

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
AMENDING ARIZONA CODE OF)
JUDICIAL ADMINISTRATION §6-106:)
PROBATION PERSONNEL PRACTICES)
)
)
)
_____)

Administrative Order
No. 2005 - 6
(Affecting Administrative
Order No. 2003-92)

An amendment to the above captioned section of the Arizona Code of Judicial Administration having come before the Arizona Judicial Council on December 10, 2004, 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 originally adopted, remain unchanged and in effect.

Dated this 12th day of January, 2005.

CHARLES E. JONES
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 6: Probation
Chapter 1: General Administration
Section 6-106: Personnel Practices

Revisions only in Section H, Section L and Appendix A. (New text shown in CAPS and deletions shown by ~~strikeout~~)

H. Application and Background Investigation Requirements.

1. Departments shall mandate that each applicant for employment completes an application that, at minimum, discloses the following information:
 - a. Identifying information;
 - b. Employment history;
 - c. Education history;
 - d. Personal references;
 - e. Employment references;
 - f. Any criminal history; and
 - g. Any illegal drug usage, including, but not limited to:
 - (1) Cannabis/marijuana; and
 - (2) Dangerous drugs or narcotics as defined in Title 13 of the Arizona Revised Statutes.
2. Departments shall complete an employment qualification review and a character and fitness investigation before each new employee begins service.
 - a. All results of pre-employment screening results shall be kept confidential.
 - b. The character and fitness check of volunteers and interns shall be limited to the requirements of H(4)(a-c).
3. The employment qualification review for all applicants shall include, but is not limited to, the following:
 - a. Verification of educational requirements for the applied position;

- b. Verification of current and past employment, which includes documented, good faith efforts to contact employers to obtain information or recommendations which may be relevant to the individual's qualification for employment; and
 - c. Checking professional and personal references provided.
4. The character and fitness investigation for all applicants shall include, but is not limited to:
- a. Fingerprinting and a criminal history records check through the Arizona Criminal Justice Information System (ACJIS) and the national criminal information database.
 - b. A driving records check through the Motor Vehicle Division (MVD) of the Arizona Department of Transportation.
 - c. A driving records check through the MVD of any other previous state of residence.
5. In addition to H(4)(a-c), the character and fitness investigation for safety sensitive positions and officers who perform safety sensitive duties shall include, ~~but is not limited to:~~ **A PSYCHOLOGICAL EVALUATION WHICH MEETS STANDARDS PROVIDED IN SUBSECTION K OF THIS CODE:**
- ~~a. A psychological evaluation which meets standards provided in subsection K of this code.~~
 - ~~b. Drug screening for illegal substances pursuant to the model policy contained in Appendix A or local policy into which the provisions of Appendix A have been incorporated.~~
6. IN ADDITION TO H(4)(a-c) AND H(5), the character and fitness investigation for safety sensitive positions and officers who perform safety sensitive duties **SHALL INCLUDE, AT MINIMUM, ONE OF THE FOLLOWING:** ~~may include, but is not limited to:~~
- a. A polygraph examination ~~of all persons prior to an offer of employment~~ to verify the responses to the issues addressed in section H and to inquire about matters that would reasonably be the basis for not hiring an applicant as a probation officer including, but not limited to, sexual misconduct, use of excessive force and abuse of authority. A polygraph examination may also be used to question particular applicants where the truthfulness or accuracy of information provided in the application or obtained during the background investigation is at issue.
 - b. ~~Interviews with neighbors and former co-workers.~~ Drug screen**TESTING** for illegal substances pursuant to the model policy contained in Appendix A or local policy into which the provisions have been incorporated.

~~e. A credit check for any current financial distress or pattern of financial mismanagement.~~

~~7.6. The character and fitness investigation for safety sensitive positions and officers who perform safety sensitive duties may include, but is not limited to: Departments shall not hire any applicant who fails to submit and successfully complete all pre-employment screening requirements.~~

a. Interviews with neighbors and former co-workers.

b. A credit check for any current financial distress or pattern of financial mismanagement.

~~8.7. Departments shall not hire any applicant who fails to submit and successfully complete all pre-employment screening requirements.~~

* * *

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 ~~may~~ 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.

~~(1) At a minimum, departments shall have all applicants for officer and other safety sensitive positions submit and pass a urine drug and alcohol test before a position in the department is offered to the applicant.~~

~~(2) Departments shall not consider any applicant failing to comply with this procedure or found to have used or tested positive for an illegal substance for employment for a period of one year.~~

b. Reasonable Suspicion Testing.

(1) Departments may have any employee submit to a drug OR ALCOHOL ~~screen TEST, blood alcohol test or a breath 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 ~~and~~ OR credible sources or by admission of the employee.
 - (e) Evidence that the employee tampered with a previous drug test.
 - (f) ~~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 incident:~~
 - (i) ~~Loss of life;~~
 - (ii) ~~Issuance of a traffic citation to the employee for a moving violation arising from an accident; or~~
 - (iii) ~~Reason to believe that alcohol or drug usage may have contributed to the accident.~~
- (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 INCIDENT:
- (A) LOSS OF LIFE;
 - (B) 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 ~~Describe~~, 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 ~~during~~ IN the line of duty shall SUBMIT TO A DRUG AND ALCOHOL TEST ~~provide a urine sample~~ within 24 hours.
- d. Random Testing.
- (1) Departments shall ~~have all~~ INCLUDE THE FOLLOWING EMPLOYEES IN RANDOM DRUG TESTING:
- (A) EMPLOYEES IN safety sensitive positions;
 - (B) Employees who perform safety sensitive duties; and
 - (C) Any other probation department employee who requests inclusion. ~~complete random alcohol and drug testing. once every two years, at minimum.~~
- (2) All employees in a safety sensitive position, employees who perform safety sensitive duties and any other probation department employee who requests

inclusion shall be included in the statewide pool for random drug ~~and alcohol~~ testing of a percentage of employees at a frequency determined by the AOC IN CONSULTATION WITH COP. The AOC or designee shall select persons for testing in a manner validated for randomness.

- 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.

Section 6-106: Personnel Practices
APPENDIX A

MODEL POLICY FOR DRUG TESTING

Revisions begin with Section V and continue through section IX.

V. Authorized Testing Conditions.

A. Pre-employment DRUG testing SHALL BE CONDUCTED IN CONJUNCTION WITH, OR IN LIEU OF A PRE-EMPLOYMENT POLYGRAPH EXAMINATION.

- ~~1. At a minimum, all applicants for officers and other safety sensitive positions shall submit and pass a urine drug and alcohol test before a position in the department is offered to the applicant.~~
- ~~2. Any applicant failing to comply with this procedure or found to have used or tested positive for an illegal substance shall not be considered for employment for a period of one year.~~

B. Reasonable Suspicion Testing.

1. All employees shall submit to a drug screen, blood alcohol test or a breath alcohol 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 ~~and~~ 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 SUMBIT TO A DRUG TEST ~~be tested for alcohol and drugs~~ after a traffic accident involving any of the following incidents:

- (1) Loss of life.
 - (2) 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, ~~and describe~~ 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 ~~provide a urine sample~~ within 24 hours.
- D. Random Testing.
1. Safety sensitive positions, employees who perform safety sensitive duties and any other probation department employee who requests to be included in random testing shall be subject to random ~~alcohol and~~ drug testing.
 2. All employees in a safety sensitive position, employees who perform safety sensitive duties and any other probation department employee who requests inclusion shall be included in the statewide pool for random drug ~~and alcohol~~ testing of a percentage of employees at a frequency determined by the AOC IN CONJUNCTION WITH THE COP. The AOC or designee shall select persons for testing in a manner validated for randomness.
 - ~~a. The random sample pool shall be modified to ensure all employees in a safety sensitive position, employees who perform safety sensitive duties, and any other probation department employee who requests to be included is tested once every two years, at a minimum.~~
 - ~~b. The sample list shall be generated by the AOC or designee in a manner validated for randomness.~~
 3. Notification.
 - a. The AOC or designee SHALL ~~computer~~ 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 ~~urine specimen collection~~ at an approved site within two working days of receiving notice.
- (2) Schedule employee ~~specimen collection~~ 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 ~~provide a urine sample~~ SUBMIT TO DRUG TESTING at the collection site within two hours.
- (5) Ensure the employee signs the notification form.

4. 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:
 - Inability to leave a work assignment due to a critical incident occurrence;
 - A safety or hazardous situation involving the employee or public;
 - Required appearance in court; or
 - Previously approved annual or other authorized leave.
- (2) Unexcused absence.

- a. 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.

5. 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 ~~breath, saliva, blood or urine~~ 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.
6. Unexcused absence, failure to report, or failure to provide a ~~SAMPLE urine specimen~~ 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 ~~TO 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.

VI. Notification to Employees Subject to Testing.

- A. Notification. The department shall utilize those collection and testing sites which demonstrate a methodology of collecting, identifying, testing, analyzing and preserving ~~urine, blood, and breath~~ **SAMPLES specimens** which ensure appropriate site security, chain of custody, privacy of the individual, confidentiality and accuracy of results, reporting of results and preservation of samples, when appropriate and as necessary. Approved methodology shall meet standards set by the AOC IN CONJUNCTION WITH COP.
- B. Employees subject to testing by this standard shall be notified of the requirement for testing on the same day by the appointing authority. Prior to any test, the employee shall be given the following information:
- 1. Whether the ~~DRUG urine, blood or breath~~ test is random or due to reasonable suspicion and provide the reason for a reasonable suspicion test.
 - 2. Assurance that quality of testing procedures is tightly controlled, that the test used to confirm use of illegal drugs or alcohol (**ON REASONABLE SUSPICION ONLY**) is highly reliable, and that the test results shall be handled with maximum respect for individual privacy and concern with safety and security.

3. Notice of the opportunity and procedures for submitting supplemental medical documentation from a licensed health care professional that supports a legitimate use for a specific drug.
 4. Prior to providing a SAMPLE ~~specimen~~, the employee being tested shall have an opportunity to indicate their legitimate use of a specific drug. Employees who test positive for a drug and have demonstrated legitimate use for a drug causing the positive test result shall be notified in writing that their result is considered negative.
 5. Prior to providing a SAMPLE ~~blood or urine specimen~~, the person being tested may request to have a second sample sent to a laboratory of the person's choosing to have an independent drug test performed at the employee's expense. **THE LABORATORY CHOSEN BY THE EMPLOYEE SHALL DEMONSTRATE THE SAME STANDARDS OF METHODOLOGY AS PROVIDED IN SECTION VI (A) OF THIS MODEL POLICY.**
 6. The department shall authorize overtime or compensatory time for an employee whose scheduled test extends the employee's work week beyond forty hours.
- C. Each employee shall be notified of the location, date and time for the employee to report to the designated test location.
- D. Applicants for employment shall be notified by the appointing authority of the testing location, date and time.

VII. URINE SAMPLE ~~Specimen~~ Collection.

- A. Random SAMPLE ~~Specimen~~ Collection. All employees shall adhere to the following random SAMPLE ~~specimen~~ collection procedures:
1. The employee shall provide picture identification and signature authorization upon arrival at the collection site.
 2. The employee shall fill out a Consent to Test and Chain of Custody form provided at the collection site.
 3. The employee may voluntarily list substances taken in the last 30 days which may be detected in the testing process.
 4. The employee shall be provided the appropriate SAMPLE ~~specimen~~ container and be escorted to the collection area by collection site personnel. The employee shall remove all outer clothing such as jackets, coats, or sweatshirts. No handbags, duffle bags, purses or other personal carrying items will be taken into the collection area. The employee will be instructed to wash hands prior to urination.

5. Unobserved collection. All SAMPLES ~~specimens~~, except those ordered because of reasonable suspicion, will be collected using the unobserved method. The employee will be escorted to a specially prepared room and permitted to urinate in private.
 - a. If the collection site person develops any information that the test has been compromised, the chief adult probation officer, director of juvenile court services or designee will be immediately notified.
 - b. The employee will be required to submit a second SAMPLE ~~specimen~~ while being observed by a same sex employee of the collection site, and both SAMPLES ~~specimens~~ will be tested.
 6. Insufficient Urine SAMPLE ~~Specimen~~.
 - a. If an employee is unable to provide a minimum of 45 milliliters, approximately 1.5 oz., of urine for a sample, collection site personnel shall instruct the employee to remain on site and to drink not more than 24 ounces of fluids and, after a period of up to two hours, the employee shall attempt to provide a sufficient urine SAMPLE ~~specimen~~ using a fresh collection container.
 - b. If a sufficient urine SAMPLE ~~specimen~~ cannot be obtained after the two hours, the insufficient SAMPLE ~~specimen~~ shall be discarded and the urine collection process discontinued. THE DEPARTMENT SHALL IMMEDIATELY PRESCRIBE AN APPROVED ALTERNATIVE TESTING METHODOLOGY. ~~A blood specimen shall be immediately obtained by the collection site personnel from the employee for analysis.~~
 7. Once a SAMPLE ~~specimen~~ is given, the employee will remain in possession of the SAMPLE ~~specimen~~ until custody is transferred to collection site personnel.
 8. The SAMPLE ~~specimen~~ will be examined by collection site personnel for indications of tampering. If no problem is noted, the SAMPLE ~~specimen~~ will be transferred by collection site personnel to the split sample ~~specimen~~ containers and sealed in view of the employee.
 9. The employee will verify the seal and initial the seal.
 10. The appropriate paperwork to ensure chain of custody will then be completed.
 11. The employee will be escorted back to the lobby and will be free to leave.
- B. Reasonable Suspicion URINE SAMPLE ~~specimen~~ Collection. An employee required to provide a urine SAMPLE ~~specimen~~ as a result of reasonable suspicion shall follow the collection site procedures outlined in section VIII(A)(1-11), except that the URINE SAMPLE ~~specimen~~ collection shall be observed by a same sex employee of the testing site.

VIII. Testing Procedures.

- A. Tests shall be conducted by an approved provider for the illegal use of the following drugs, or classes of drugs:
 - 1. Cannabis;
 - 2. Cocaine;
 - 3. Opiates;
 - 4. Amphetamines/Methamphetamine;
 - 5. Phencyclidine (PCP);
 - 6. Alcohol (ONLY FOR PRE-EMPLOYMENT AND REASONABLE SUSPICION TESTING).
- B. The employee shall be notified prior to the testing for any additional drugs or classes of drugs.
- C. Urine samples shall be rendered for testing within three hours of arrival at the laboratory.

IX. Test Results.

- A. All testing results and any disciplinary actions resulting from a positive test result shall be confidential.
- B. The provider shall send the results of the test to the chief adult probation officer or director of juvenile court services, or designee. The department shall forward a copy of the results to the employee.
- C. The chief adult probation officer, director of juvenile court services, or designee shall notify the AOC of positive results and any disciplinary or other action taken.
- D. Disciplinary action, up to and including termination, may be taken under any of the following circumstances:
 - 1. Reporting to work or, while on duty, having any detectable or measurable presence of alcohol or illegal drugs.
 - 2. Use of illegal drugs.
 - 3. Refusal to:
 - a. Submit an adequate ~~urine, blood or breath~~ SAMPLE specimen;

- b. Cooperate with the collection procedures set forth in this policy;
 - c. Sign the consent for release of information; or
 - d. Enter or successfully complete a rehabilitation program when such program has been required by the employer.
4. Adulteration, substitution or other attempt to falsify the results of a DRUG ~~urine, blood or breath specimen~~ test.
 5. On-duty use or possession of illegal drugs or consumption of alcohol or alcohol impairment.
 6. Off-duty use or possession of illegal drugs OR UNAUTHORIZED USE OF PRESCRIPTION DRUGS.
 7. A determination that an employee has engaged in illegal drug trafficking including, but not limited to:
 - a. Buy;
 - b. Sale;
 - c. Manufacture;
 - d. Grow;
 - e. Distribute;
 - f. Transport; OR
 - g. Aiding, abetting or conspiring to commit offenses listed in IX(D)(7)(a - f).
 8. Failure to notify the supervisor of an arrest or citation for an offense involving drug or alcohol violation by the next business day.
- E. Employee Assistance Program (EAP).
1. In situations where an employee who tests positive for any illegal substance is not terminated from employment, the employee shall be referred to the EAP and be given the opportunity to successfully undertake rehabilitation. The ultimate responsibility to be drug AND ALCOHOL-free rests with the employee.

2. An employee needing help in addressing drug or alcohol dependency is encouraged to use and may be directed to use the confidential services of the EAP or the substance abuse treatment program provided within the employee's health insurance coverage.