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SECRETARIAL DIRECTIVE

SUBJECT: Personnel Drug Testing

NUMBER: 2022-03

SUPERSEDES: ADC AD 19-13
ADC AD 13-101
ACC AD 19-12

APPLICABILITY: All Personnel of the Department of Corrections as defined herein.

REFERENCE: A.C.A. § 5-64-101, 5-65-204, 11-14-106, 25-403-105, 25-43-108, 25-43-403, AR 202 Drug-Free Workplace, Arkansas Constitution Amendment 98, 49 C.F.R. § 40.3

PAGE: 1 of 14

APPROVED: Original signature on file

EFFECTIVE DATE: 4/13/2022

I. POLICY

As the executive head of the Arkansas Department of Corrections (Department), it is the responsibility of the Secretary of Corrections (Secretary) to administer the various rules, orders, or directives issued by the Department. The purpose of this directive is to ensure the Department is compliant with the federal Drug-Free Workplace Act of 1988 (41 U.S.C 81) and is committed to adhering to laws regarding the possession and use of Prohibited Substances/ Drugs, providing a safe work environment, fostering the well-being and health of its employees, and ensuring that no employees are impaired by intoxicating substances while performing their duties.

The Department prohibits the manufacture, purchase, distribution, dispensing, possession, or use of Prohibited Substances/Drugs by Personnel. This prohibition covers the inhalation, injection, ingestion and the presence of a specific Prohibited Substance/Drug or its metabolites in the body or bodily fluids. Department Personnel shall not report to work while their ability to perform job duties is impaired due to the use of alcohol or other drugs.

All Department Personnel, including support staff, are responsible for the good order and safety the various Department owned and operated Entities and must be fully alert, capable of good judgment, and physically able to respond as required. No Personnel, whether on or off duty, shall have any involvement with Prohibited Substances/Drugs.

II. DEFINITIONS

- A. Adulteration Check. A field or laboratory test to indicate whether the specimen submitted matches certain parameters of human urine. Adulteration will be considered to have occurred if the creatinine level is below 20 milligrams per deciliter on laboratory analysis
- B. Alcohol Test. Any standardized field or breathalyzer test accepted by the Department and as specified in A.C.A. § 5-65-204, et. seq.
- C. Applicant. An individual who is seeking employment with the Department.
- D. Chain of Custody. Procedures to account for the integrity of each specimen by tracking its handling and storage from the point of specimen collection to the final disposition of the specimen, using a Department approved Chain of Custody form.
- E. Central Drug Testing Coordinator (CDTC). An employee responsible for coordination and administration of Drug Testing and Alcohol Testing for the Department, to include training of Local Drug Testing Coordinators (LDTC), procurement and inventory of supplies, uniformity and retention of documentation, and testimony in administrative and legal proceedings.
- F. Confirmation Test. A retest of the sample using current scientifically accepted confirmation technology. Confirmation Tests will be conducted when the results of the first test are inconclusive, when adulteration is suspected, to test for drugs not covered in the screening test if the CDTC suspects Personnel may be under the influence of other controlled substances, and/or for the verification of a Positive Test Result from an On-Site Test.
- G. Controlled Substance. Also referred to as prohibited drugs or substances, defined as any drug, substance, or immediate precursor in Schedules I through VI as defined in A.C.A. § 5-64-101. See Definition V. "Prohibited Substances/Drugs."
- H. Critical Incident. For the purpose of this directive, an incident involving on-duty staff and causing, or having the potential to cause, substantial property damage, physical injury, or death.
- I. Critical Need Position. Personnel in a position or job classification that is required to be staffed by the Department twenty-four (24) hours a day and seven (7) days a week.
- J. Decision-Making Supervisor. An individual over the daily operations and decision-making processes of any Department owned or operated Entity including the Secretary, Chief of Staff, Division Directors, Deputy Directors, Superintendents, Wardens, Center Supervisors, Area Managers, Assistant Area Managers, or Administrators, or their designee.
- K. Direct Observation. Visualization by testing staff of the urine stream leaving the body and entering the test cup.
- L. 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.
- M. Drug Test. Any number of standardized and generally accepted tests for the presence of mind-altering drugs or substances meeting or exceeding the United States Department of Transportation (USDOT) Standards; 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. These tests may test for, but are not limited to, the following drugs: amphetamine, methamphetamine, opiates, oxycodone, benzodiazepines, barbiturates, cocaine, and marijuana. Tests may be varied in response to available intelligence and testing procedures. Criteria for a Positive Test Result are pre-established by the manufacturer or laboratory, balancing the risk of false negatives and false positives.
- N. Entity. Any office, unit, center, or facility operated by the Department to include programs, farm and industry facilities, construction sites, administrative offices, area offices, jails, work release centers, pre-release centers, and private prisons operated on behalf of the Department.

- O. Indirect Observation. Presence in the immediate area when a urine sample is being provided, balancing the need for privacy with prudent measures for prevention of adulteration or substitution of samples.
- P. Local Drug Testing Coordinator (LDTC). An individual at each entity who has been designated by the warden, manager, center supervisor, or administrator. This individual will be trained by the CDTC to coordinate specimen collection, On-Site and off-site testing, train staff in collection and testing and be responsible for local documentation of Drug Testing and Alcohol Testing. LDTC's are identified in the files of the CDTC, and all training is documented in that file.
- Q. Medical Review Officer (MRO). A licensed physician who is responsible for evaluating, interpreting, and providing results of Drug Tests and Alcohol Tests.
- R. On-Site Test. A Drug or Alcohol Test administered by the LDTC or CDTC or their designee at any Department Entity. On-Site Tests may be sent out for Confirmation Testing if they are inconclusive, for verification, or for other purposes as outlined in this policy.
- S. Personnel. For the purpose of this directive, Personnel are defined as individuals applying for employment with the Department (new applicants), individuals hired into employment either full or part-time within the Department, or any agent of the Department including supervisory and support staff, interns, volunteers, and contracted employees, excluding any appointees of the Governor.
- T. Policy Testing. Drug Testing for current employees as required by Department policy at regular intervals determined by the CDTC.
- U. Positive Test Result. A Positive Test Result on a Drug Test or Alcohol Test is defined as the presence of a prohibited substances in a sample provided by the Personnel being tested. Positive Test Results may be produced through an On-Site test and/or Confirmation Test.
- V. Prohibited Substances/Drug. Alcohol, illicit drug, and/or controlled substance use without a valid prescription, misused prescription or over the counter (OTC) drugs, synthetic cannabinoids such as K2 or spice, or any kind of cannabidiol (CBD) product including but not limited to oils, edibles, creams, lotions, and vaporizers. The use of marijuana in any form, including legal use with a medicinal marijuana card, is included as a prohibited substance for all Personnel.
- W. Proper Use of Prescription Medications. For purposes of this policy, "prescription" or "prescribed drugs" means a written order for a pharmaceutical drug for use by a particular person given by a practitioner in the course of professional practice, including controlled substances, prescribed in accordance with the regulations promulgated by the director of the United States Drug Enforcement Administration (DEA) pursuant to the federal drug abuse control laws. A medicinal marijuana card, regardless of any reason Personnel may possess one, is not covered under this policy and is considered a prohibited substance for all Personnel. Prescription medications will not be recognized as valid/current prescriptions after the "discard after" or "do not use after" date printed on the prescription bottle label. See Definition V. "Prohibited Substances/Drug."
- X. Random Testing. Unannounced testing of Personnel determined by the CDTC or a Decision-Making Supervisor which may range from the testing of an individual employee or a representative sample of the staff within an Entity in which each of those to be sampled has an equal chance of being selected.
- Y. Reasonable Suspicion. This may include, but is 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, complaints from supervisors or colleagues about poor work performance, excessive use of sick leave, negligent accidents, poor traffic safety record, reports of drug involvement from reliable sources, or other documented acts of omission or commission often associated with drug or alcohol abuse.

- Z. Safety-Sensitive Position. Involves job duties where impairment may present a clear and present risk to co-workers or other persons and include any position where a momentary lapse in attention could result in injury or death to another person. It also refers to jobs that would be particularly dangerous if performed under the influence of drugs or alcohol. Safety-sensitive position duties include, but are not limited to the following activities: carrying a firearm, performing life-threatening procedures, working with confidential information, working on criminal investigations, driving a vehicle, operating heavy equipment as part of normal duties, using justified physical force against persons to maintain order or security in accordance with Use of Force policies, and working with known or potentially hazardous or flammable materials, controlled substances, food, or medicine.
- AA. Suspicion Testing. Testing based on a previous positive test, adulterated test, or a reasonable suspicion that has been documented on official forms, such as 005 Incident Report or a memorandum to or from the Decision-Making Supervisor.
- BB. Testing Employee. Any employee authorized by the Decision-Making Supervisor who is trained by the CDTC and/or LDTC, and registered with the CDTC to conduct On-Site Testing and laboratory-based testing.
- CC. Under the Influence. For purposes of this policy, under the influence refers to any amount of Prohibited Substance/Drug above threshold for a positive drug test, any prescription or OTC medication demonstrably impairing alertness, judgment or behavior to the degree that proper and efficient job performance is jeopardized, and/or a blood alcohol content (BAC) of 0.02% or higher.

III. **GUIDELINES**

A. **General**

1. All Department Personnel are designated as Safety-Sensitive Positions.
2. This Secretarial Directive is the guiding document for Personnel Drug Testing. It may be supplemented by Drug Test instructions from the manufacturer and annual training. Any error in the administration of a Drug Test or failure to obtain a Confirmation Test in a timely manner will be reported to the CDTC immediately. The CDTC will consult with the appropriate authorities to determine whether an error is sufficient to invalidate the test.
3. Each Department Entity, including the Secretary's office, shall designate a LDTC to coordinate and administer Drug Tests or Alcohol Tests.
4. All Personnel are subject to Drug Testing. Drug Tests may include urine, sweat, saliva, or hair samples. Drug tests may be conducted On-Site and sent for a Confirmation Test. Any positive Drug Test for Prohibited Substances or refusal to submit to a Drug Test or Alcohol Test will result in an assumption of a Positive Test Result and any offer of employment being withdrawn. Any Positive Test Results will be documented by Human Resources. The Entity's Human Resources manager may check with Central Human Resources for the previous test results of any Applicant or Personnel. Previous Positive Test Results may preclude the processing of an individual's employment application.
5. Personnel must notify their immediate supervisor, and the LDTC or CDTC of any prescribed medications they take that may produce a Positive Test Result on a Drug Test prior to the administration of a Drug Test or Alcohol Test. This notification must be documented on the Personnel's Drug Testing Request Form (Attachment 3). Personnel will be required to produce a current medication list for the last six (6) months from their pharmacist to confirm and verify proper prescription usage.
6. A Positive Test Result that is not due to confirmed prescription drug usage will result in the termination of employment as stated in the Secretarial Directive on Employee Conduct Standards and Discipline. A Positive Test Result for any non-prescription prohibited substance use will also result in any offer of employment to an Applicant being withdrawn.

7. Medical marijuana usage, as defined in Amendment 93 of the Arkansas Constitution, prohibits Personnel in a Safety-Sensitive Position from the use of medical marijuana even if they are qualifying patient under the amendment and/or hold a registry identification card. Department Personnel are prohibited from the use or possession of a medicinal marijuana card pursuant to this policy and state law.
8. All Personnel must be advised of the existence of this Secretarial Directive.
 - a. All Personnel must be directed to sign the “Personnel Drug Testing Advisory Receipt” form (Attachment 1) indicating that they have been made aware of the provisions of this Secretarial Directive and that they agree to support a drug-free workplace.
 - b. Personnel’s consent, indicated by signing this form (Attachment 1), permits a release of personal information relating to a Drug Test or Alcohol Test.
 - c. All Personnel may review this Secretarial Directive on the Departments intranet (DOC Connect) and on the Department’s public website.
9. Random Testing of Department Personnel may be conducted as authorized by a Decision-Making Supervisor.
10. Any supervisor suspecting that their Personnel is impaired by Prohibited Substance(s) must contact their Decision-Making Supervisor or designee to schedule a Drug Test or Alcohol Test.
11. Supervisors shall document any referral for Drug Testing or Alcohol Testing. The rights and privacy of Personnel will be safeguarded to the maximum extent possible. Revealing the results of Drug Tests or Alcohol Tests to those not directly involved in testing procedures will be considered cause for disciplinary action according to the provisions of the policies governing employee conduct.
12. Any employee may refuse a Drug Test or Alcohol Test. If this occurs, they are to immediately be relieved of duty and placed on unpaid administrative leave pending disciplinary action. Notification of the refusal of testing will be made to the employee’s Human Resources manager and Division Director. For purposes of employee discipline, refusal of testing will be considered the equivalent to a Positive Test Result and that individual will be subject to disciplinary actions pursuant to the Secretarial Directive on Employee Conduct Standards and Discipline.
13. Any Applicant, volunteer, or intern may refuse a Drug Test or Alcohol Test. If this occurs, any offer of employment is to be withdrawn and the processing of an application will be stopped. If a volunteer refuses a Drug Test or Alcohol Test, the volunteer agreement will be voided. If an intern refuses Drug Testing or Alcohol Testing, their internship will be terminated. The Applicant, volunteer, or intern will not be eligible to reapply for one year and the refusal of a test may be considered in future applications.
14. Any Personnel may come forward and admit an alcohol or other drug problem to their supervisor and request referral to the Employee Assistance Program (EAP). This must be done at least 24 hours prior to any random or suspicion drug testing.
 - a. This action will not prevent Drug Testing from occurring, nor will admitting an alcohol or other drug problem mitigate the seriousness of a rule violation. However, admission may be taken into consideration when considering the appropriate level of disciplinary action.
 - b. Any employee freely admitting a problem will be Drug Tested or Alcohol Tested immediately.

- c. As a condition to enrollment in the EAP, if any employee with documented substance abuse is currently registered with HR or the CDTC as a drug or alcohol-free individual, they may continue to work for the Department so long as they can continuously provide a negative test result for Drug Tests or Alcohol Tests. Employees with documented substance abuse will be tested regularly at their own expense as part of the EAP.
 - d. If a Drug Test returns a Positive Test Result, the employee will be immediately relieved of duty.
 - e. At the discretion of the Entity's Decision-Making Supervisor, employees may be allowed to take accrued vacation, holidays, or compensatory time until they are cleared by the EAP to return to work.
 - f. Employees enrolled in a treatment program that is certified by the Arkansas Department of Human Services may request sick leave to complete their treatment program.
 - g. If any of these options are not available or contradicted by other Department policy or rule violations, Personnel may be allowed the choice of being placed on leave without pay or resigning. If resignation is chosen, the termination report must reflect drug or alcohol abuse as the reason.
15. Services directly provided by the EAP, other than Drug Testing, are free. However, referrals to other programs may be made, and the individual will be responsible for payment required by outside programs.
16. Any Personnel found to be in violation of this policy will be subject to discipline according to procedures outlined in the Secretarial Directive on Employee Conduct Standards and Discipline.
17. Personnel terminated or resigning for being Under the Influence while on duty or for use of Prohibited Substances/Drugs may not apply for rehire until at least one (1) year after their termination. Rehire is not a right nor is it guaranteed regardless of any drug/alcohol treatment received in the interim. The recommendations of the EAP or other drug/alcohol treatment provider certified through the Arkansas Department of Health must be provided and may be considered in a rehire application.
18. Any Personnel who have been disciplined and/or referred to the EAP for substance abuse problems may be subject to Policy Testing as a condition of continued employment.
19. All persons, vehicles, and belongings of any Personnel on state property are subject to search, ion scanning, and examination by drug sniffing dogs. Any individual found to be in possession of Prohibited Substances/Drugs will be detained and turned over to the proper authorities and may face disciplinary action up to termination.

B. Conditions of Testing

1. Pre-employment testing:
- a. All Applicants will be advised of the requirements for Drug Testing by the Human Resources manager or other appropriate official.
 - b. All new hires must be tested as a part of pre-employment screening and will not be allowed to begin work until after being Drug Tested. The test must be negative and neither adulterated nor tampered with. A new hire may begin their duties with a Positive Test Result only if the Positive Test Result is determined to be due to current prescribed medications after confirmation testing and review by the MRO.
 - c. All applicants holding a Commercial Driver's License (CDL) will have a report from the Office of Driver Services retrieved. This report will be maintained as a part of the Personnel's employee record.

- d. Refusal to test submit to a Drug Test and/or a Positive Test Result will result in the offer of employment being withdrawn.
2. Random Testing:
- a. Any Decision-Making Supervisor may order the unannounced drug testing of a sample of, or the entire population of any section of Department Personnel under their supervision. Sampling will be conducted randomly so that every member of the employee group has an equal chance of being tested.
 - b. A minimum of 5% of Personnel in each Entity will be tested quarterly. Sentencing Commission and Jail Standards will be included with Personnel at Department Headquarters; Compliance, Industry, Warehouse, Internal Affairs, and K9 will be included with Personnel at Central Office; and Internal Auditors, Think Legacy, Classification, SOCNA, and Inmate Banking will be included with Personnel at Administration Annex East for quarterly testing purposes.
 - c. Personnel on initial hire probation, or those for whom such tests have been made a condition of continued employment, may be tested as often as requested by their applicable LDTC, CDTC, or Decision-Making Supervisor.
3. Critical Incident Testing
- a. Personnel involved in a Critical Incident will be referred for Drug Testing and Alcohol Testing.
 - b. Testing shall be performed as soon as possible by trained agency staff or hospital staff.
4. Policy Testing
- a. Any Personnel that is designated as a Testing Employee is to be Drug Tested at least quarterly. Any Testing Employee may be selected for their facility or office's Random Testing Cycle in addition to the mandatory quarterly testing specifically for Testing Employees, which may result in being tested two (2) times during that cycle.
 - b. All Personnel enrolled in the EAP for drug or substance abuse problems, a substance abuse treatment program, or a program of recovery are to be Drug Tested at least quarterly.
 - c. Any Personnel whose duties require them to hold a CDL must be Drug Tested by a Arkansas Department of Transportation (ARDOT) testing contractor for CDL Drug Testing. This ARDOT testing is required in addition to drug testing procedures described in this policy.
 - d. Personnel in a Critical Need Position may be Drug Tested at the frequency designated by their Division Director or the Secretary.
 - e. Personnel on initial hire probation, or those for whom such tests have been made a condition of continued employment, may be Drug Tested as often as requested by their applicable LDTC, CDTC, or Decision-Making Supervisor.
 - f. Employees returning from any absence from duty of six (6) months duration or more will be required to submit to a Drug Test and/or Alcohol Test.
 - g. All new, rehired, and reassigned Personnel who will be issued a firearm must be tested for both drugs and alcohol prior to being issued a firearm. Any individual issued a firearm will be tested at least twice each calendar year during their employment. The tests must be at least six (6) months apart and may include a Random Test.

- h. All employees are subject to Suspicion Testing provided there is Reasonable Suspicion or reliable information that would lead a reasonable person to believe that the employee had been using and Under the Influence of drugs or alcohol. Additionally, any previous Positive Test Result is considered grounds for Suspicion Testing. A written report documenting any observed behavior or information must be provided with all Suspicion Testing.
- i. It is the responsibility of an entity's Decision-Making Supervisor to ensure that the LDTC under their supervision is Drug Tested and Alcohol Tested at unannounced intervals, at least quarterly. Such testing should be documented in the monthly report. For administrative offices, the appropriate Division Director or Secretary are responsible for ensuring Random Testing of the LDTC is performed in their areas of supervision.

IV. TESTING PROCEDURES

A. Preparation for Testing

1. The LDTC or the Testing Employee must check the number and expiration dates of any on-site Drug Test(s) to be used. If the plastic envelope in which the Drug Test is packaged has been compromised, the Drug Test should not be used. If this appears to be a manufacturing defect, the Drug Test should be returned to the CDTC.
2. Prior to conducting an Alcohol Test, the breath alcohol analyzer machine must be checked according to the manufacturer's instructions and the date of the next calibration check documented.
3. The LDTC or Testing Employee must obtain Chain of Custody documentation prior to testing. If a sample is to be sent out for laboratory confirmation, a sealable plastic bag must be obtained in addition to the Chain of Custody documentation.
4. The LDTC or Testing Employee must carefully check the identification badge of the individual being tested to ensure their information correctly matches the data on their forms.
5. Upon reaching the testing site, Personnel reporting for testing must empty their pockets. Personal property must be examined by the testing employee in a direct and clear view of Personnel being tested. Then, the Testing Employee may conduct a pat search. After a pat search and examination of their belongings, personal property can be retrieved by the employee being tested. If any illegal items, prescribed or OTC medications, nose or eye-drops, and any other chemical substance subject to being used to adulterate a specimen are found, they must be secured in a clear plastic sealable bag and held by the Testing Employee until the specimen has been collected and sealed.
6. Personnel being tested must remove anything from inside their mouth and keep their hands away from their mouth, out of their pockets, and visible to the Testing Employee.

B. Specimen Collection and Testing: Alcohol

1. The Testing Employee must observe the Personnel being tested for twenty (20) minutes before administering any breath or saliva test. The Personnel being tested cannot have anything to eat or drink during this observation period including, but not limited to, chewing gum, mints, candy, etc. There must be a witness, selected by the LDTC, that is present at all times during Alcohol Testing.
2. The Testing Employee must remove the mouthpiece from its protective covering and insert it into the breath alcohol analyzer in the presence of the individual being tested and witness. The Personnel being tested will be instructed to blow into the mouthpiece until the equipment indicates that an adequate sample has been obtained.

3. The reading from the breath alcohol analyzer must be shown to the tested Personnel who must read aloud the result displayed. The breath alcohol analyzer must then be shown to the witness who also must read the number aloud. The reading from the machine must be documented on the “Drug Testing Request Form” (Attachment 4). The “Drug Testing Request Form” must be signed by Personnel being tested, the witness, and the Testing Employee.
4. If there is a Positive Test Result, the “Notification of a Positive Test” (Attachment 3) document must be given to the tested Personnel in the presence of a witness. Additionally, the document must be signed by the witness and Testing Employee in the presence of the tested Personnel.
 - a. If Personnel accept the test result, they must sign the document acknowledging they accept the Positive Test Result.
 - b. If Personnel do not accept the test result, they may request confirmation of their results, and will be asked to provide a urine sample. The specimen must be sealed with evidence tape and sent to the laboratory for confirmation testing. If a urine sample is to be collected, it must be conducted by a Testing Employee designated by the LDTC based on the demographic information of the Personnel being tested.
5. No person suspected of or found to be Under the Influence of alcohol should be allowed to operate a motor vehicle. The Decision-Making Supervisor or their designee must arrange for the individual that is Under the Influence to be driven home. If the person Under the Influence of alcohol refuses assistance, local law enforcement will be notified with a description of the car and license plate.

C. Specimen Collection and Testing: Illegal Drugs

1. Any Personnel reporting for Drug Testing must be under continuous observation by the Testing Employee or their designee until testing procedures are completed to avoid substitution or adulteration of specimens. The Testing Employee for Direct Observation drug tests will be determined by the LDTC based on the Personnel demographic information. Additionally, there must be a witness to the administration of the test designated by the LDTC.
2. The Testing Employee must conduct an initial check of the location where collection of the specimen is to occur. Cleansers or any other foreign material that could be used to contaminate the sample must be removed or secured.
3. The Testing Employee shall obtain a collection cup, show the Personnel being tested the test expiration date, and that the plastic envelope is intact. The envelope must not be opened until it is time to obtain the specimen.
4. Personnel being tested must remove any bulky outer clothing. Their hands and fingernails must be inspected. If a foreign substance is noted under their fingernails during the inspection, the employee must then be asked to thoroughly wash their hands in clear water only and scrub underneath their fingernails. Hands should be dried thoroughly with a clean paper towel that must be discarded immediately.
5. The Testing Employee must enter the restroom with the Personnel being tested. If the restroom is too small to accommodate two (2) people, the testing employee may stand outside with the door slightly propped open to provide a view of the washbasin. Direct Observation is not required unless there is Reasonable Suspicion that the Personnel being tested may attempt to contaminate the sample. Any male Personnel that is being tested should be asked to stand away from toilets or urinals containing liquid.

6. The envelope containing the On-Site Drug Test must be opened by the Testing Employee in the presence of the Personnel being tested. Prior to handing the specimen cup to the Personnel being tested, the Testing Employee shall provide instructions to fill the cup to a depth of a minimum of two (2) fingers width to half-full .
7. Should the Personnel being tested be unable to produce a specimen, they will be asked to remain seated in an office or other place where they can be observed by the Testing Employee or witness. If the package containing the specimen cup has already been opened, it must remain in personnel's sight but out of their reach until they are ready to provide a specimen. They may be given either two (2) glasses of water, a soft drink, or a cup of coffee. They will be given two (2) hours to sit and wait. If the Personnel being tested does not produce a specimen within two (2) hours, they may be considered to have refused the test. Personnel may be offered hair analysis test in place of urinalysis at the discretion of the appropriate Division Director or Deputy Director. An extension of time to complete the test may be allowed at the discretion of the Testing Employee if the Personnel being tested can give a plausible explanation for their inability to provide a sample. If they cite a medical reason for difficulty in producing a urine sample, a hair sample may be taken instead.
8. When the sample has been collected, the Personnel being tested must hand the cup to the Testing Employee who will secure the lid. The Testing Employee then will return the collection cup to the Personnel being tested who, under the supervision of the Testing Employee, must carry the cup to the location where an On-Site Test is to be read or where the laboratory test is to be secured for shipping.
9. Any specimen producing a Positive Test Result will be sent to the lab for confirmation. Upon receiving a Positive Test Result, the Testing Employee must show the Personnel being tested a computer-generated label with their name, AASIS number, and the last four (4) digits of their social security number. The Testing Employee must then place the label on the collection cup. The temperature strip will then be read. The On-Site Drug Test must be conducted according to the instructions of the manufacturer and this policy. The collection cup and the Drug Test are to be left in the sight but out of reach of the Personnel being tested until all test procedures have been concluded or the sample is packaged for sending to the laboratory. The cup must be sealed with the computer-generated label and placed and sealed in the plastic shipping bag in the presence of the Personnel being tested.
10. If the On-Site Drug Test fails to produce a result, it should be reactivated and checked to make sure that the manufacturer's instructions have been followed. If the Drug Test still does not produce a result, the sample cup must be sealed with evidence tape and forwarded to the laboratory for independent analysis.
11. If any On-Site Test yields a Positive Test Result, the witness will be asked to read the test in the presence of the Personnel being tested. In the presence of the witness, the Personnel being tested must be asked to list any medications recently taken that might account for the Positive Test Result.
12. If a sample requires laboratory confirmation, the Testing Employee must record the tracking number from the shipping label on the positive Drug Testing Request Form (Attachment 4) for the applicable Personnel.
13. If the Personnel being tested is an employee, they will be called in by the LDTC or Decision-Making Supervisor or their designee when the laboratory results are received. A "Notification of a Positive Test" form (Attachment 3) must be completed once the results are delivered to the personnel. The employee will be provided with a copy of the laboratory results.

- a. While waiting for confirmation results to be returned from the laboratory, the LDTC must notify the Personnel's supervisor that preliminary results are positive for Prohibited Substances/Drugs or medications in which the Personnel does not have a valid prescription. In this situation, the Personnel must be placed on administrative leave pending confirmation. In addition, the LDTC or the Personnel's supervisor must immediately notify the appropriate Human Resources Administrator.
- b. Personnel may, at their own expense, choose to get an independent Confirmation Test of the results. They must use a laboratory that is approved by the Substance Abuse and Mental Health Services Administration (SAMHSA) or the College of American Pathologists (CAP) other than the lab that is regularly used by the Department. If Personnel chooses this option, they must pay the lab charges plus shipping and handling via money order to their LDTC or human resources manager within one (1) business day.

D. Action Upon a Positive Test

1. Personal information related to any individual yielding a Positive Test Result on an On-Site Test should not be revealed except to those directly involved in the Drug Testing of that person, their Decision-Making Supervisor, Human Resources Administrator, CDTC, Division Director, the Chief of Staff, Chief Legal Counsel, or the Secretary. Personnel are not to be considered guilty of any wrongdoing unless they accept the Positive Test Result, willingly admit to the drug use, willingly admit to being Under the Influence of Prohibited Substance(s) while on duty, or the test is confirmed.
2. Certain medications may produce a Positive Test Result. If a Positive Test Result is due to the proper use of a prescribed medication, Personnel will have twenty-four (24) hours from the notification of their Positive Test Result to provide a current prescription list dating back six (6) months from their pharmacist. If drug testing is completed on a weekend or holiday, the prescription list must be provided by 8:00 a.m. on the following business day. Personnel who provide their medication list may not be penalized, unless the drugs are at a level that impairs work performance, the individual has failed to notify their supervisor that they are taking medication that may cause them to work at an impaired state, they are taking a prescribed medication that produce a Positive Test Result on a Drug Test, and/or they are not taking the medication as prescribed.
3. For Personnel who hold a CDL, positive results, as defined by the Procedures for Transportation Workplace Drug and Alcohol Testing Programs 49 C.F.R. § 40.3, as in effect on June 1, 2021 are to be reported by the Personnel's Human Resources manager to the Office of Driver Services within three (3) business days. This includes any refusal to comply, adulterated specimen, diluted specimen, or substituted specimen.
4. Any Personnel who yields a Positive Test Result of an On-Site Test will be escorted to the office of their Decision-Making Supervisor. The Testing Employee must notify the CDTC.
 - a. The Personnel's Decision-Making Supervisor must notify the appropriate Deputy or Assistant Director and local Human Resources manager that the On-Site Test produced a Positive Test Result. If the testing is not of Personnel that is assigned to a unit or center, the appropriate Decision-Making Supervisor or their designee will notify the Personnel's Human Resources manager.
 - b. An employee testing positive shall be placed on administrative leave immediately pending disciplinary action if Prohibited Substances/Drugs are involved or if a Reasonable Suspicion, as determined by their Decision-Making Supervisor, exists that chronic or episodic drug/alcohol use is likely to continue impairing the employee's ability to perform job requirements.

- c. If an employee wishes to be paid while they are on administrative leave, they may take annual leave or other forms of leave as allowed in the Secretarial Directive on Employee Work Schedules and Leave. If the Confirmation Test comes back negative, or positive for drugs which are explained by current prescription medications being taken as they are prescribed, the leave taken will be restored to the employees account, or the employee will be reimbursed for any leave without pay (LWOP).
 - d. Personnel may request an independent Confirmation Test of a specimen producing a Positive Test Result from a laboratory of their choice that is independent of the one used by the Department and is approved by the SAMHSA or CAP. The specimen sent for independent confirmation must be the original specimen that was collected by a Department appointed Testing Employee. It must be sent to the lab of the Personnel's lab pursuant to procedures outlined in this directive. Personnel requesting independent Confirmation Testing must bear the costs associated with such testing and must notify the LDTC or their Human Resources manager of the laboratory of their choosing and provide payment by the end of the next business day via a money order that is payable to the Arkansas Department of Corrections. If notification and payment is not provided by the end of the next business day, Personnel forfeit the opportunity to seek independent confirmation testing.
 - e. Pending laboratory results or termination of employment with the Department, Personnel may request or agree to referral to the EAP. Personnel is to be advised that accepting referral to the EAP does not minimize the seriousness of the conduct violation, nor does it stand in the place of disciplinary action. This action may be used in the consideration of eligibility for rehire.
5. Confirmation of an On-Site Drug Test or results of a laboratory test should be returned to the LDTC electronically. A copy of the report should be sent certified mail or physically given to the Personnel that was tested. The Personnel's supervisor must be provided a copy of the results and will take action pursuant to the Secretarial Directive on Employee Conduct Standards and Discipline.

E. Post-Incident Testing

1. It is Personnel's responsibility to contact their supervisor or Human Resources Administrator for instructions on how to be tested within two (2) hours after any of the following incidents (in addition to this, CDL licensed employees must follow guidance in the "CDL Drivers" section):
 - a. Work-related accident with injury involving a personal or state vehicle.
 - b. Damage to state property, including state vehicles, as a result of a vehicular accident or incident whether on or off duty.
 - c. Moving traffic violation in conjunction with an accident involving a state vehicle or while on state business in a personal vehicle.
 - d. Work-related incident involving another employee that results in injury or death.
 - e. The intentional or accidental discharge of a firearm while on duty, other than range practice or training, whether or not an injury or death occurs.
 - f. The supervisor of involved Personnel may consult with the appropriate Deputy Director to determine if Drug Testing or Alcohol Testing is required for work-related incidents or accidents that do not involve a vehicle but result in the injury, damage, or loss of state property.

- g. When it is determined by their supervisor that Personnel's actions or performance could have contributed to a serious accident or serious incident. In these situations, the supervisor may consult with the appropriate Deputy Director to determine if testing is required.

2. CDL Drivers

- a. Following an incident involving a commercial motor vehicle, drug and Alcohol Testing must be conducted for each 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.
- b. A CDL driver is subject to post-incident testing and must consult with their supervisor or Human Resources Administrator to receive testing instructions as soon as possible if testing is not conducted by law enforcement officials immediately following the accident. The driver may be deemed to have refused to submit to Drug Testing or Alcohol Testing if they do not consult with their supervisor for testing instructions. It is the joint responsibility of the Personnel and their supervisor to ensure that they are tested within two (2) hours after the incident.
- c. 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 employee in complying with these requirements.

V. SAMPLE SELECTION, DOCUMENTATION, AND CHAIN OF CUSTODY

A. Sample for Random Testing

1. Random Testing samples should be drawn at unpredictable intervals at each unit and center at least once a month. The CDTC, in consultation with the Decision-Making Supervisor of the unit or center, will determine the number of Personnel to be tested monthly. At least 5% of unit and center Personnel must be tested quarterly.
2. Random Testing samples and the number of Personnel to be tested quarterly for Department entities not including units and centers (i.e., administrative offices, field offices) will be determined by the appropriate Division Director or the Secretary. At least 5% of Personnel must be tested quarterly.
3. All Department Personnel are subject to Random Testing at any time and not exempt from random testing solely because they have been previously tested in a cycle. Any Personnel may be selected for Random Testing in addition to their mandatory quarterly testing. (See "Policy Testing" under Section III. "Guidelines", subsection B. "Conditions of Testing").

B. Notification of a Positive Test

1. The "Notification of a Positive Test" document (Attachment 3) is to be completed by the Testing Employee at the time the On-Site Test is read and/or the results are received from any laboratory analysis.
2. Confirmation Testing processes must be explained to the Personnel being tested by the Testing Employee. The "Notification of a Positive Test" document (Attachment 3) must be completed after the confirmation processes are explained and signed or initialed where required by both the Personnel being tested and the Testing Employee .
3. The completed "Notification of a Positive Test" document (Attachment 3) must be taken to the Personnel's Decision-Making Supervisor, appropriate Division Director, or Secretary by the Testing Employee.

C. Monthly Report

1. The LDTC is responsible for reporting to the CDTC the number and results of all Personnel Drug Tests or Alcohol Tests conducted each month, by the fifth day of each succeeding month. Field offices are responsible for forwarding all Personnel drug tests to the CDTC to maintain their testing records.
2. Monthly reports will be summarized quarterly by the CDTC and reported to the appropriate Division Director and the Secretary.

VI. PROGRAM MANAGEMENT AND TRAINING

- A. The LDTC will maintain a current list of all individuals within their Entity trained and approved as Testing Employees. A copy of this list must accompany the monthly report to the CDTC.
- B. The LDTC will observe a Drug Test conducted by each Testing Employee at least quarterly and to document this supervision in the employee's training file.
- C. The CDTC will schedule annual Department-wide training, and provide training as requested by any Decision-Making Supervisor or LDTC. All training conducted should be documented in a training file as well as in the Personnel file of the individual(s) participating in the training.
- D. Questions that arise about procedures or policy are to be referred to the CDTC or up Personnel's chain of command. Any legal questions about Drug Testing or Alcohol Testing should be referred to Department's Legal Division.

VII. ATTACHMENTS

- Attachment 1. Personnel Drug Testing Advisory Receipt
- Attachment 2. Personnel Drug Testing Advisory
- Attachment 3. Notification of a Positive Test
- Attachment 4. Drug Testing Request Form



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PERSONNEL DRUG TESTING ADVISORY RECEIPT

I have received the document titled "Personnel Drug Testing Advisory." I recognize that this is not a complete description of the drug-testing program, and that I am entitled to review the Secretarial Directive on Personnel Drug Testing, which is available to me via the DOC Connect home page and the public Department website. In addition, a copy of the policy may be requested from a Human Resources Manager, Drug Testing Coordinator, or the Central Human Resources Office.

I understand that as Department personnel, I am expected to support the concept of a Drug-Free Workplace. I agree to submit to testing as required in the Secretarial Directive on Personnel Drug Testing.

Should I be involved in a critical incident as described in the Secretarial Directive on Personnel Drug Testing, my signature below authorizes medical staff treating me to test for the presence of alcohol and other drugs, and to release the results of such tests to the appropriate Department personnel.

PRINTED NAME

POSITION

ASSIGNED ENTITY

SIGNATURE

DATE

AASIS NUMBER

COPY: CENTRAL PERSONNEL FILE AND SUPERVISOR'S FILE | EMPLOYEE (if requested)



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PERSONNEL DRUG TESTING ADVISORY

This Secretarial Directive on Personnel Drug Testing supersedes all previous Division Employee Drug Testing Administrative Directives. The following is an advisory list of some of the highlights of this Directive that support AR 202, Drug-Free Workplace. A complete copy of the Secretarial Directive on Personnel Drug Testing is available on DOC Connect intranet, the public Department website, through personnel's Human Resources Manager, Central Human Resources Administrator, or the Central Drug Testing Coordinator's office. Questions about this policy should be directed up the personnel's chain of command or to the Central Drug Testing Coordinator.

- All Department personnel is subject to random testing as outlined in this Directive. Groups, up to the whole staff of a Division entity, may be tested at the Secretary, Division Director, or entity's Decision-Making Supervisors request. Personnel are also subject to continued testing pursuant to this Secretarial Directive. Additionally, applicants for employment, interns, and volunteers issued Department identification are subject to the provisions outlined in this policy and are considered Department personnel.
- Any personnel may be subject to testing if there is reasonable suspicion of the use of prohibited substances, drugs, and/or a level of alcohol use that may impair work performance. Personnel involved in critical incidents, accidents posing danger to persons and/or property, or causing damage to persons and/or property are subject to Drug/Alcohol Testing following such incidents.
- Personnel must notify their supervisors of the use of any legal drugs, such as legally prescribed medications, being taken that may impair their ability to carry out job functions prior to assuming their posts or produce a positive result on a drug test. Staff who have an alcohol or drug problem may seek help through their supervisor or human resources manager. Disciplinary action will not be taken based solely on the admission of an alcohol or drug problem, provided the admission is made more than one (1) day before a scheduled drug screening.
- Drug testing is primarily conducted by urinalysis. However, it may be conducted by hair or sweat analysis on a limited and/or as needed basis. Urine samples are provided under indirect observation to allow for privacy while preserving the integrity of the test. Direct observation will only be conducted if there is reason to suspect adulteration or substitution. Adulteration tests will be conducted on all samples.
- Blood Alcohol Testing is primarily performed with a machine that detects alcohol on the breath. Confirmation will be sought through urinalysis. Blood alcohol of 0.02% or higher while on duty will be considered to be "Under the Influence" and subject the employee to suspension or termination pursuant to the Secretarial Directive on Employee Conduct Standards and Discipline.
- Confirmation of Positive Drug Tests is routinely performed. Confirmation is obtained through gas chromatography/mass spectrometry. Any employee may request confirmation through a laboratory outside the Department following the initial Department used laboratory confirmation. An independent lab may be used provided the lab is a CAP or SAMHSA approved laboratory. Confirmation expenses are to be paid by the personnel being tested.
- Involvement with and the use of Prohibited Substances/Drugs is considered a terminable offense. Staff terminated for their association with illegal drugs will not be eligible for rehire for one (1) year. Documentation of treatment in an Arkansas Department of Health approved program will be requested and may be considered in any instance of rehire of personnel after termination for prohibited substance/drug abuse.
- Results of Drug/Alcohol Tests are to be kept as confidential as possible, consistent with the needs of the Department.
- The person and property of any individual on state property is subject to search, examination by drug sniffing dogs, or ion scanning for the presence of Prohibited Substances/Drugs. Any person in possession of Prohibited Substances/Drugs on Department owned property may be subject to arrest.
- Testing is conducted by trained staff using accredited methods and pursuant to procedures outlined in the Secretarial Directive on Personnel Drug Testing.



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NOTIFICATION OF A POSITIVE TEST

PERSONNEL NAME (Printed or Typed)

AASIS NUMBER

____/____/____
DATE OF TEST

FACILITY/OFFICE

You are hereby advised of a positive result on your drug/alcohol test.

If the test is an alcohol test, you have the right to accept the result shown to you, **or** to request confirmation by urinalysis.

If the test is a drug test, you have the right to accept or reject the result shown to you. If the test is an on-site test, the results will be confirmed by an independent laboratory at the expense of the Department of Corrections. If the test was conducted by a laboratory, it is considered confirmed.

- I accept the result shown to me _____ (initial)
- I do not accept the result shown to me _____ (initial)

Note: If you do not accept, please provide a brief explanation as to why you decline the results shown to you. If you indicate a prescribed medication may have caused a positive result, you have twenty-four (24) to provide your prescription list covering the last six (6) months from your pharmacy. If the drug test was conducted on a weekend or holiday, you have until 8:00am on the next business day to provide your prescription list covering the last six (6) months from your pharmacy.

You have the right to request confirmation of the results of an alcohol or drug test at a Substance Abuse and Mental Health Services Administration (SAMHSA) or College of American Pathologists (CAP) approved laboratory, other than the one used by the Department, provided you are willing to pay the cost of confirmation plus shipping and handling. These costs must be provided to your human resources manager or LDTC via money order payable to the Arkansas Department of Corrections by the end of the next business day. If payment for independent confirmation is not received by the end of the next business day, the right to independent confirmation is thus forfeited.

- I request independent confirmation by _____
Name of approved laboratory Personnel Initial

I have been advised that, if my position has grievance rights, I may grieve any disciplinary action that may follow a positive test by contacting the EEOC Grievance Coordinator at (501) 682-3380 within five (5) working days.

(PERSONNEL SIGNATURE)

(WITNESSED BY)

Note: Your signature indicates only that you have been notified, not that you are admitting to alcohol or drug use, unless you initial that you accept the results shown.



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DRUG TESTING REQUEST FORM

COPIES: HUMAN RESOURCES MANAGER | CDTG | PERSONNEL

NAME	AASIS NUMBER	FACILITY/ OFFICE	SHIPPING LABEL TRACKING NUMBER
REASON FOR TEST	☐ 01 RANDOM	☐ 02 SUSPICION	☐ 03 RETEST
	☐ 05 ACCIDENT	☐ 06 POLICY	☐ 07 APPLICANT
	☐ 09 OTHER		☐ 04 VIOLENCE
			☐ 08 CONTRABAND

LIST ALL CURRENT MEDICATIONS
VERIFIED ☐ NO ☐ YES BY

PRINTED NAME	AASIS #	SIGNATURE	DATE/ TIME
COLLECTED BY:			
TEST RUN BY:			
WITNESSED BY:			
RECEIVED BY:			
RECEIVED BY:			

DRUGS TESTED FOR	TEST RESULTS OR READINGS			TO BE CONFIRMED
☐ AMPHETAMINE	☐ NEGATIVE	☐ POSITIVE	☐ INCONCLUSIVE	☐ YES ☐ NO
☐ METHAMPHETAMINE	☐ NEGATIVE	☐ POSITIVE	☐ INCONCLUSIVE	☐ YES ☐ NO
☐ COCAINE	☐ NEGATIVE	☐ POSITIVE	☐ INCONCLUSIVE	☐ YES ☐ NO
☐ MARIJUANA	☐ NEGATIVE	☐ POSITIVE	☐ INCONCLUSIVE	☐ YES ☐ NO
☐ OPIATES / Mop	☐ NEGATIVE	☐ POSITIVE	☐ INCONCLUSIVE	☐ YES ☐ NO
☐ BENZODIAZEPINES	☐ NEGATIVE	☐ POSITIVE	☐ INCONCLUSIVE	☐ YES ☐ NO
☐ BARB	☐ NEGATIVE	☐ POSITIVE	☐ INCONCLUSIVE	☐ YES ☐ NO
☐ Oxy	☐ NEGATIVE	☐ POSITIVE	☐ INCONCLUSIVE	☐ YES ☐ NO
☐ METHADONE	☐ NEGATIVE	☐ POSITIVE	☐ INCONCLUSIVE	☐ YES ☐ NO
☐ PPX	☐ NEGATIVE	☐ POSITIVE	☐ INCONCLUSIVE	☐ YES ☐ NO
☐ K-2	☐ NEGATIVE	☐ POSITIVE	☐ INCONCLUSIVE	☐ YES ☐ NO
☐ ALCOHOL	☐ NEGATIVE	☐ POSITIVE	☐ INCONCLUSIVE	☐ YES ☐ NO
☐	☐ NEGATIVE	☐ POSITIVE	☐ INCONCLUSIVE	☐ YES ☐ NO
☐	☐ NEGATIVE	☐ POSITIVE	☐ INCONCLUSIVE	☐ YES ☐ NO

I HEREBY ACKNOWLEDGE THAT THE SPECIMEN WAS KEPT WHERE I COULD SEE IT FROM THE TIME I PROVIDED IT UNTIL THE RESULTS OF THE TEST WERE SHOWN TO ME. I ☐ DO ☐ DO NOT ACCEPT THE RESULTS OF THE TEST.			
SIGNATURE OF PERSON TESTED	WITNESS OF SIGNATURE OR REFUSAL TO SIGN	DATE	TIME

REACTION OF PERSON TESTED	☐ 01 COOPERATIVE	☐ 02 DELAYED OR SLOW	☐ 03 ARGUMENTATIVE
	☐ 04 REFUSED	☐ 05 ADULTERATED	☐ 06 UNABLE TO COMPLY
ACTION TAKEN ON RESULTS OF TEST	☐ 01 FURTHER ANALYSIS REQUESTED	☐ 02 PLACED ON SUSPICION TESTING	
(CHECK ALL THAT APPLY)	☐ 03 ACTION PENDING	☐ 04 NO ACTION REQUIRED	
COMMENTS:			