE
26 REPORT SHALL SPECIFY ONLY THAT THE TEST WAS NEGATIVE FOR CONTROLLED
27 SUBSTANCES; AND

28 (E) THE NAME AND ADDRESS OF THE LABORATORY PERFORMING THE ANALYSIS,
29 THE DATE THAT THE TEST WAS ADMINISTERED AND ANALYSIS WAS PERFORMED.

30 10. AFTER RECEIPT BY THE EMPLOYER OF A REPORT FROM A LABORATORY
31 CONTAINING THE RESULT OF A TEST, THE EMPLOYER SHALL PROVIDE WRITTEN
32 NOTIFICATION OF SUCH RESULT, WHETHER POSITIVE OR NEGATIVE, TO THE
33 EMPLOYEE. THE NOTIFICATION SHALL BE PROVIDED WITHIN THE EMPLOYEE'S FIRST
34 FIVE WORKING DAYS IMMEDIATELY FOLLOWING THE RECEIPT OF SUCH REPORT BY
35 THE EMPLOYER DURING WHICH THE EMPLOYEE IS IN PERSONAL ATTENDANCE EACH
36 DAY AT A FACILITY OPERATED BY THE EMPLOYER.

37 11. WITHIN THIRTY DAYS AFTER THE RECEIPT OF A REPORT CONTAINING A
38 NEGATIVE TEST RESULT, THE EMPLOYER SHALL DESTROY ALL RECORDS, REPORTS
39 AND OTHER DOCUMENTS IN ITS POSSESSION RELATED TO THE TEST AND SHALL NOT
40 THEREAFTER MAKE REFERENCE TO THE TEST IN ANY EMPLOYMENT-RELATED
41 PROCEEDINGS.

42 12. THE LABORATORY SHALL PRESERVE ALL SAMPLES IN A SECURE FACILITY FOR
43 SIXTY DAYS AFTER THE ISSUANCE OF A TEST REPORT AND, UPON WRITTEN REQUEST
44 FOR FURTHER PRESERVATION BY THE EMPLOYER OR EMPLOYEE RECEIVED WITHIN
45 SUCH PERIOD, FOR SUCH AN ADDITIONAL PERIOD OF TIME AS MAY BE SPECIFIED
46 IN THE REQUEST.

47 13. IN THE COURSE OF ANY DISCIPLINARY OR JUDICIAL PROCEEDINGS INVOLV-
48 ING A POSITIVE TEST RESULT, AN EMPLOYEE SHALL HAVE THE OPPORTUNITY TO
49 PRESENT EVIDENCE ON THE SIGNIFICANCE AND ACCURACY OF THE TEST RESULTS.
50 AN EMPLOYEE MAY ALSO PRESENT EVIDENCE THAT THE PROCEDURES FOLLOWED WITH
51 RESPECT TO THE COLLECTION, HANDLING, TESTING OR STORAGE OF THE SAMPLE
52 DESTROYED THE VALIDITY OF THE SAMPLE OR THE TEST RESULT. AN EMPLOYEE
53 SHALL ALSO BE GIVEN THE OPPORTUNITY, AT HIS OR HER REQUEST, TO PRESENT
54 THE RESULT OF ANY TEST FOR THE PRESENCE OF A CONTROLLED SUBSTANCE OR
55 ALCOHOL WHICH MAY HAVE BEEN PERFORMED ON THE OTHER SAMPLE.

1 14. ANY EMPLOYER OR LABORATORY THAT IS FOUND, THROUGH LITIGATION,
2 ARBITRATION OR ADMINISTRATIVE PROCEEDING, TO HAVE GENERATED OR RELIED
3 UPON A POSITIVE TEST RESULT OF THE SUBJECT EMPLOYEE THAT IS EITHER FALSE
4 OR NOT SUPPORTED BY LABORATORY DOCUMENTATION SHALL REPORT THAT FINDING
5 IN WRITING TO THE COMMISSIONER OF HEALTH AND THE COMMISSIONER OF CRIMI-
6 NAL JUSTICE SERVICES WITHIN THIRTY DAYS OF THE FINAL DISPOSITION OF SUCH
7 A PROCEEDING.

8 S 748. CONFIDENTIALITY. 1. EMPLOYERS, LABORATORIES AND THE AGENTS
9 THEREOF WHO RECEIVE OR HAVE ACCESS TO INFORMATION CONCERNING DRUG TESTS
10 AND THEIR RESULTS SHALL KEEP ALL SUCH INFORMATION CONFIDENTIAL. EXCEPT
11 WHERE THE RELEASE OF SUCH INFORMATION IS COMPELLED BY SUBPOENA OR COURT
12 ORDER, ANY SUCH INFORMATION SHALL BE RELEASED ONLY UPON A WRITTEN
13 CONSENT VOLUNTARILY EXECUTED BY THE EMPLOYEE. ANY CONSENT SHALL CONTAIN,
14 AT A MINIMUM, THE FOLLOWING INFORMATION:

- 15 (A) THE NAME OR NAMES OF PERSONS AUTHORIZED TO OBTAIN THE INFORMATION;
- 16 (B) THE PURPOSE OF THE DISCLOSURE;
- 17 (C) THE PRECISE INFORMATION TO BE DISCLOSED; AND
- 18 (D) THE DURATION OF THE CONSENT.

19 2. THIS SECTION SHALL NOT APPLY TO PROCEEDINGS IN WHICH THE EMPLOYEE
20 IS ACCUSED OF A CRIMINAL VIOLATION, NOR SHALL IT APPLY TO DISCIPLINARY
21 OR JUDICIAL PROCEEDINGS RELATING TO EMPLOYMENT, OR TO PROSPECTIVE
22 EMPLOYMENT INQUIRIES RECEIVED FROM ANY LAW ENFORCEMENT AGENCY.

23 S 749. RELATION TO COLLECTIVE BARGAINING. 1. NOTHING IN THIS ARTICLE
24 SHALL BE CONSTRUED TO PROHIBIT, AS A SUBJECT OF COLLECTIVE BARGAINING,
25 THE ESTABLISHMENT AND TERMS OF A PROGRAM TO TEST EMPLOYEES FOR
26 CONTROLLED SUBSTANCES WHICH IS CONSISTENT WITH THE PROVISIONS OF THIS
27 ARTICLE.

28 2. NOTHING IN THIS ARTICLE SHALL SUPERSEDE ANY COLLECTIVE BARGAINING
29 AGREEMENT IN EFFECT ON THE EFFECTIVE DATE OF THIS ARTICLE. NO COLLECTIVE
30 BARGAINING AGREEMENT COMMENCING ON OR AFTER THE EFFECTIVE DATE OF THIS
31 ARTICLE MAY AUTHORIZE TESTING OF EMPLOYEES FOR CONTROLLED SUBSTANCES
32 UNLESS IT CONTAINS TESTING PROCEDURES WHICH ARE CONSISTENT WITH THE
33 PROVISIONS OF THIS ARTICLE.

34 S 750. APPLICABILITY. THE PROVISIONS OF THIS ARTICLE SHALL ONLY APPLY
35 TO POLICE OFFICERS EMPLOYED IN A CITY WITH A POPULATION OF ONE MILLION
36 OR MORE.

37 S 751. SEVERABILITY. IF ANY PROVISION OF THIS ARTICLE OR THE APPLICA-
38 TION THEREOF TO ANY EMPLOYEE OR CIRCUMSTANCES ARE HELD TO BE INVALID,
39 SUCH INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF
40 THIS ARTICLE WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR
41 APPLICATION, AND TO THIS END THE PROVISIONS OF THIS ARTICLE ARE SEVERA-
42 BLE.

43 S 2. This act shall take effect on the ninetieth day after it shall
44 have become a law, provided, however, effective immediately the division
45 of criminal justice services shall be authorized to adopt any such rules
46 and regulations deemed necessary to effect the provisions of this act.