Article 12
HEALTH AND SAFETY

Section A. General.

The Employer will make every reasonable effort to provide a place of employment free from known health and safety hazards. While the parties recognize that certain health and safety hazards are inherent in a correctional or other custody environment, the Employer shall take steps to eliminate or minimize, and to avoid aggravating, such inherent hazards. Matters pertaining to health and safety conditions may be discussed at the appropriate level Labor-Management meeting in accordance with Article 11 of this Agreement. Any existing Safety/Health Committees shall continue as an alternative to the Labor-Management meeting process, unless terminated by mutual agreement. It is the expressed policy of the Employer to resolve health and safety problems. The Union agrees to cooperate in such efforts to the extent possible.

The Department of Corrections Joint Committee on Health and Safety is continued, consisting of three representatives of the Union appointed by the Union and three representatives of the department, appointed by the department. Each party will make a good faith effort to appoint at least one member who has professional training or employment responsibilities in the area of workplace health or safety.

The Joint Committee on Health and Safety shall meet at least quarterly at mutually agreeable times and places. An agenda shall be established in advance of each meeting. Minutes will be prepared by the department for each meeting and a copy provided to all members. Meetings shall be open to such other representatives of the parties as the committee members deem appropriate.

The charge of this committee shall be to identify and examine health and safety issues which impact upon Bargaining Unit members in the Department of Corrections. In conjunction with its charge, the committee shall be afforded access, when requested, to workplace injury, accident and illness reports involving Bargaining Unit employees, and will work cooperatively with health and safety programs initiated under the authority of the state's Disability Management Program. The committee shall make recommendations to the Department Director on such matters as indoor air quality, first aid and life saving devices, personal protective and communication devices, physical facilities security, training, and any other related matters pertaining to the health and safety of Bargaining Unit members.

Committee members appointed by the Union shall be permitted time off the job without loss of pay for travel to and from and attendance at committee meetings.

The 1997 Secondary Agreement regarding joint committees on health and safety shall remain in effect between MCO and the Department of Community Health unless altered through secondary negotiations.

All employees shall be required to comply with safety/health rules and regulations established by the Employer. If an employee has justifiable reason to believe that his/her safety is endangered due to an alleged working condition or equipment which is abnormally hazardous, even in a custody and security setting, the employee shall inform the supervisor who shall have the responsibility to determine what action, if any, should be taken.

If the employee is not satisfied with the action taken by the supervisor, the employee shall be entitled to notify the highest ranking Union official at the work site, who may contact the highest ranking shift supervisor on duty.

Section B. First Aid Equipment.

First aid equipment shall be provided at various locations in the work place. Current policy concerning first aid treatment shall continue.

Section C. Tools and Equipment.

The Employer agrees to furnish and maintain in safe working condition all tools and equipment required by the Employer to carry out the duties of each position. Employees are responsible for reporting to the Employer any unsafe condition or practice and for properly caring for the tools and equipment furnished by the Employer. Employees shall not use such tools and equipment for personal use.

Section D. Protective Clothing and Equipment.

The Employer will furnish protective clothing and equipment in accordance with applicable standards established by the Michigan Departments of Labor & Economic Growth or Community Health. The Employer reserves the right to require the use of such protective clothing and equipment.

In the Department of Corrections, the issues of requiring, supplying, and training in the use of “gas masks”, as required by such safety standards, shall be subject to secondary negotiations.

Section E. Confidentiality of Employee Health Records.

To insure strict confidentiality, only authorized Representatives of the Employer who have a professional or management need to know, or authorized Union Representatives with the employee's written permission, shall possess or have access to any employee medical records, including records prepared by a private physician, rehabilitation facility, or other resource for professional assistance. The Employer shall not be prohibited from releasing medical records or reports made or obtained by the Employer where such release is required to

process a grievance which involves the use or interpretation of such reports or records by the Employer; or to respond to a legal action or arbitration, or to a claim or complaint filed with a government agency by an employee.

Section F. Buildings.

The Employer will provide and maintain all state-owned buildings, facilities, and equipment in accordance with the specific written order(s) of the Michigan (MIOSHA) Departments of Labor & Economic Growth and/or Community Health. Where facilities are leased by the Employer, the Employer shall make a reasonable attempt to assure that such facilities comply with the order(s) of the Michigan Departments of Labor & Economic Growth and/or Community Health.

Section G. Medical Examinations.

Whenever the Employer requires an employee to submit to a medical examination, psychiatric evaluation or medical test, including X-rays or inoculations, by a licensed medical practitioner selected by the Employer, the Employer will pay the entire cost of such services, provided that the employee uses the services provided and approved by the Employer. An employee who is required by the employer to take a medical examination and who objects to the examination by the state-employed or retained physician/health provider may be examined by a mutually approved personal physician/health provider, in which case the employer will pay the entire cost of such service not covered by the health insurance program in which the employee is then enrolled. In the absence of mutual agreement, the parties will select a physician/health provider from recommendations by a county or local medical society, by alternate striking from a list if necessary. This Section does not apply in circumstances in which the employer requires the employee to supply evidence of medical/psychological examination and/or evaluation in conjunction with an employee's request for a medical or FMLA leave of absence, sick leave authorization, or an accommodation under the ADA or applicable state statute. Employees required to take a gynecological examination may be examined by a physician mutually acceptable to the Employer and the employee.

Section H. Contagious Conditions/Communicable Diseases.

When the Employer suspects a contagious condition exists, the Employer shall take action without undue delay to provide a healthful place of employment. In accordance with current State Statute and Departmental policy, when a source of possible contagion becomes known, or is suspected by agency or departmental medical personnel responsible for advising the employer on occupational health matters, the Employer will isolate such source, if possible, and notify the Union of the possible contagion, the isolation steps taken (if appropriate), and those further precautions which (from a medical standpoint) will be required to avoid further contagion. The Employer shall provide necessary supplies and equipment for such precautions and will furnish medical

examinations where such examinations are deemed necessary by Departmental medical staff.

When the Employer requires tests for Tuberculosis the Employer shall pay for such tests, provided the employee receives such tests from the provider designated by the Employer. Notice of scheduled Tuberculosis testing will be provided to employees at least two weeks in advance. If the employee chooses to obtain testing from his/her own health care provider, the Employer will not be responsible for payment for such testing.

Subject to applicable Community Health and Civil Rights considerations, the Employer will administer a program to identify cases of contagious diseases. This program will include a system that identifies generic disease categories such as blood borne infectious diseases and gives precautions designed to minimize, if not prevent, employee contagion.

The Employer will establish and/or continue a contaminated waste disposal system which includes identification of contaminated waste and ensures that all contaminated waste, clothing, one-way CPR valves, linens, etc. are properly handled.

The Department of Corrections will continue to issue a "belt pack", consisting of protective gloves and a protective mask device for use when performing CPR, to each employee whom the department expects to have need for such items. Such items will be replaced as recommended by the respective manufacturer. Protective garments such as gloves, gowns, aprons, masks, etc. shall be readily accessible to an employee who faces exposure to a blood borne infectious disease from a patient or prisoner.

In accordance with applicable departmental policies, if an employee's clothing or shoes are soiled by bodily fluids or other infectious or hazardous material, the employee will immediately be relieved of duty and directed and allowed sufficient time to change clothes and, if necessary, shower. If a shower and/or replacement uniform are not available on site, the employee will be provided appropriate replacement attire and authorized to leave the workplace on administrative leave to clean up and change clothing. The employee shall return to work in a timely manner.

The parties recognize the importance of protecting employees in the Security Bargaining Unit from occupational exposure to blood-borne diseases such as human immunodeficiency virus (HIV) and Hepatitis. The Departments of Corrections and Community Health will adhere to the recommendations promulgated by the U.S. Departments of Labor and Health and Human Services in the Joint Advisory Notice (JAN): Protection Against Occupational Exposure to Hepatitis B Virus (HBV) and Human Immunodeficiency Virus (HIV) (Federal Register, October 30, 1987) which is herein incorporated by reference. In

complying with the "JAN", the word "should" will be interpreted as "shall", with the exception of the categorization of all working conditions and the tasks that workers are expected to encounter as a consequence of employment. The Department will apply these recommendations to Security Unit employees as well as health care workers.

The employer shall make a Titer Test available to employees during the 60-day period following completion of the series of Hepatitis B shots.

A variety of testing opportunities involving communicable diseases will continue to be available to employees in accordance with Departmental policy. When an occupational exposure to blood or other potentially infectious materials occurs, the Department will initiate post exposure prophylaxis and offer to begin medication within the stated time frames.

Departments will follow all of their exposure control plans, protocols, policies and procedures. Personnel identified in Departmental documents addressing communicable diseases shall fulfill their outlined responsibilities. In addition, Departments shall carry out any monitoring responsibilities referenced in such documents regarding the performance of designated treatment centers. Medical costs associated with an occupational exposure will be borne by the Employer.

Upon approval of a revised Policy Directive in the Department of Corrections addressing the control of communicable bloodborne diseases, the Michigan Corrections Organization may reopen negotiations on this topic.

The departments will also adhere to applicable Federal and Michigan statutes and administrative rules relating to protection from health hazards in the workplace.

The departments will ensure that their respective plans and policies, and their successors, established pursuant to applicable Federal and State Occupational Safety and Health Statutes and Implementing Regulations, are enforced and that other measures established by OSHA/MIOSHA are followed.

An ad hoc committee will timely meet following approval of the agreement and discuss the effectiveness of the current Hepatitis vaccination program, communicable disease procedure, methods of employee notification and information sharing, associated training, including training on how to handle infected prisoners, and recommend any additional effectiveness measures to be taken. As issues involving Hepatitis arise, the parties shall meet upon the request of either party to discuss the issue and make recommendations. This ad hoc committee shall meet within 30 days of approval of this Agreement to discuss precautions and preventive measures for antibiotic resistant organisms.

Section I. Foot Protection.

The Employer reserves the right to require the wearing of foot protection by employees. In such cases, the Employer will provide a safety device or, if the Employer requires the employee to purchase approved safety shoes, the Employer will pay an allowance, not to exceed the established contract price approved by the State Purchasing Division, during January of each year.

Section J. Safety Inspection.

When the Michigan Department of Labor & Economic Growth or Community Health, or a State, County, City or Township Fire Marshal inspects a state facility pursuant to MIOSHA, a Union official (if on duty at such work site) shall be notified by the Employer and, consistent with the operational needs of the Employer, be released from work without loss of pay to accompany the inspector. The Union shall have a right, consistent with the above, to accompany other inspections conducted for the protection of the work force and as a result of a Labor-Management agenda item. The Employer agrees to provide the Union with a copy of any inspection report left with or returned to the Employer.

Section K. Damage to Personal Items.

The Employer or Insurance Carrier will pay the cost of repairing or replacing eye glasses, watches, dentures, articles of clothing or other personal items damaged in the line of duty in accordance with applicable regulations of the State Administrative Board (Procedure 0620.02, issued January 6, 1997), and unless otherwise reimbursed.

Claims shall be processed as expeditiously as possible and reimbursement for valid claims shall not be unduly delayed.

A claim that the employing department has violated the applicable Administrative Procedure shall be grievable in accordance with Article 9 of this Agreement. An appeal from a State Administrative Board decision on a claim filed pursuant to the applicable Administrative Procedure shall not be grievable under this Agreement.

Within budgetary and space limitations, the Employer agrees to attempt to provide reasonable secure storage space for wearing apparel and authorized personal property of employees. Locations and a timetable will be taken up in Labor-Management Meetings.

Where job duties require, and State Accounting Regulations and budget limits permit it, the State will make a reasonable effort to honor an employee's request to advance the employee some reasonable portion of the cost for replacement glasses, if there is no question that the employee will be eligible for reimbursement.

If the employee's claim is subsequently denied, or granted in an amount less than the amount advanced, the employee shall reimburse the department accordingly.

Section L. Compliance Limitations.

If the Employer is unable to meet the requirements of any section of this Article due to lack of funds or some other reason beyond the Employer's control, the Employer shall make a positive effort to undertake corrective action or seek other alternatives. Grievances alleging failure to comply with Section A. of this Article and posing a clear and present danger to the health or safety of employees, if filed, shall be filed initially at Step 2 of the grievance procedure.

Section M. Evacuation and Mobilization Plans.

Upon the Union's request, each Agency or work location shall provide to the Union for review and comment a copy of nonconfidential portions of existing emergency evacuation and mobilization plans. The Local Chapter president shall be entitled to make input into the annual mobilization plan review at the facility. Such input shall be on a confidential basis. The Union shall be entitled to consult with the Employer and make recommendations on the content of mobilization training. The Local Chapter President shall also be entitled to participation in the facility's post-mobilization critique if one is conducted.

Section N. Drug and Alcohol Testing.

1. Testing. The Employer may require an employee to submit to urinalysis drug screening and/or alcohol breath testing under the circumstances set forth below in Subsections a. through e.

An employee may refuse to submit to a drug screening or alcohol test. However, the employee shall be warned that such refusal constitutes grounds for discipline equivalent to that imposed for a positive test result, and then allowed an opportunity to submit to the testing as though the employee had originally complied with the order.

a. Preappointment Testing: An employee not occupying a test-designated position shall submit to a urinalysis drug screening if the employee is selected for a test-designated position. The employee shall not perform any duties of a test-designated position until the employee has submitted to and passed a drug screening. If the employee fails or refuses to submit to the drug test, interferes with a test procedure, or tampers with a test sample, the employee shall not be appointed or otherwise placed in the test-designated position and will be ineligible for appointment to or placement in a test-designated position for a period of three years. Also, the employee may be disciplined if the employee fails a drug test, refuses to submit to the drug test, interferes with a test procedure, or tampers with a test sample.

b. Random Testing: An employee in a test-designated position may be selected at random from a pool comprised of test-designated positions covered by this Agreement. The number of urinalysis drug screenings performed at random each calendar year may not exceed 15% of the number of test-designated positions in the pool. The number of alcohol breath tests performed at random each calendar year may not exceed 15% of the number of test-designated positions in the pool.

c. Reasonable Suspicion Testing: An employee may be required to submit to urinalysis drug screening or alcohol breath testing based on reasonable suspicion. Reasonable suspicion means a belief, drawn from specific objective facts and reasonable inferences drawn from those facts in light of experience, that an employee is using or may have used drugs or alcohol in violation of this Agreement or a departmental work rule. By way of example only, reasonable suspicion may be based upon any of the following:

(1) Observable phenomena, such as direct observation of drug or alcohol use or the physical symptoms or manifestations of being impaired by, or under the influence of, a drug or alcohol.

(2) A report of on-duty or sufficiently recent off/pre-duty drug or alcohol use provided by a credible source.

(3) Evidence that an individual has tampered with a drug test or alcohol test during employment with the state of Michigan.

(4) Evidence that an employee is involved in the use, possession, sale, solicitation, or transfer of drugs or alcohol while on duty, while on the employer's premises, or while operating the employer's vehicle, machinery, or equipment.

The basis of support for the reasonable suspicion drug screening or alcohol test will be documented by a trained supervisor. An employee shall not be required to submit to a reasonable suspicion drug screening or alcohol test without the individualized expressed approval of the employer designated drug and alcohol testing coordinator (DATC) or his/her designee.

d. Post Accident Testing: An employee in a test-designated position shall submit to a drug test or an alcohol test if there is evidence that the employee in the test-designated position may have caused or contributed to a serious work accident. A serious work accident is defined as an on-duty accident resulting in death, or serious personal injury requiring immediate medical treatment, that arises out of any of the following:

(1) The operation of a motor vehicle
(2) The discharge of a firearm
(3) A physical confrontation
(4) The provision of direct health care services
(5) The handling of dangerous or hazardous materials

e. Follow-up Testing: An employee shall submit to unscheduled follow-up drug and/or alcohol testing if, within the previous 24-month period, the employee voluntarily disclosed drug or alcohol problems, entered into or completed a rehabilitation program for drug or alcohol abuse, failed or refused a preappointment drug test, or was disciplined for violating the provisions of this Agreement and Employer work rules.

The Employer may require an employee who is subject to follow-up testing to submit to no more than six unscheduled drug or alcohol tests within any 12 month period.

2. Test-Designated Positions. For purposes of this Section, test-designated positions are:

a. A safety-sensitive position in which the incumbent is required to possess a valid commercial driver's license or to operate a commercial motor vehicle, an emergency vehicle, or dangerous equipment or machinery.

b. A position in which the incumbent possesses law enforcement powers or is required or permitted to carry a firearm while on duty.

c. A position in which the incumbent, on a regular basis, provides direct health care services to persons in the care or custody of the state or one of its political subdivisions.

d. A position in which the incumbent has regular unsupervised access to and direct contact with prisoners, probationers, or parolees.

e. A position in which the incumbent has unsupervised access to controlled substances.

f. A position in which the incumbent is responsible for handling or using hazardous or explosive materials.

Additional test designated positions in other classifications whose duties are not as provided in Subsections a. through f. above shall be subject to the provisions of this Article pursuant to secondary negotiations.

New classifications, or levels added to existing classifications, may include duties consistent with those identified for test-designated positions in Subsections a. through f. above. The Employer shall meet with the Union to review the new classification or level prior to requiring an employee in the new class to submit to testing under this Section.

3. Drug and Alcohol Testing Protocol.

a. Protocol. The Employer will adopt the U.S. Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs as the protocol for drug testing and the U.S. Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing Programs for alcohol testing.

After adoption of the protocol, and its implementation, the protocol shall not be subject to change except by mutual agreement of the parties and approval by the Civil Service Commission.

b. Definitions. The parties agree to incorporate in this Agreement the definitions contained in the U.S. Department of Workplace Drug Testing Programs, as may be amended, and in the U.S. Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing, as may be amended. In addition, the parties agree to define credible source as, "one who is trustworthy and entitled to be believed. One who is entitled to have his/her oath or affidavit accepted as reliable, not only on account of his/her good reputation for veracity, but also on account of his/her intelligence, knowledge of the circumstances, and disinterested relation to the matter in question. One who is competent to testify".

4. Union Representation. Employees may confer with an available Union representative on site (if available on site), or through a telephone conference, whenever an employee is directed to submit to a reasonable suspicion alcohol or drug test, provided such contact will not unreasonably delay the testing process.

5. Review Committee for Drug and Alcohol Testing. A committee consisting of three representatives of the SEIU Coalition and three representatives of the Employer will meet, upon request of either party, to review testing data and discuss problems related to the administration of the testing program. The committee may vote on matters it discusses. The committee's recommendations, if any, will be submitted to the Employer for its consideration. Recommendations voted on by the committee will be reported as without recommendation if based on a 3-3 tie vote and as a unanimous recommendation for any vote other than 3-3.

Upon written request, but not more than twice a year, the Employer will provide the name and Social Security number of all Bargaining Unit employees who were actually tested for the previous time period, including the test date.

6. Required Treatment. In the event of a positive test, and in the further event that a sanction less than discharge is imposed, the employee shall be referred to a substance abuse professional for assessment and, if necessary, treatment.

7. Self-Reporting. An employee who voluntarily discloses to the Employer a problem with drugs or alcohol shall not be disciplined for such disclosure if, and only if, the problem is disclosed before the occurrence of any of the following:

a. For reasonable suspicion testing, before the occurrence of an event that gives rise to reasonable suspicion that the employee has violated this Agreement or a department work rule.

b. For preappointment testing, follow-up testing, and random testing, before the employee is notified he/she has been selected to submit to a drug test or alcohol test.

c. For post-accident testing, before the occurrence of any accident that results in post-accident testing.

After self-reporting, the Employer shall permit the employee an immediate leave of absence, subject to the provisions of Article 19, Leaves of Absence Without Pay, to obtain medical treatment or to participate in a rehabilitation program. In addition, the Employer shall remove the employee from the duties of a test-designated position until the employee submits to and passes a follow-up drug or alcohol test. The Employer may require the employee to submit to further follow-up testing as a condition of continuing or returning to work.

An employee may take advantage of this provision no more than two times while employed in the Classified Service. An employee making a report is not excused from any subsequent drug or alcohol test or from otherwise complying in full with this Section. An employee making a report remains subject to all drug and alcohol testing requirements after making a report and may be disciplined as the result of any subsequent drug or alcohol test, including a follow-up test.

8. Confirmation Alcohol Testing. If an employee is tested for alcohol and is determined to have a blood alcohol level equal or greater than 0.02% in both the initial evidentiary breath test (EBT) and the confirmation evidentiary breath test, at the employee's option and at the employee's full cost, the employee may elect to have a second confirmation test carried out by drawing a sample of blood and submitting it for testing at an approved laboratory. This option is only available if the testing site where the two positive breath tests were conducted is equipped to

draw the blood and either directly provide for its testing for level of blood alcohol or transport the sample to a laboratory which is certified to test the sample for level of blood alcohol. The protocol for such confirmation blood testing for alcohol (including but not limited to chain of custody, security, integrity and identity of sample, transportation to testing laboratory if required, reporting of results, etc.) shall be determined prior to initiation of alcohol testing under this Section and shall be a topic for discussion in the committee established in this Section. The employee shall remain off the job until the results of the second confirmation test are provided to the Employer and may use available leave credits, if desired.

9. Positive Drug Test Results. Upon written request the Employer will provide to the Union at no cost the initial screening positive drug test results (litigation package) on employees who test positive.

Section O. Personal Protective Devices.

The issue of providing, testing, developing and upgrading personal protective devices for members of the Bargaining Unit may be addressed in departmental Labor-Management meetings.

Section P. Staffing Safety.

The Employer intends to staff unit work assignments at safe levels. If an individual assignment is closed down, it shall be done in a manner which does not diminish the safety of Bargaining Unit employees in other unit assignments which remain active. If an alleged violation of this Article is grieved, the burden of proof that staff safety is diminished will rest with the Union.

Section Q. Isolated Single Person Assignments.

This confirms that it is the joint intent and expectation of the Michigan Department of Corrections (MDOC), and the Michigan Corrections Organization (MCO), and the Office of the State Employer (OSE) that the safety of Security Unit employees will be given maximum attention and consideration as such employees are placed in assignments. Within the legislative appropriations available to MDOC, all reasonable efforts will continue to be undertaken to assure that Security Unit employees are not placed in assignments which appear to pose a higher-than-normal risk of inmate physical assault on the employee unless, through the exercise of his/her own due diligence and care, the Security Unit member would be within the general view and/or voice-range of another MDOC employee at virtually all times.

The standard for determining whether or not an assignment would pose a higher-than-normal risk of physical assault by an inmate may be developed and adopted by MCO and MDOC jointly, but in the absence of such mutually accepted standard, shall be whether past and/or present events and circumstances (such as previous physical assaults by inmates), and reasonable

and informed inferences drawn there from, would suggest the Unit member would be vulnerable to inmate assaults.

The MDOC and MCO will continue to work jointly and cooperatively to identify situations where Security Unit members are working in isolated single-employee assignments. Moreover, the MDOC and MCO will discuss (and attempt to reach agreement on) as many principles as possible concerning the criteria to be considered by the MDOC in determining when the Security Unit member, while working in general view and/or voice-range of another employee, should be furnished with other personal safety devices and measures.

In the Department of Community Health, the parties will discuss (and attempt to reach agreement on) the safety aspects of employees working in isolated single-employee assignments.

The MDOC will continue to affirmatively seek legislative appropriations, through the established executive and legislative branch procedures, sufficient to fund staffing in current and additional MDOC positions which will minimize the occasions when Security Unit members are placed in higher than usual risk single-employee assignments.