

# Warren County Board of Supervisors

## RESOLUTION NO. 161 OF 2025

**RESOLUTION INTRODUCED BY SUPERVISORS WILD, DRISCOLL, ETU, MADAY, BEAN, PATCHETT AND MERLINO**

### **ADOPTING THE WARREN COUNTY SUBSTANCE ABUSE POLICY**

WHEREAS, the County Attorney requested and the Personnel, Administration & Higher Education Committee agreed to adopt the Warren County Substance Abuse Policy, and recommended that the same be advanced to the Board of Supervisors for consideration and approval, now, therefore, be it

RESOLVED, that the Warren County Substance Abuse Policy, annexed hereto as Schedule "A," be and the same is hereby adopted as the official policy for Warren County, and be it further

RESOLVED, that any and all prior Warren County Substance Abuse Policies, Resolutions or parts thereof inconsistent with the annexed Warren County Substance Abuse Policy are hereby repealed effective April 11, 2025.

**SCHEDULE “A”**

**WARREN COUNTY SUBSTANCE ABUSE POLICY**

**A. PURPOSE**

The purpose of this policy is to ensure a safe, healthy, productive and efficient work environment for employees and the public we serve and to prevent accidents and injuries resulting from the use or misuse of alcohol or drugs.

This policy applies to all County employees and contracted vendors and contractors on County premises.

The County will endeavor to make reasonable accommodations to assist recovering addicts and alcoholics, as well as those employees having a medical history reflecting treatment for substance abuse conditions in accordance with regulatory requirements.

**B. DEFINITIONS**

**Alcohol:** A colorless volatile flammable liquid that is produced by the natural fermentation of sugars and is the intoxicating constituent of wine, beer, spirits, and other drinks.

**Cannabis:** All parts of the plant of the genus Cannabis (commonly referred to as marijuana, weed, and pot among other acronyms) the seeds and resin extracted from any part of the plant and every compound derived from the plant, as more fully defined by section 3(5) of the New York State Cannabis Law.

**Cannabis Product:** Products for use by a cannabis consumer which contains cannabis, concentrated cannabis, or cannabis-infused products, as defined by section 3 of the New York State Cannabis Law.

**Cannabinoid-hemp:** Cannabinoid-hemp products governed pursuant to Chapter 1 of the Laws of 2020 to govern the production and sale of products associated with the cannabinoid-hemp flower and include CBD products including tinctures, oils, topicals, pills, capsules, food and/or beverages.

**Consumption/Consume:** To eat, drink or ingest a substance.

**Controlled Substance:** Controlled substances as defined by law to include opioids, methamphetamines, cannabis, alcohol products, hallucinogenic drugs and/or other narcotics controlled by Title 21 United States Code (USC) Controlled Substance Act.

**County Premises:** Any building, property or facility the County owns, leases, operates and/or maintains.

**Department Head:** County officers or employees given the supervisory title of Department Head.

**Drug Free Workplace Act (DFWA):** A Congressional Act enacted in 1988 that requires federal agency contractors and grantees to certify that they will provide a drug-free workplace as a pre-condition of receiving a contract or grant from a federal agency after March 18, 1989.

**Employee:** A person employed by the County of Warren on a full-time, part-time, less than part-time, or seasonal basis and includes volunteers and interns, whether paid or unpaid.

**Medical Review Officer:** A licensed physician contracted by the County to review lab results and validate whether a test is positive in accordance with established standards for alcohol and controlled substances.

**Medication:** A substance prescribed by a licensed healthcare provider for use in the diagnosis, cure, mitigation, treatment or prevention of a disease.

**Officer:** A person holding the right, authority and duty created and conferred by law for a given period of time which is either fixed in law or at the pleasure of the appointing authority which provides some portion of the sovereign's governmental functions to be exercised for the benefit of the public.

**Out-of-Unit Employee:** An officer or employee holding a position that is outside the County's various bargaining units.

**Reasonable Suspicion Test:** A type of testing program the County uses when they find evidence or make observations indicating an employee may be under the influence of drugs or alcohol at work.

**Shy Bladder Syndrome:** A medical condition known as paruresis that results from social anxiety disorder that makes it hard to urinate when others are around.

**Unauthorized Use of Prescription Drugs:** The use of controlled substances capable of altering the mood, perception, behavior or judgment of the individual consuming it when consumed in a manner or quantity other than that for which it was prescribed or manufactured, or consumed without a valid prescription.

**Vendor:** An individual or company contracted with the County to provide a product or service.

**Verified Positive Reasonable Suspicion Test:** A drug test, initiated due to observed behaviors or circumstances suggesting impairment, has confirmed the presence of a prohibited substance or above a defined threshold requiring further action.

**Workplace:** Any location where an employee performs any work-related duty in the course of their employment by the employer including County approved remote work assignments.

**Work Related Accident:** An accident which occurs while an employee is on County premises, or is off-site while engaged in activities for or on behalf of the County, or occurs while the employee is operating a vehicle for or on behalf of the County; and the incident results in one or more of the following: (1) a fatality, (2) bodily injury to any individual who, as a result of the accident, requires immediate medical treatment (excluding first aid) at or away from the scene of the accident; (3) property damage to County property or to the property of another person, or (4) in the case of a vehicle accident, one or more vehicles involved in the requiring vehicle(s) to be transported away from the scene by another vehicle.

## **C. REGULATIONS AND PROCEDURES**

### **1. Permitted Use of Prescribed Medications Within the Workplace:**

Employees, other than those performing work under a Commercial Driver's License (CDL), shall be permitted to consume prescribed medication and be under the influence of such prescribed medications while in the workplace under the following conditions:

- a. it was prescribed by a licensed healthcare provider for the employee's use;

- b. the employee consumes the prescribed medication in accordance with the prescription provided; and
- c. the employee was advised by the employee's health care provider that the prescribed medication will not adversely affect the employee's safety at work, or the safety of others in the workplace.

If the employee, to include employees performing work with a CDL license, are advised by their health care provider that use of a prescribed medication is likely to adversely affect the employee or others in the workplace, then the employee shall be responsible to ask whether another medication can be prescribed. If an alternative medication may not be prescribed, the employee shall contact Human Resources to determine if an accommodation is possible while taking the required prescription medication.

**2. Prohibited Use of Alcohol and controlled Substances Within the Workplace:**

Employees shall NOT consume or be under the influence of alcohol and/or controlled substances within a County premises. The following conduct by an employee is strictly prohibited.

- a. Employees shall not engage in the illegal or unauthorized use of alcohol and/or controlled substances at any time during assigned work hours. This includes, but is not limited to, reporting for work after the illegal or unauthorized use of alcohol or a controlled substance, and/or in an unauthorized manner during the employee's workday including meal and other break periods.
- b. Employees shall not report for work or remain on duty after the employee has consumed alcohol or a controlled substance in an amount that may have an adverse effect upon the employee, or does adversely affect the employee's job performance.
- c. Employees shall not consume alcohol or controlled substances at any time during an employee's workday regardless of whether an employee is on or off County premises, including, but not limited to, an employee's personal meal and other break periods.
- d. Employees shall not drive County vehicles at any time, including during non-business hours, if the employee has consumed any alcoholic beverages and/or controlled substances unless legally prescribed by a medical professional and the prescription taken does not materially affect the safe operation of a vehicle.
- e. Employees shall not serve or share alcoholic beverages and/or controlled substances on County premises.
- f. Employees shall not consume alcohol and/or controlled substances within the eight (8) hour period immediately following a work-related accident or until the employee has submitted to an alcohol or drug test as defined in this policy whichever occurs first.
- g. Employees shall not engage in the unlawful or unauthorized manufacture, distribution, dispensation, solicitation, sale, purchase, transfer or possession of controlled substances or alcohol under any of the following circumstances:
  - i. While an employee is on duty in the workplace;
  - ii. While an employee is on a County premises; and/or
  - iii. While an employee is otherwise engaged in activities for or on behalf of the County.

The County is subject to the federal Drug-Free Workplace Act (DFWA). The DFWA requires employees who are convicted under a criminal drug statute to advise the County of their conviction within five (5) days of the conviction. Any employee convicted per the DFWA will be subject to disciplinary action, up to and including termination. An employee's illegal conduct

involving alcohol and/or controlled substances during non-work times may also result in disciplinary action, up to and including immediate termination in consultation with law enforcement officials and the employee's Department Head.

Vendors shall be governed by the same policy prohibitions outlined within Section 2a through and including this policy section while providing a product and/or service in the course of contracted work while on a County premise.

**3. Reasonable Suspicion Test Procedures**

County collective bargaining unit agreements may govern an employee's reasonable suspicion testing protocols for employees belonging to that bargaining unit. This policy shall govern all employees unless the employee's collective bargaining agreement provides for Reasonable Suspicion testing. All employees which are out-of-unit employees, to include elected and appointed officers, shall be subject to Reasonable Suspicion Testing, in accordance with government standards. Additionally, 29 CFR 382.307 shall govern the reasonable suspicion testing for commercial drivers as outlined in the County's CDL Drug Testing Program which shall supersede these policy conditions.

Key elements for reports of reasonable suspicion involving an employee's potential consumption of alcohol or controlled substances should be specific, contemporaneous and articulate observations including, but not limited to the following:

- a. Appearance: changes in appearance, including unkemptness or flushed face; and/or
- b. Behavior: erratic or unusual behavior, or difficulty speaking clearly; and/or
- c. Speech: slurred speech or difficulty engaging in conversation; and/or
- d. Body Odors: presence of alcohol or other controlled substances on an employee's breath or clothing.

The County shall utilize generally accepted standards for reasonable suspicion identification within its workplace to determine if an employee may be under the influence of alcohol and/or controlled substances. Reasonable determinations shall be based upon observable evidence that may include, but not be limited to: physical signs of impairment; workplace behavioral changes; and reports of personal observations from credible witnesses. Suspicions of impairment within a workplace should be privately reported to the employee's supervisory chain-of-command, to include the employee's Department Head. Department Heads shall be responsible for immediately contacting Human Resources to obtain assistance. Human Resources will review the allegations of the reasonable suspicion facts with the employee's Department Head and be responsible for the scheduling the employee's Reasonable Suspicion Test.

Any such alcohol and/or controlled reasonable suspicion identification shall be documented in written form and be held in the strictest confidence when reporting the matter to Human Resources. The Human Resources Department shall be responsible for a Reasonable Suspicion investigation and testing for employees governed under this policy.

**4. Reasonable Suspicion Testing in Accordance with Collective Bargaining Agreements**

All County officials and employees are bound by the terms and conditions of this policy. In the event an employee's collective bargaining unit has specific alcohol and drug testing requirements

that are in addition to this policy, the terms and conditions of that drug testing within the collective bargaining unit shall prevail.

DPW CDL drivers shall be governed under the County's established CDL Drug Testing program in accordance with 29 CFR 382.307 which shall supersede these policy conditions.

Except as otherwise provided in this policy, employees are required to submit to testing under the circumstances described below. The County's Reasonable Suspicion Testing shall be directed only during the employee's regular work hours and any test shall be conducted as expeditiously as the circumstances permit, but no longer than two (2) hours after the employee was directed to report for testing, as follows:

- a. That an employee shall submit to a Reasonable Suspicion Test for controlled substances or alcohol, in accordance with applicable state or local law, when the Count has reason to suspect the employee may have consumed controlled substances or alcohol in violation of this policy.
- b. That except as federal or state law may other wise provide, the County's "Reasonable Suspicion" determination will be based on specific and current observations of the employee, that can be verbalized, including but not limited to: the employee's appearance; behavior; conduct; speech and/or body odors. These observations may also include indications of chronic use of, or the effects of withdrawal from, alcohol or controlled substances. A reasonable determination may be based on a single instance of conduct by the employee involving a serious potential risk of harm to the employee or other persons, or to County property, or the property of other persons. A Reasonable Suspicion determination shall be made by, and/or in conjunction with, either members of the Human Resource Department, or other County employees who received training on the signs and symptoms of alcohol or controlled substances consumption.
- c. That the County may require an employee to submit to a Reasonable Suspicion Test if an employee is involved in a work-related accident or near accident.
- d. That the County will transport or arrange for the transport of an individual directed to take a Reasonable Suspicion Test, to and from the sample collection site, except under circumstances which do not permit the County to provide such transportation.
- e. Employees shall not receive a confirmed positive drug test result, or confirmed alcohol test result of 0.04 or greater, on any test required under this policy.
- f. Employees shall not engage in any conduct which constitutes a "refusal to submit to a drug or alcohol test" as defined in this policy.
- g. Employees shall stay in contact with the County or its Medical Review Officer (MRO) while awaiting the results of a drug test.
- h. That an employee directed to submit to a Reasonable Suspicion Test shall be suspended with pay, until the Reasonable Suspicion Test results are received by the County and the results of such testing are reviewed by the Human Resources Department to determine any required remediation. The County shall take appropriate employment action against the employee upon receiving positive Reasonable Suspicion Test results for alcohol or a controlled substance. The County reserves the right to evaluate the employee's conduct that caused the Reasonable Suspicion Test to determine if the employee's conduct, in and of itself, warrants disciplinary action or other administrative action, up to and including termination.

**5. Refusal to Submit to a Reasonable Suspicion Test**

The County’s Reasonable Suspicion Test procedures for drug and alcohol testing comply with applicable state and federal law. Except as otherwise may be required or otherwise permitted by the applicable state or federal law, the County’s Reasonable Suspicion Testing procedures will follow the Federal Procedures for Transportation Workplace Drug and Alcohol Testing Programs, 49 CFR Part 40, in effect on January 18, 2001, and in accordance with subsequent adopted revisions.

An employee’s refusal to submit to a Reasonable Suspicion Test directed under County policy, including tests that employees agree to take in connection with rehabilitation provided under this policy, will result in disciplinary action against the employee, up to and including termination. An employee who engages in any of the following conduct will be considered to have refused to submit to a Reasonable Suspicion Test:

- a. Refusing to provide a urine or breath sample, or failing to provide an adequate amount of urine or breath without a legitimate medical explanation;
- b. Failing to undergo a medical examination or evaluation, as directed by the Medical Review Officer as part of the verification process, or as directed by the County as part of the “shy bladder” procedures, or the insufficient breath procedures;
- c. Refusing to complete the chain-of-custody form or another testing form whose completion is required and necessary to conduct the test;
- d. Refusing or failing to notify the County promptly that the employee was involved in a work-related accident, without a valid excuse;
- e. Refusing or failing to report promptly to the site where the Reasonable Suspicion Test will be conducted after the employee is directed that they shall submit to the drug and alcohol testing;
- f. Failing, refusing or declining to take a second Reasonable Suspicion Test that the County or collector has directed to be taken from the employee;
- g. Failing to cooperate with any part of the Reasonable Suspicion Testing process and procedures including, but not limited to delaying the sample collection, testing or verification processes;
- h. Compromising, excessive dilution, or substituting a urine sample, or attempting to compromise, dilute or substitute a urine sample;
- i. Refusing escort to or from the collection site; and
- j. Otherwise engaging in conduct that clearly obstructs or manipulates, or attempts to obstruct or manipulate the sample collection, testing and verification processes.

County Department Heads who have actual knowledge that an employee has engaged in or is engaging in conduct prohibited under this policy shall immediately remove the employee from their job duties and contact Human Resources for further direction.

**D. EMPLOYEE SELF-IDENTIFICATION OF SUBSTANCE ABUSE PROBLEM**

- 1. Employees who voluntarily self-identify themselves as having a problem with consuming alcohol or controlled substances and who voluntarily request assistance for such problems will be referred to the Employee Assistance Program for an evaluation and for appropriate counseling, treatment, or a rehabilitation program, if recommended. The financial cost of the evaluation and any counseling, treatment or rehabilitation shall be the employee’s responsibility and paid by the employee. Personal leaves taken under this section must be consistent with the County’s employment policies.
- 2. A request for personal leave pertaining to a substance abuse issue must be made prior to a work-

related accident before the employee is directed to submit to a Reasonable Suspicion Test. Employees may not use this self-identification provision to avoid taking a Reasonable Suspicion Test when directed by the County under this policy or to avoid disciplinary proceedings should the employee fail to comply and take a Reasonable Suspicion Test.

3. To receive the protections provided by this self-identification procedure, the employee shall be required to execute a HIPAA release authorization for the attending substance abuse professional so that the professional may communicate and release the employee substance abuse treatment records directly to the County's Human Resource Department. The employee will also be required to provide the County's Human Resources Department with a monthly substance abuse personal leave recertification to include substance abuse rehabilitation progress reports certified by the employee's healthcare substance abuse professional.
4. Except where the federal, state or local laws prohibits, all leave time taken for the evaluation, counseling, treatment or rehabilitation will be counted against any paid time off to which the employee may be entitled to under County policy.
5. Employees who take extended leave and successfully complete their counseling, treatment or rehabilitation program may be reinstated to their former position or to an equivalent position, provided that there is an available position consistent with and subject to the County's policies concerning leaves of absence and NYS Civil Service Laws. An employee, however, will be entitled to reinstatement only if they would have continued to be employed had medical leave not been taken. An employee is not entitled to reinstatement if, because of layoff, reduction in force, or other reason, the employee would not be employed at the time at which job restoration is requested.

#### E. COUNTY SUBSTANCE ABUSE POLICY VIOLATION CONSEQUENCES

Employees who violate the County's Substance Abuse Policy shall be subject to the following employment consequences:

1. **County Request to Submit to a Reasonable Suspicion Test:** Any employee who is required to submit to a Reasonable Suspicion Test based upon drug or alcohol use, to include an employee's post-accident testing for work related accidents, shall be temporarily suspended with pay.
2. **Refusal to Submit to a Reasonable Suspicion Test:** Employees who refuse to submit to a Reasonable Suspicion Test when directed shall be temporarily suspended, either with or without pay, and will be subject to disciplinary action, up to and including termination.
3. **Positive Reasonable Suspicion Test Result:** Any employee who receives a verified positive Reasonable Suspicion Test result for a controlled substance, or a confirmed alcohol test of 0.04 BAC or greater, will be subject to disciplinary action, up to and including termination, absent a valid medical reason and medical documentation for the positive testing result for a controlled substance.
4. **Other Employee Violations of the Substance Abuse Policy:** An employee may be subject to disciplinary action, up to and including termination, in the following additional circumstances.
  - a. **Fitness-for-Duty Evaluation:** If an employee is required to submit to a Reasonable Suspicion Test, to include testing for alcohol and controlled substance following a work-related accident or near accident and the employee receives a positive test result which was caused by the employee's legal and authorized use of a controlled substance, then the County will require the employee to submit to a fitness-for-duty evaluation. An employee who tests negative from a Reasonable Suspicion Test may also be required to submit to a fitness-for-duty evaluation. The evaluation may include a review of the employee's medical records, a medical examination, or both. The purpose of the evaluation is to determine whether the employee poses a significant risk of substantial harm to the health and safety of the employee or other persons in the workplace, including customers,

visitors, and members of the general public. Employees will be required to provide the necessary HIPAA release authorization for obtaining medical records and consent to the release of medical records related to the medical examination. Depending on the results of the evaluation, the County shall consider whether the safety or health risk can be eliminated or sufficiently reduced by a reasonable accommodation, if applicable.

- b. **Potential Forfeiture of Unemployment Benefits:** An employee's violation of the County's substance abuse policy will be considered as gross and willful misconduct. In addition to any appropriate disciplinary action and the other consequences imposed under this policy, the employee's misconduct may also result in the denial of unemployment compensation under applicable state law.
- c. **Potential Forfeiture of Workers Compensation Benefits:** An employee's violation of the County's substance abuse policy will be considered as gross and willful misconduct. In addition to any appropriate disciplinary action and the other consequences imposed under this policy, an employee who was injured while testing positive for alcohol or controlled substances in violation of this policy and/or other County safety rules, shall also risk forfeiture of any workers' compensation benefits under the applicable state law.

Vendors who violate the terms and conditions of this policy shall immediately be requested to leave the County premises. The Department Head responsible for the contracted vendor shall be informed of the removal and shall complete a written referral of the incident to the County Attorney's Office for further action as required.

#### **F. INSPECTIONS INVOLVING SUBSTANCE ABUSE VIOLATIONS**

The County reserves the right to conduct physical searches of County premises including any employee assigned lockers, desks, file cabinets, closets, toolboxes, and any other County-owned property. Additionally, the County reserves the right to search a vehicle owned or leased by the County and used by an employee, regardless of the vehicle's location. County vehicle searches will be conducted in accordance with law enforcement.

#### **G. SPECIAL POLICY CONDITIONS**

- a. The terms and conditions of "Warren County Board of Supervisors Resolution No. 77 of 2020 ADOPTING REVISED WARREN COUNTY ALCOHOL & DRUG TESTING POLICY FOR EMPLOYEES HOLDING A COMMERCIAL DRIVERS LICENSE (CDL)" and any future updates is hereby incorporated by reference herein and attached to this substance abuse policy with regard to the alcohol and controlled substance testing of Department of Public Works employees who hold CDL licenses in accordance with the Federal Motor Carrier Safety Administration (FMCSA) Regulations.
- b. Disciplinary measures taken with regard to employee infractions of this policy will be in accordance with an employee's collective bargaining agreement.

Questions regarding the meaning or application of this policy should be directed to the County Human Resources Department.