

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of:	)	
	)	
AMENDING ARIZONA CODE OF	)	Administrative Order
JUDICIAL ADMINISTRATION	)	<u>No. 2009 - 41</u>
§ 6-106: PERSONNEL PRACTICES	)	(Affecting Administrative Orders
	)	Nos. 2003-92, 2005-06, 2005-33,
	)	2005-35, and 2005-41)
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An amendment to the above captioned section of the Arizona Code of Judicial Administration having come before the Arizona Judicial Council on March 19, 2009, and having been approved and recommended for adoption,

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that Arizona Code of Judicial Administration § 6-106 is amended as indicated on the attached document. All other provisions of § 6-106 as adopted, remain unchanged and in effect.

Dated this 8th day of April, 2009.

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RUTH V. McGREGOR  
Chief Justice

**ARIZONA CODE OF JUDICIAL ADMINISTRATION**

**Part 6: Probation**

**Chapter 1: General Administration**

**Section 6-106: Personnel Practices**

**Section A through K – No Changes**

**L. Drug Testing.** The AOC, in conjunction with the Committee on Probation (COP) shall determine methodologies for drug testing. The department shall adopt and integrate policies and procedures for pre-employment, random sampling and reasonable suspicion drug screening for illegal substances which conforms to the model policy established by the AOC. This model policy is attached and incorporated as Appendix A, “Model Policy for Drug Testing”.

1. Departments shall conduct authorized drug tests under the following conditions:
  - a. Pre-employment drug testing shall be conducted in conjunction with, or in lieu of a pre-employment polygraph examination.
  - b. Reasonable Suspicion Testing.
    - (1) Departments may have any employee submit to a drug or alcohol test based upon reasonable suspicion of prohibited or illegal use of drugs or alcohol.
    - (2) Departments may determine that reasonable suspicion exists that an employee used alcohol or illegal drugs based upon, but not limited to, the following:
      - (a) Direct observation of drug or alcohol use or the physical symptoms of being under the influence of drugs or alcohol.
      - (b) A pattern of abnormal conduct or erratic behavior.
      - (c) Arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation of illegal drug possession, use or trafficking.
      - (d) Information provided by reliable or credible sources or by admission of the employee.
      - (e) Evidence that the employee tampered with a previous drug test.
    - (3) Departments shall have any employee driving a state, county, or personal vehicle within the scope of their employment test for alcohol and drugs after a traffic accident involving any of the following incidents:
      - (a) Loss of life; or
      - (b) Reason to believe that alcohol or drug usage may have contributed to the accident. Issuance of a traffic citation to the employee for a moving violation arising from an accident; or
      - (c) ~~Reason to believe that alcohol or drug usage may have contributed to the accident.~~
    - (4) The documenting supervisor shall:
      - (a) Provide, in writing, a description of the circumstances which form the basis of

- reasonable suspicion;
  - (b) Forward the written documentation to the chief adult probation officer, director of juvenile court services, or a designee to authorize testing.
  - (5) Departments shall retain the test results in the employee's personnel file and keep the results confidential.
- c. Officer Shooting or Discharging a Firearm While On Duty. Any officer who discharges a weapon in the line of duty shall submit to a drug and alcohol test within 24 hours.
- d. Random Testing.
- (1) Departments shall include all employees who perform safety sensitive duties in random drug testing.
  - (2) All employees who perform safety sensitive duties shall be included in the statewide pool for random drug testing of a percentage of employees at a frequency determined by the administrative director in consultation with COP. The administrative director shall select persons for testing in a manner validated for randomness.
  - (3) A chief probation officer or director of juvenile court services may submit a request to the AOC for special authorization to include an additional group or class of employees in the statewide pool for random drug testing.
    - (a) Authorization may only be granted if there is:
      - i) Evidence of current or recent illegal drug use among a group or class of employees;
      - ii) Evidence of current or recent illegal drug use within a facility staffed by a group or class of employees; or
      - iii) Evidence of past illegal drug use among a group or class of employees and random drug testing is included in a loss prevention plan approved by the AOC.
    - (b) The request for approval shall include, at a minimum:
      - i) The nature and extent of the past or current illegal drug use;
      - ii) Any and all corrective actions taken to date and the results;
      - iii) Documentation of the underlying legal basis for testing the group or class of employees;
      - iv) The recommended testing period.
    - (c) The administrative director, in consultation with the requesting chief probation officer or director of juvenile court services, and upon review by legal counsel, shall approve or decline the request.
    - (d) If approved, the AOC shall notify all chief probation officers and directors of juvenile court services of the authorization.
    - (e) The chief probation officer or director of juvenile court services shall notify the AOC if comparable circumstances exist in their department that warrant random drug testing of similarly situated employees.
- e. Departments may require probation student interns or volunteers to submit and pass a

- drug and alcohol test before assignment of duties or for reasonable suspicion as prescribed in (L)(1)(b).
2. An AOC approved vendor shall conduct employee drug tests for the illegal use of the following drugs, or classes of drugs:
    - a. Cannabis;
    - b. Cocaine;
    - c. Opiates;
    - d. Amphetamines/Methamphetamine;
    - e. Phencyclidine (PCP);
    - f. Alcohol (only for pre-employment and reasonable suspicion testing).
  3. Departments shall develop and implement protocols, approved by the AOC, that allow for medical review of positive drug test results when an employee requests an appeal of the results.

**M. No Change**

**Section 6-106: Personnel Practices**  
**APPENDIX A**

**MODEL POLICY FOR DRUG TESTING**

**Sections I through IV No changes.**

**V. Authorized Testing Conditions.**

- A. Pre-employment drug testing shall be conducted in conjunction with, or in lieu of a pre-employment polygraph examination.
  
- B. Reasonable Suspicion Testing.
  - 1. All employees shall submit to a drug test based upon reasonable suspicion of prohibited or illegal use of drugs or alcohol.
  
  - 2. Reasonable suspicion that an employee uses alcohol or illegal drugs may be based upon, but not limited to, the following situations:
    - a. Direct observation of drug or alcohol use or the physical symptoms of being under the influence of drugs or alcohol; for example, slurred speech or odor of alcohol.
  
    - b. A pattern of abnormal conduct or erratic behavior.
  
    - c. Arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation of illegal drug possession, use or trafficking.
  
    - d. Information provided by reliable or credible sources or by admission of the employee.
  
    - e. Evidence that the employee tampered with a previous drug test.
  
    - f. All employees driving a state, county, or personal vehicle within the scope of their employment shall submit to a drug test after a traffic accident involving any of the following incidents:
      - (1) Loss of life- or
      - (2) Reason to believe that alcohol or drug usage may have contributed to the accident. Issuance of a traffic citation to the employee for a moving violation arising from an accident.
      - (3) ~~Reason to believe that alcohol or drug usage may have contributed to the accident.~~

3. The supervisor shall document, in writing, a description of the circumstances which form the basis of reasonable suspicion. The supervisor shall forward the documentation to the chief adult probation officer, director of juvenile court services, or a designee to authorize such testing. The results of the testing shall be retained in the employee's personnel file and remain confidential.
- C. Officer Shooting or Discharging a Firearm While On Duty. Any officer who discharges a weapon during the line of duty shall submit to a drug and alcohol test within 24 hours.
- D. Random Testing.
1. Departments shall include all employees who perform safety sensitive duties in random drug testing.
  2. All employees who perform safety sensitive duties shall be included in the statewide pool for random drug testing of a percentage of employees at a frequency determined by the administrative director in consultation with the Committee on Probation (COP). The administrative director shall select persons for testing in a manner validated for randomness.
  3. A chief probation officer or director of juvenile court services may submit a request to the AOC for special authorization to include an additional group or class of employees in the statewide pool for random drug testing.
    - a. Authorization may only be granted if there is:
      - (1) Evidence of current or recent illegal drug use among a group or class of employees;
      - (2) Evidence of current or recent illegal drug use within a facility staffed by a group or class of employees; or
      - (3) Evidence of past illegal drug use among a group or class of employees and random drug testing is included in a loss prevention plan approved by the AOC.
    - b. The request for approval shall include, at a minimum:
      - (1) The nature and extent of the past or current illegal drug use;
      - (2) Any and all corrective actions taken to date and the results;
      - (3) Documentation of the underlying legal basis for testing the group or class of employees; and
      - (4) The recommended testing period.
    - c. The administrative director, in consultation with the requesting chief probation officer or director of juvenile court services, and upon review by legal counsel, shall approve or decline the request.

- d. If approved, the AOC shall notify all chief probation officers and directors of juvenile court services of the authorization.
  - e. The chief probation officer or director of juvenile court services shall notify the AOC if comparable circumstances exist in their department that warrant random drug testing of similarly situated employees.
4. Notification.
- a. The AOC or designee shall generate a randomly selected employee list for drug testing and notify, via email, each selected employee's chief adult probation officer, director of juvenile court services, or designee.
  - b. The chief adult probation officer, director of juvenile court services, or designee shall:
    - (1) Schedule the employee for drug testing at an approved site within two working days of receiving notice.
    - (2) Schedule employee for drug testing during the employee's regularly scheduled shift.
    - (3) Authorize overtime or compensatory time when scheduled testing extends an employee's work week beyond forty hours.
    - (4) Issue a notification form to the selected employee requiring the employee to submit to drug testing at the collection site within two hours.
    - (5) Ensure the employee signs the notification form.
5. Failure to Report.
- a. If an employee fails to appear after receiving a notification, the employee shall provide the chief adult probation officer, director of juvenile court services, or designee with a written explanation for not reporting by the next business day. The report shall include:
    - (1) Reason for not reporting to the collection site;
    - (2) Name of supervisor notified; and
    - (3) Supervisor's instructions, if any, given to the employee.
  - b. Failure of the employee to notify the supervisor of the excused absence circumstance prior to the test may be considered an unexcused absence.
  - c. The chief adult probation officer, director of juvenile court services, or designee shall determine if the failure to report was:
    - (1) Excused absence, which may include, but is not limited to:
      - (a) Inability to leave a work assignment due to a critical incident occurrence;

- (b) A safety or hazardous situation involving the employee or public;
- (c) Required appearance in court; or
- (d) Previously approved annual or other authorized leave.

(2) Unexcused absence.

- d. If the chief adult probation officer, director of juvenile court services, or designee approves the absence, the reason shall be documented and the employee's name shall be placed into the random selection pool for the next unannounced random selection.
6. Refusal to submit. Any of the following actions performed by a selected employee will be considered a refusal to submit:
- a. Failing to provide an adequate sample to allow appropriate testing;
  - b. Refusing to submit to or complete any paperwork relating to the test;
  - c. Engaging in conduct that clearly obstructs the testing process;
  - d. Failing to remain available for testing when requested;
  - e. Leaving the testing site before testing is completed;
  - f. Refusing to submit a sample; or
  - g. Failing to appear for testing when scheduled.
7. Unexcused absence, failure to report, or failure to provide a sample or refusal to submit as ordered will be considered a refusal and may result in disciplinary action up to, and including, termination.
- E. Departments may require probation student interns or volunteers to submit and pass a urine drug and alcohol test before the student intern or volunteer is assigned departmental duties or for reasonable suspicion at any time.
- F. Follow up testing. Any employee who is not terminated from employment following a violation of this policy is subject to unannounced follow-up testing for a three-year period after their return to work or completion of a rehabilitation or abatement program, whichever is later, to document that the employee remains drug free.

**Sections VI through XI, no changes.**