



*"Service with Excellence
& Integrity"*

Arkansas Department of Community Correction

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ADMINISTRATIVE DIRECTIVE: 13-08 DRUG-FREE WORK PLACE

TO: DEPARTMENT OF COMMUNITY CORRECTION (DCC) EMPLOYEES

FROM: DAVID EBERHARD, DIRECTOR

SUPERSEDES: AD 11-04

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APPROVED: Signature on file EFFECTIVE: July 17, 2013

- I. APPLICABILITY.** This directive applies to Department of Community Correction (DCC) employees, extra help, interns, volunteers, applicants who have received a conditional offer of employment, and contractors, unless the contractor operates a drug-testing program acceptable to the DCC.
- II. POLICY.** The DCC is committed to adhering to all laws regarding possession and use of prohibited drugs, providing a safe work environment and fostering the well-being and health of workers. The DCC prohibits the unlawful manufacture, purchase, distribution, dispensing, possession, or use of prohibited drugs by employees, extra help, interns, volunteers, and contractors. (4-ACRS-7C-02; 4-APPFS-3C-01)

This policy sets standards and procedures for the DCC drug-testing program to ensure testing is fair and impartial, and to provide appropriate procedural safeguards to protect the reliability and confidentiality of test results. The DCC drug-testing program will aid worker and public safety, advance workplace security, and promote public trust in the DCC.

III. DEFINITIONS.

- A. Chain of Custody.** Procedures to account for the integrity of each specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen, using an agency approved chain of custody form.
- B. Confirmatory Test.** A second analytical procedure performed to identify the presence of a specific drug or metabolite. The confirmatory test is independent of the screening test and uses a different technique and chemical principle in order to ensure reliability and accuracy.

- C. Controlled Substance.** A drug, substance, or immediate precursor in Schedules I. through VI, as defined in Ark. Code Ann. §5-64-101.
- D. Documented Drug or Alcohol Abuse History.** Any reported history of drug abuse or alcohol abuse for which the individual must maintain recovery as a condition of employment; criminal history records; or internal drug testing records.
- E. Drug Testing Coordinator (DTC).** The DCC employee designated to conduct employee drug testing activity.
- F. Medical Review Officer (MRO).** A licensed physician who is responsible for evaluating, interpreting, and providing results of drug and alcohol tests.
- G. Urine Test Observation.** For urine specimen collection, there are two types of observation, direct and indirect. Direct Observation is visualization of the urine stream leaving the body and entering the test cup. Indirect Observation means presence in the immediate area balancing the need for privacy with prudent measures for preventing adulteration or substitution of samples.
- H. Prohibited Drug.** Alcohol, illicit drug, misused prescription or over-the-counter drug, K2 (recipe name JWH-018) substances present in the employee's system while the employee is on duty (including breaks).
- I. Random Testing.** Workers are selected without plan or purpose and are tested on an unannounced basis. The selection mechanism results in an equal probability that any worker from a group of workers will be selected. The methodology used prevents supervisor or worker discretion to waive or influence the selection of any person.
- J. Safety/Security Sensitive Positions.** Members of the Management Team, Parole/Probation Assistant Directors, Parole/Probation Services Managers, Assistant Area Managers, Officers, Agents, and Career Planning and Placement Specialists and Substance Abuse Program Leaders in Parole/Probation Services, and all residential center staff.
- K. Screening Test.** A preliminary test used to eliminate "negative" specimens from further consideration. Specimens that test "positive" on the screen are subject to a confirmation test.
- L. Use (of prohibited drug).** The inhalation, injection, ingestion or the presence of a specific prohibited drug(s) or its metabolites in the body or body fluids.

IV. TESTING PROCEDURES, CONFIRMATION AND DOCUMENTATION. Workers to be tested must show photo identification when requested by the DTC. Specimens will be collected in a manner reasonably calculated to address privacy considerations, while preventing the substitution, contamination, and adulteration of specimens. Chain of custody procedures must be followed to preclude the possibility of erroneous identification of test results.

A. Test Conditions and Whom to Test. Testing must not be used in a discriminatory manner nor used to harass, punish or discipline. Specimen collection procedures will include minimizing the number of persons handling specimens and using the chain of custody to precisely record sample transfers from one person to another. Employee Drug Testing will be as follows:

1. **Conditional Employees.** Test all applicants/newly-hired employees, including rehires, who receive conditional offers of employment with the DCC. The DCC Internal Affairs Administrator (IAA) must check the Office of Driver Services records for hires into positions requiring CDL's to determine and report prior positive substance abuse.
2. **Volunteers and Contractors.** Aspects of this policy apply to volunteers and contractors such as testing methods and consequences of positive tests or refusal to test. Refer to the Volunteer Services directive for additional guidance on volunteers and contractor personnel.
3. **Commercial Driver's Licensed (CDL) Workers.** CDL workers must adhere to the United States Department of Transportation (DOT) and the Arkansas Office of Driver Services requirements. All CDL workers will be selected for alcohol and drug testing on an irregular basis, at least twice per year. Selection for a random test may count toward these tests, however more than two tests per year may be given. DCC must report to the Office of Driver Services within 3 business days the results of an alcohol screening test performed on CDL licensed workers if the results of the screening test are positive or the CDL employee refuses to provide a specimen for the testing.
4. **Post Incident Testing.**
 - a. It is the worker's responsibility to contact his/her supervisor, the DTC, or the IAA to get testing instructions and present himself or herself to be tested within 2 hours after one of the following incidents (in addition to this, CDL licensed employees must follow guidance in the "CDL Drivers" paragraph):
 - (1) Work related accident with injury involving a personal or state vehicle;
 - (2) Moving traffic violation in conjunction with an accident involving a state vehicle or while on state business in a personal vehicle;
 - (3) The intentional or accidental discharge of a firearm while on duty, other than range practice or training, whether or not injury or death occurs.
 - (4) Work related incident or accident (other than vehicle) resulting in damage or property loss or injury. In these situations, the supervisor may consult with the deputy director to determine whether testing is required.
 - (5) When a worker's actions or performance could have contributed to an accident or serious incident.

Note, Refer to the Reporting and Investigating Incidents and Hazards policy for additional requirements.

b. CDL Drivers. Following an incident involving a commercial motor vehicle, testing for alcohol and controlled substances must be made for each surviving DCC CDL driver, if injuries or loss of human life were involved or the driver received a citation for a moving traffic violation in conjunction with an accident. A CDL driver is subject to post accident testing and must actively seek such testing or the driver may be deemed to have refused to submit to testing for alcohol and drugs. It is the worker's and supervisor's joint responsibility to ensure the worker is tested within the prescribed period. When testing is not conducted by law enforcement after an accident, the worker must immediately contact his or her supervisor, the DTC, or the IAA for testing instructions. Supervisors must provide CDL drivers with necessary post-accident information, procedures, and instructions prior to the driver operating a commercial motor vehicle, to assist the worker in complying with these requirements.

- (1) Alcohol Testing. Post accident alcohol testing of CDL drivers must be conducted within two (2) hours of the accident or the immediate supervisor must provide written justification to the DTC for not having the test promptly administered. If the alcohol test is not administered within eight (8) hours following the accident, cease attempts to administer an alcohol test and prepare a written justification stating the reasons the test was not promptly administered. This justification will be submitted in an envelope marked confidential to the DTC who will report this information to the appropriate Deputy Director and maintain the documentation. Documentation must be forwarded to the Arkansas Office of Driver Services and Federal Highway Administration (FHWA) as required or requested.
- (2) Controlled Substance Testing. Post accident controlled substance testing should be conducted within 2 hours following an accident, however if testing is not done in this time, testing must still be done and must be completed within 32 hours to meet federal requirements. If not, the supervisor must provide written justification to the DTC for not having the test administered. Such justification must be submitted in an envelope marked confidential to the DTC who will report this information to the appropriate Deputy Director who will maintain the documentation. Such documentation will be forwarded to the FHWA upon request and in accordance with the law.
- (3) Other Acceptable Post Accident Test. Other test results are acceptable when they meet all of the following criteria:
 - conducted by Federal, State or local officials having independent authority for the test and
 - conducted in conformance with applicable Federal, State or local requirements and
 - test results are provided to the DTC, and
 - the test method is a breath, blood, or saliva test to determine the use of alcohol or a saliva or urine test for determining the use of controlled substances.

5. Reasonable Suspicion. Reasonable suspicion exists when there is a degree of certainty based on facts and reasonable inferences drawn from that cause one to believe that a person has violated the law or policy. Reasonable suspicion testing must be conducted as soon as the facts and circumstances leading to suspicion of prohibited drug or alcohol use are gathered. The supervisor will coordinate with the DTC or IAA for testing instructions and completion of a Reasonable Suspicion Affidavit. This testing activity must be reported to the appropriate Deputy Director. Regardless of the test result, the reason for such testing must be recorded and submitted to the DTC in an envelope marked "Confidential" as soon as possible but no later than 72 hours following testing. Reasonable suspicion testing does not require certainty but "hunches" are not sufficient to meet this standard. Some circumstances that may support reasonable suspicion include the following:
 - a. observation of possession or use of a prohibited drug or paraphernalia or manifestations of being under the influence of a prohibited drug or alcohol, or other such observations;
 - b. abnormal conduct or erratic behavior while at work;
 - c. excessive absenteeism or frequent absences on Mondays, Fridays, payday or the day after;
 - d. frequent worker' compensation claims;
 - e. frequent tardiness;
 - f. deterioration in work performance;
 - g. a report of prohibited drug use provided by a reliable and credible source;
 - h. evidence or suspicion of or tampering with the drug test;
 - i. evidence that a worker is involved in the possession, sale, solicitation, manufacturing or transfer of prohibited drugs;
 - j. evidence that a worker is being treated for substance abuse.
6. Follow-Up Testing. Follow-up testing, for a period not to exceed 2 years as determined by the immediate supervisor, may be conducted as a condition of employment or continued employment where a worker is drug-free but has a documented drug history. This category of testing is in addition to random testing and will be conducted on an irregular basis by the supervisor or DTC.
7. Random Testing. Random testing will be conducted of DCC workers using a neutral selection process. The DTC will produce random test schedules and notify the supervisor as necessary and scheduled worker on the date of the test only.
8. After Hours Testing. When reasonable suspicion testing after normal work hours is necessary, the worker's supervisor will provide a testing packet and authorization form and will ensure the worker is tested. Contact the IAA for instructions.
9. Nothing in this policy should be construed to require the delay of necessary medical attention or to prohibit leaving the scene of an accident for the period necessary for an employee to obtain required emergency medical care or assistance following an accident.

B. Testing for Prohibited Substances.

1. The DCC requires substance abuse testing of urine, saliva, and/or breath for cocaine, marijuana metabolites, K2, opiates, phencyclidines (PCP), amphetamines, and alcohol. A contractor, local sheriff, or other trained police agency with evidentiary breathalyzer trained personnel, may be asked to conduct a breathalyzer test to confirm a positive alive alcohol test. Initial substance abuse screening tests will be conducted by the DTC. Positive specimens or challenged results must be submitted for confirmatory testing to a Substance Abuse and Mental Health Services Administration (SAMHSA) approved lab. Urine specimen collection will be by indirect observation unless there is reason to believe the specimen may be altered or substituted, in which case direct observation must be used. Employees must show photo identification when requested by the DTC. Chain of custody procedures must be followed to avoid errors in test results. A Medical Review Officer (MRO) will review positive lab results, scrutinizing for possible alternate explanations and conducting necessary medical interviews with the employee and his/her physician concerning the legitimacy of the presence of drugs in the employee's system.
2. The DTC must perform the following when conducting a post-accident or incident drug screening test:
 - a. Notify the immediate supervisor, Deputy Director, and IAA as soon as practical. Do not delay the screening test to make these notifications.
 - b. Use the testing materials provided by IAA.
 - c. Conduct only one test.
 - d. Seal the specimen in the presence of the tested person.
 - e. Require the tested person to initial and date the seal.
 - f. Ensure the "Drug Testing Chain-of-Custody," Form 760 is complete and secured with the specimen.
 - g. For positive test results, contact the IAA's office (if unavailable contact your deputy director) for confirmation instructions. Provide copies of all documentation to the IAA, regardless of the results.
3. All new, rehired, and reassigned DCC employees who will be issued a firearm must be tested for both drugs and alcohol prior to being issued a firearm. (4-APPFS-3A-22[P])
4. All workers will be grouped for test scheduling. Workers will be randomly chosen for periodic testing using a computer based selection system. No worker will be given advance notice of an impending test. If a worker is on duty, there are very few reasons, if any, why they should not be tested. On the testing day, the DTC will notify the supervisors of workers to be tested. Workers will report to the collection site for testing as soon as possible but not later than two hours from receiving notice of the requirement to test. Testing schedules for CDL and workers identified for follow-up will be managed by the DTC on a random but individual basis in a similar manner as described above. Testing of workers for other reasons will not excuse them from random testing when selected.

- C. Failure or Inability to Produce Specimen.** A worker must remain at the test site until a sample is produced or the end of the workday, whichever comes first. If the worker is unable to produce a sample on the day requested, the worker must contact his/her supervisor for further instructions. The DTC will also contact the appropriate Deputy Director.
- D. Adulteration/Attempted Adulteration of Sample.** If it is determined that a worker adulterated or attempted to adulterate a specimen collected for substance abuse testing the worker is subject to the same discipline as a worker who has a confirmed positive test.
- E. Proper Use of Prescription Medications.** DCC supports accepted medical practices with the assumption that prescription medications will be taken as directed, by those for whom it was prescribed, for the problem diagnosed. If a worker chooses to take medication prescribed for a spouse or other family member, it is the worker's responsibility to contact his/her physician and obtain the doctor's approval. Failure to comply with specific medical directions may leave a person without a "valid" explanation of the presence of a controlled substance in case of a positive drug test.
- F. Validating Test Results.** Following specimen testing, positive results will be forwarded to the MRO. The MRO may also be provided results of a screening saliva test along with confirmatory evidentiary breath results for review. The MRO will confidentially contact the worker. If the worker cannot be reached at the number provided, the MRO will call the DTC for assistance. The MRO may question the worker concerning use of prescription drugs and medical treatments which may have impacted the positive test result. Prescriptions and/or treatments reported by the tested worker may be verified by the MRO with the pharmacy or doctor as appropriate. Workers are responsible to provide the MRO medical information which may explain a positive test result. Workers are also responsible to cooperate fully with the verification process. Failure to cooperate will result in a "reported positive" test result. If the worker cannot be contacted within three (3) work days the MRO will report a positive test result. Where there is a legitimate medical explanation for a positive test, the result will be reported by the MRO as a negative test result. The MRO will maintain confidentiality throughout all phases of his or her involvement and will discuss a worker's medical information only with the worker and other medical officials as necessary to verify information provided. The MRO will provide the DTC with a positive or negative test result and information on adulterants or possible attempted dilution. For CDL employees, the MRO must report within 3 business days to the Office of Driver Services valid positive drug test results for any of the following drugs: marijuana metabolites; K2; cocaine metabolites; amphetamines; meth (methamphetamines), opiate metabolites; or phencyclidine (PCP); or the submission of an adulterated, diluted, or substituted specimen on a performed test. DCC must report any refusal to provide a specimen to the Office of Driver Services.
- G. Consequences of Positive Test or Refusal to Test.** A refusal to test for a prohibited substance will be treated as a positive test result. A confirmed positive test result or refusal to test by an applicant or employee will result in withdrawal of the conditional offer of employment or termination of employment. Services of volunteers, interns, and

extra help will be terminated and entry on DCC premises denied for a confirmed positive test result. A confirmed positive test result or refusal to test by a contract worker will result in denied access to DCC premises.

H. Confidentiality. Every worker is responsible to respect the privacy of coworkers and to maintain strict confidentiality regarding drug or alcohol test results. This means only those persons managing the drug testing program and those in the worker's chain of supervision with a need to know may be informed or granted access to an individual's test results. The DTC will report quarterly unidentifiable aggregate test results for use by management. Results of individual substance abuse tests may be released to the following:

1. The worker;
2. The worker's supervisory chain;
3. Pursuant to a court order;
4. Medical personnel (for the purpose of meeting medical emergencies of the worker or medical review);
5. DCC Human Resource confidential employee file;
6. Law enforcement agencies, Office of Driver Services and FHWA, to an employer and/or the IAA for CDL drivers;
7. IAA and DTC;
8. MRO (for positive screens)
9. SAMHSA certified lab (for positive screens)
10. Other parties upon the written consent of the worker.

V. SUBSTANCE ABUSE ASSISTANCE.

A. Employee Requests for Assistance. An employee in a position other than a safety/security sensitive position may come forward at least twenty-four (24) hours prior to gaining knowledge of or being notified of a scheduled test and admit an alcohol or drug problem to his or her supervisor and request referral to the Employee Assistance Program (EAP). Alternatively, the employee may choose to enroll, at his or her own expense, in a licensed drug treatment program. Employees in safety/security sensitive positions may come forward only with alcohol problems in accordance with this guidance. The employee admitting use must be tested immediately. The supervisor will note the time and date of the employee request and report this information to the DTC. Based upon the testing result, one of the following will occur:

1. If the test is positive, the supervisor will require the employee to go on leave without pay status or use any accrued annual, holiday, or compensatory leave. The supervisor will contact the DTC to place the employee in follow-up testing as part of the treatment program with the results provided confidentially to his or her supervisor. The employee's job position will be held available for the employee for no more than 30 calendar days. The employee may return to work within the 30 days following negative test results reported to the supervisor. On return to work, the employee will be subject to all conditions for testing, post accident, reasonable suspicion, follow-up and random testing. Any subsequent confirmed positive test will result in immediate termination of employment. The employee must successfully complete the treatment program and have the results reported to his or her supervisor within 10 business days of completing the program.

2. If the test is negative, the employee may be allowed to continue at work, enter into drug treatment through EAP and/or a licensed treatment program, and be subject to drug testing at his or her own expense through the treatment program. Drug test results will be provided confidentially to the employee's supervisor. The supervisor will confidentially report the results to the DTC. The employee will continue to be subject to all conditions for testing. Any subsequent confirmed positive test will result in immediate termination of employment.

B. Unreported Employee Treatment. If a supervisor learns of any employee's enrollment in a substance abuse treatment program that has not been reported to him/her by the employee, such knowledge may be used as a basis for reasonable suspicion testing. If confirmed positive, employment must be terminated. If negative, the procedures in subparagraph V.A.2 above are applicable.

C. Treatment Program Completion. Evidence of successful completion of a substance abuse treatment program does not guarantee employment.

D. Notice of Drug-Free Workplace. Advertisements for vacant positions will identify DCC as a Drug-Free Workplace. Job Vacancy Announcements will state that applicants offered conditional employment will be drug tested. Workers will be provided access to this administrative directive and will sign a statement indicating his or her reading and understanding of the contents, which will be maintained in the employee's personnel file.

E. Hiring Applicants with a Documented Drug/Alcohol Abuse History. The DCC will not discriminate against applicants for employment because of a past history of substance abuse. Individuals who have failed a pre-employment drug test may reapply after a period of one year but must present themselves drug and alcohol-free. Such applicants, if employed, are subject to follow-up testing for two years as described above. Applicants for positions that require CDL's who have a history of a positive drug and/or alcohol tests must have completed a treatment program or an educational program prescribed by a substance abuse counselor and who has been eligible to assume the duties of the position by the employer as provided under federal statute.

VI. REPORTING. When there is reasonable suspicion of illegal activity contact the supervisor and Chief or appropriate Deputy Director and the Director. Also, follow applicable DCC guidance for reporting and investigating accidents and incidents.

VII. APPEAL/GRIEVANCE. Positive test results are not a matter for appeal or grievance unless discrimination or improper application of this directive is claimed as the reason for a positive test result.

VIII. ATTACHMENTS.

Form 760 "Drug Testing Chain of Custody Form"

