

	<b>KENOSHA POLICE DEPARTMENT</b>			
	<b>POLICY AND PROCEDURE</b>			
	<b>52.3 Psychological and Psychiatric Testing</b>			
<b>Effective Date:</b>	1/24/1984	<b>Revision Date:</b>	11/11/2003	
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**I. PREFACE**

It is important to the Kenosha Police Department to have mentally fit sworn police personnel for, but not limited to, the following reasons:

- A. Sworn police personnel are authorized to carry police issued firearms and batons which are instrumentalities capable of causing death or serious bodily injury.
- B. Sworn police personnel are authorized to carry their police issued firearms and to enforce the law while off duty.
- C. Sworn police personnel have the power of arrest.
- D. Sworn police personnel have the power to stop, detain and search.
- E. Sworn police personnel are authorized to drive emergency vehicles in derogation of certain traffic laws.

It is, therefore, necessary for the Kenosha Police Department to test sworn police personnel from time to time to determine their mental fitness to perform the duties of their position so as to eliminate or reduce the risk of sworn police personnel becoming a danger to themselves, other law enforcement personnel or the general public. A formal policy and procedure is herein promulgated to accomplish this result.

**II. PSYCHOLOGICAL AND PSYCHIATRIC TESTING**

**A. WHO MAY ORDER**

The Police Chief may order a sworn police officer to undergo psychological and psychiatric testing (hereinafter referred to as "testing"). In the absence of the Police Chief, the Assistant Chief shall have such authority. The person ordering such testing shall be hereinafter referred to as the "decision maker." Should an Assistant Chief exercise such authority, a written report thereof shall be forthwith made to the Police Chief.

**B. NATURE OF TESTING**

Testing shall be for the limited purpose of determining whether or not a sworn police officer is able to safely perform the duties of his/her position and such testing shall therefore be job related. Testing shall be initially performed by a psychologist. Psychiatric testing shall be performed only at the recommendation of a psychologist or medical doctor.

C. CIRCUMSTANCES AUTHORIZING TESTING

Testing is authorized where one or more incidents arise or have arisen which tend to indicate that a sworn police officer may be dangerous to himself/herself, another law enforcement officer or the general public, whether or not the incident(s) merit(s) discipline.

D. PURPOSE OF TESTING

The purpose of such testing is not discipline, but the detection of a condition which may be amenable to treatment, therapy or counseling. Notwithstanding the above, the incident(s) which form(s) the basis for the request for such testing may be the subject of a disciplinary action. Should such testing result in the conclusion that a sworn police officer will be unable to perform the duties of his/her position at any time in the foreseeable future, termination of employment is appropriate. However, prior to termination proceedings being instituted, the alternatives of voluntary resignation, normal retirement and duty related disability retirement will be explored.

E. NOTICE AND NON-ADVERSARY HEARING

Prior to testing being ordered, a written notice of proposed testing shall be given to the officer who may be subjected thereto, stating the facts forming a basis for the request for testing and advising of the name of the party proposed to perform such testing. The officer will be given an opportunity to be heard on the issue of the propriety of such testing under the circumstances at hand and on the professional qualifications of the proposed tester. The hearing will be informal and of a non-adversary nature. The officer will be permitted to have an attorney or a representative of the officer's union or professional or supervisory association represent the officer at such hearing. The hearing may be held upon a minimum advance notice to the officer of twenty-four (24) hours. The decision maker, following such hearing, may order such testing at a date, time, and place certain, may cancel the request for testing, or may delay the request for testing pending further investigation. The decision maker may also agree to a tester different than the one originally proposed, upon a showing of good cause by the officer. However, a tester recommended by the officer may be rejected if the cost of such tester would be greater than the cost of the tester proposed by the decision maker and if the officer will not agree to pay the difference in cost, including travel time and expenses, or if the tester is outside Wisconsin or within Wisconsin, but greater than one hundred twenty (120) miles from the City of Kenosha. The decision maker is not obligated to negotiate who shall do the testing with the officer. Except as above provided, the cost of testing shall be paid for by the Police Department.

F. CONFIDENTIALITY

Test reports shall be confidential and shall not be kept in the officer's regular personnel file. Only the following persons shall have access thereto: the Mayor, Police Chief, the Assistant Chief, any Captain assigned to Internal Affairs and the Officer tested. Such reports shall be admissible at a Police and Fire Commission hearing.

G. OFFICER'S RIGHTS AT THE TEST

The officer will not be permitted to have anyone witness the test or represent him/her at the test. However, the officer will be permitted to tape record the test at his/her expense and with his/her equipment if permitted by the psychologist or psychiatrist. In the event of a dispute concerning the test, the officer must make the entire recording, if any, available to the Police Department.

H. NON-CONCLUSIVE TEST REPORTS

Where test reports are nonconclusive, such reports will not be used against the officer for any purpose, at any time. However, such reports may be retained by the Police Department to be utilized in the defense of the City or any officer or employee or agent thereof in any court case or administrative proceeding. The simple, isolated fact, without regard to conclusions or circumstances giving rise thereto, that an officer has undergone testing shall not be considered in promotions or disciplinary actions.

I. CONCLUSIVE TEST REPORTS

Conclusive test reports are defined as reports which find a condition which requires affirmative action through treatment, therapy, counseling or other appropriate action. Such reports shall be released only to authorized personnel herein defined. Such reports may be retained by the Police Department to be utilized in the defense of the City or any officer or employee or agent thereof in any court case or administrative proceeding. Such reports may be used by the Police Chief in evaluating an officer's qualifications for promotion, until a period of three (3) years has elapsed after final treatment, therapy or counseling, during which time no incidents have arisen which put in issue the fitness of the officer. Such reports shall not form a basis for progressive discipline although any incidents giving rise to testing may form a basis for progressive discipline. Conclusive reports may form a basis for termination of employment if they indicate that an officer will not be able to safely perform the duties of his/her position within the foreseeable future.

J. ALTERNATIVE ACTION BASED UPON CONCLUSIVE REPORTS

The following alternative actions may be considered when testing results in a conclusive report:

1. Treatment, therapy or counseling while remaining on active duty.
2. Sick leave for purposes of treatment, therapy or counseling.
3. Request by decision maker for voluntary resignation.
4. Request by decision maker that officer take normal retirement, if available.
5. Request by decision maker that officer take duty related disability retirement, if available.
6. Termination of employment.

The least restrictive alternative shall be explored prior to taking more severe action. However, an orderly progression through alternatives is not required. The least restrictive alternative is relevant only as to the initial choice of a course of action. The alternative which is the least restrictive will vary from case to case, and in some cases there may be no less restrictive alternative than 3 to 6.

Discipline for the act which formed a basis for testing is always appropriate, where otherwise warranted.

The termination of employment referred to in this section is not discipline, but action which is taken to remove an officer who is unable to perform the duties of his/her position. Termination proceedings based upon inability to perform the duties of the position may be had in conjunction with other proceedings seeking termination as discipline.

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### K. SUSPENSION WITH PAY

Where appropriate, the Police Chief, or in the absence thereof, the Assistant Chief, may suspend an officer with pay until testing is completed and a course of action related thereto is taken.

### L. REFUSAL TO UNDERGO TESTING

The refusal of a sworn police officer to undergo testing shall be grounds for termination.

## III. **POLYGRAPH EXAMINATIONS**

See Kenosha Police Department Policy and Procedure "Police Officers 'Bill of Rights'," issued March 1, 1978.

## IV. **BLOOD AND URINALYSIS TESTS**

See Kenosha Police Department Policy and Procedure "Police Officers 'Bill of Rights'," issued March 1, 1978.