



*"Service with Excellence and Integrity"*

## Arkansas Department of Community Correction

Two Union National Plaza Building  
105 West Capitol, 2<sup>nd</sup> Floor  
Little Rock, Arkansas 72201-5731  
(501) 682-9510 Fax: (501) 682-9538

---

### ADMINISTRATIVE DIRECTIVE: 09-11 DRUG-FREE WORK PLACE

**TO: DEPARTMENT OF COMMUNITY CORRECTION (DCC) EMPLOYEES**

**FROM: G. DAVID GUNTARP, DIRECTOR**

**SUPERSEDES: AD 08-02**

**PAGE 1**

**APPROVED: Signature on File**

**EFFECTIVE: May 29, 2009**

- 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; 3-3060)

This policy sets standards and procedures for the DCC drug testing program to ensure drug testing is conducted in a fair and impartial manner, 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. Collection Site.** Any DCC designated location where workers (see definition) present themselves for the purpose of providing a specimen of their urine, breath, or saliva to be analyzed for the presence of drugs or alcohol.

- C. 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.
- D. Controlled Substance.** A drug, substance, or immediate precursor in Schedules I. through VI, as defined in Ark. Code Ann. §5-64-101.
- E. 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.
- F. Drug Testing Coordinator (DTC).** The DCC employee designated to administer the drug test. The DTC will also coordinate and schedule appropriate persons for follow-up testing and commercial drivers license (CDL) testing. The DTC compiles management information reports on drug test activity.
- G. Internal Affairs Section (IAS).** The office responsible for administering the drug testing program.
- H. Medical Review Officer (MRO).** A licensed physician who is responsible for evaluating, interpreting and providing results of drug and alcohol tests.
- I. Observation.** 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.
- J. Prohibited Drug.** Any illicit drug or misused prescription or over-the-counter drug. Alcohol is a prohibited drug when the amount of alcohol in a person's system exceeds the cutoff level while in duty status or when it is consumed during the workday, including the lunch period.
- K. 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.
- L. Reasonable Suspicion.** An opinion of possible use or abuse of a prohibited drug based on observed behavior or appearance that is characteristic of alcohol or drug use, such as, but not limited to a pattern of one or more of the following: observed decrease in the level of work performance, misconduct, excessive absenteeism and tardiness, history of valid complaints from supervisors or colleagues about poor work performance, reports of drug involvement from reliable sources or other documented acts of omission or commission often associated with drug or alcohol abuse, and excessive use of sick leave.

- M. Safety/Security Sensitive Positions.** Members of the Management Team, Parole/Probation Services Managers, Parole/Probation Officers, Community Work Program Advisors and Substance Abuse Program Leaders in Parole/Probation Services, and all residential center staff.
- N. Screening Test.** A preliminary test used to eliminate “negative” urine specimens from further consideration. Specimens that test “positive” on the screen are subject to a confirmation test.
- O. Substance Abuse Test.** A test administered for the purpose of determining the presence or absence of a prohibited drug or the metabolites of a prohibited drug in a person’s bodily fluids.
- P. Testing Official.** A designated staff person trained and authorized to collect samples for testing and/or conduct screening tests for substance abuse and to submit urine specimens for confirmatory testing by the lab.
- Q. Under the Influence.** A person with a confirmed positive drug or alcohol test result is considered to be under the influence.
- R. 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.
- S. Workers.** DCC employees, volunteers and contracted staff, unless the contractor operates a drug testing program acceptable to the DCC.

**IV. TESTING PROCEDURES, CONFIRMATION AND DOCUMENTATION.** Workers to be tested will show photo identification upon request of the DTC or testing official. Urine 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 will be followed to preclude the possibility of erroneous identification of test results.

- A. Test Conditions and Whom to Test.** Testing shall not be used to harass, punish or discipline, nor shall it be administered based on race, color, sex, religion, age, national origin, pregnancy, or disability. 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. A person to be tested will be allowed privacy during collection unless there is reason to believe that he or she may alter or substitute the specimen. Measures will be taken to ensure specimens are unadulterated and correctly identified. A Medical Review Officer (MRO) will make a final review of positive lab results by scrutinizing for possible alternate explanations and conducting necessary medical interviews with the tested worker (and his or her physician, if appropriate) concerning prescription medicines, medical history or review of other relevant factors. Employee Drug Testing will be as follows:

1. Conditional Employees. All applicants/newly-hired employees, including rehires, who receive conditional offers of employment with the DCC, will be tested. The DCC Internal Affairs Administrator shall 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. Refer to Volunteer Program directive for guidance on volunteers and contractor personnel.
3. Commercial Driver's Licensed (CDL) Workers. The United States Department of Transportation (DOT) and the Arkansas Office of Driver Services have specific requirements for drivers of commercial vehicles. 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 shall report to the Office of Driver Services within 3 business days the results of an alcohol screening testing conducted by DCC that is 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-Accident or Incidents.
  - a. It is the worker's responsibility to contact his/her supervisor, the DTC, or the IAA within the allotted period of time to get testing instructions and to be tested after one of the following incidents:
    - (1) Work related vehicle (in a private or state vehicle) accidents when there is injury;
    - (2) Moving traffic violation in conjunction with an accident;
    - (3) Work related incidents or accidents (other than vehicle) resulting in damage or property loss or injury
    - (4) The intentional or accidental discharge of a firearm while on duty, other than range practice or training, whether or not injury or death occurs.
    - (5) When a worker's actions or performance could have contributed to an accident or serious incident.
  - b. Non CDL licensed workers must report on-the-job accidents and injuries to their supervisors in accordance with the Reporting and Investigating Incidents and Hazards policies and will also follow established guidance for reporting workers compensation injuries.
  - c. Post Accident Testing of CDL Drivers. As soon as practical following an accident or incident involving a commercial motor vehicle, testing for alcohol and controlled substances shall be made for each surviving DCC CDL driver, if the accident involved injuries or loss of human life or if a driver received a citation under State or local law for a moving traffic violation in conjunction with an accident. A CDL driver who is subject to post accident testing shall, when circumstances permit, 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 that the worker is tested within the time frames prescribed. When testing is not conducted by law enforcement after an accident, the worker will immediately contact his or her supervisor, the DTC, or the IAA for testing instructions. Supervisors shall 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) **Post Accident 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 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 will maintain the documentation. Documentation shall be forwarded to the Arkansas Office of Driver Services and Federal Highway Administration (FHWA) as required or requested.
  - (2) **Post Accident Controlled Substance Testing.** Post accident controlled substance testing must be conducted within 32 hours following an accident. If not, the supervisor must provide written justification for not having the test administered. Such justification will 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.** The results of a breath or blood test to determine the use of alcohol or a urine test for determining the use of controlled substances conducted by Federal, State or local officials having independent authority for the test, will be considered to meet the requirements of this testing, provided such tests conform to applicable Federal, State or local requirements, and the results of the tests are obtained and provided to the DTC.
5. **Reasonable Suspicion.** Reasonable suspicion testing will 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 for testing instructions and completion of a Reasonable Suspicion Affidavit. This testing activity should be reported to the appropriate Deputy Director or Assistant 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. Circumstances which may support reasonable suspicion may include some or all of 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;
  - h. evidence that a worker is involved in the possession, sale, solicitation, manufacturing or transfer of prohibited drugs;
  - i. evidence that a worker is being treated for substance abuse.
6. Follow-Up Testing. Follow-up testing, for a period not to exceed two 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 designee.
7. Random Testing. Random testing will be conducted of all DCC workers using a neutral selection process. Random test schedules will be produced and will be made known on the date of the test only by the DTC, supervisors as necessary and scheduled workers. When departing the worksite for testing, workers are responsible for properly accounting for their time to their supervisor.
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 requirement shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain required emergency medical care or assistance in responding to the accident.

## **B. Testing for Prohibited Substances.**

1. General. The DCC requires substance abuse testing of urine, saliva, and/or breath for cocaine, marijuana metabolites, 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 breathalyzer confirmation of a positive saliva alcohol test. Initial drug screen testing will be conducted by authorized DCC personnel. Following drug screen testing, all positive urine specimens or challenged results will be submitted for confirmatory testing to a Substance Abuse and Mental Health Services Administration (SAMHSA, formerly NIDA) approved lab.

2. Issuance of DCC firearm. DCC employees who will be issued a firearm must be tested for both drugs and alcohol prior to being issued a firearm. This includes newly hired employees and employees rehired into a position where a firearm will be issued. (3-3087-1 [P])
  3. Selection of Workers for Testing. 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. 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 shall remain at the test site until a sample is produced or the end of the work day, 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 doctors 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 shall report within 3 business days to the Office of Driver Services valid positive drug test results for any of the following drugs: marijuana metabolites; cocaine metabolites; amphetamines; opiate metabolites; or phencyclidine (PCP); or the submission of an adulterated, diluted, or substituted specimen on a performed test. DCC shall 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 may report unidentifiable aggregate test results for use by management. Results of individual substance abuse tests may be released as follows:

1. To the worker;
2. To the worker's supervisory chain (based on a need to know);
3. Pursuant to a court order;
4. To medical personnel for the purpose of meeting medical emergencies of the worker or for medical review as part of the substance testing process;
5. To DCC Human Resource Section for the confidential employee file;
6. To law enforcement agencies, Department of Transportation according to Federal Regulation for CDL licensed workers, to an employer (as permitted for CDL holders or in DCC policy regarding release of employment records), and/or the Internal Affairs Administrator (IAA) for investigations; and
7. To 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 drug treatment program licensed or approved by the Arkansas Bureau of Alcohol and Drug Abuse Prevention (ABADAP) or a program licensed by another state. Employees in safety/security sensitive positions may come forward only with alcohol problems in accordance with this guidance. The employee admitting use will 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 employee will be required to go on leave without pay status or choose to use any accrued annual, holiday or compensatory leave. The supervisor will notify the DTC and request that the employee be placed in follow-up testing (at his or her expense) 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 work 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 positive, employment shall be terminated. If negative, the procedures in sub-paragraph 1.b. above apply.

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

**D. Notice of Substance Abuse Testing.** 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-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 and 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. NOTIFICATION AND INVESTIGATION.** When there is reasonable suspicion of illegal activity, DCC guidance for reporting and investigating accidents and incidents should be followed. Information that may indicate illegal activity will be reported to the supervisor, the appropriate Deputy Director and the Internal Affairs Administrator.

**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.