

ARIZONA CODE OF JUDICIAL ADMINISTRATION

Part 6: Probation

Chapter 1: General Administration

Section 6-106: Personnel Practices

A. Definitions. In this section the following definitions apply:

“Administrative director” means both the administrative director of the Administrative Office of the Courts (AOC) or the director’s designee.

“Court” means superior court.

“Department” means both adult and juvenile probation agencies.

“Evaluator” means a licensed or certified psychologist.

“Officer” means both adult and juvenile probation and surveillance officers.

“Presiding judge” means the presiding judge of the superior court or presiding juvenile judge or designee.

"Safety sensitive duties" means duties that involve assigned responsibilities for direct community or custodial supervision of probationers, defendants or juveniles pending adjudication or that involve authorization to carry and to use a firearm in the performance of other assigned responsibilities.

“Safety sensitive positions” means officers, community service coordinators and other employees as designated by the chief probation officer or director of juvenile court services who provide direct supervision or services to adult or juvenile offenders who are subject to the jurisdiction of the court.

B. Applicability. Article VI, Section 3 of the Arizona Constitution and A.R.S. §§ 12-252(A) and 8-203(E) authorize the supreme court to establish personnel practices for adult and juvenile probation personnel, and A.R.S. §§ 12-251(C) and 8-203(C) authorize the supreme court to prescribe minimum qualifications for adult and juvenile probation department personnel with peace officer status.

C. Purpose. To prescribe and establish minimum personnel requirements for adult and juvenile probation departments. This code shall not limit the discretion of the chief probation officer or the director of juvenile court services to adopt local personnel practices not in conflict with this code section.

D. General Administration.

1. A.R.S. § 12-251(A) provides, “The presiding judge of the superior court in each county shall appoint a chief adult probation officer who shall serve at the pleasure of the

presiding judge. Such chief adult probation officer, with the approval of the presiding judge of the superior court, shall appoint such deputy adult probation officers and support staff as are necessary to provide presentence investigations and supervision services to the court.”

2. A.R.S. § 8-203(A) provides, “The presiding judge of the juvenile court shall appoint a director of juvenile court services who shall serve at the pleasure of the presiding juvenile judge.”
3. A.R.S. § 8-203(B) provides, “The director of juvenile court services shall recommend the appointment of deputy probation officers, detention personnel, other personnel and office assistants as the director deems necessary.”

E. Personnel System. Pursuant to A.R.S. §§ 12-252(A) and 8-203(E) each chief adult probation officer and director of juvenile court services shall ensure that:

1. The probation department is included in or maintains a personnel system covering all probation department employees that meet the requirements of this code and is consistent with local judicial or county personnel systems.
2. The personnel system includes provisions regarding:
 - a. Hiring, promoting, disciplining and terminating probation department employees.
 - b. Position titles, minimum qualifications and job responsibilities for each position.
 - c. Completion of annual performance reviews.
3. The probation department adopts and integrates the model policy for drug testing into local policies, as set forth in Appendix A of this code section.
4. The probation department’s personnel system adheres to all applicable federal and state statutes, the Federal Drug-Free Workplace Act of 1988, local ordinances, the Arizona Code of Judicial Administration (ACJA) and all administrative orders regarding employment and labor practices.

F. Minimum Qualifications for Officer Applicants. Pursuant to A.R.S. §§ 12-251(C) and 8-203(C): “Probation department personnel shall qualify under minimum standards of experience and education established by the supreme court.” Employees hired before October 27, 2003 may be exempted from the minimum qualifications stated below. All employees seeking promotional opportunities after October 27, 2003 shall meet these minimum requirements.

1. All chief adult probation officers and directors of juvenile court services shall be a United States citizen or have legal resident status and possess the following:

- a. At minimum, a master's degree in business, management, the social sciences or a related field from an accredited college or university; and
 - b. Ten years experience in the fields of corrections or probation, or working with offenders or delinquents in some equivalent capacity with at least five years of progressively increasing responsibility in an administrative and supervisory capacity.
2. A presiding judge in a county with a population of fewer than 300,000, and having good cause, may request a waiver of the requirement for a chief adult probation officer and director of juvenile court services from the administrative director.
 3. All adult and juvenile probation officers shall be a United States citizen or have legal resident status and possess the following:
 - a. At minimum, a bachelor's degree with a preference in the behavioral sciences or a related field from an accredited college or university; and
 - b. Minimum age of 21 years.
 4. All adult and juvenile surveillance officers shall be a United States citizen or have legal resident status and possess the following:
 - a. At minimum, a high school diploma or a GED; and
 - b. Minimum age of 21 years.

G. Medical Qualifications for Officer Applicants.

1. Departments shall have each officer applicant certify, on a form approved by the AOC, that they are able to perform the required training and job duties of an officer with or without reasonable accommodations.
2. Departments may require applicants to provide additional medical information and submit to a physical examination.

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, a psychological evaluation which meets standards provided in subsection K of this code.

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:
 - a. A polygraph examination 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. Drug testing for illegal substances pursuant to the model policy contained in Appendix A or local policy into which the provisions have been incorporated.
7. The character and fitness investigation for safety sensitive positions and officers who perform safety sensitive duties may include, but is not limited to:
 - a. Interviews with neighbors and former co-workers.
 - b. A credit check for any current financial distress or pattern of financial mismanagement.
8. Departments shall not hire any applicant who fails to submit and successfully complete all pre-employment screening requirements.

I. Disqualifiers for Officer and Safety Sensitive Position Applicants.

1. Departments shall disqualify an applicant for appointment if:
 - a. The applicant is awaiting trial for, or has been convicted of a felony offense in this state or a similar offense in another state or jurisdiction whether or not the conviction was sealed or expunged.
 - b. An applicant for a juvenile officer position is awaiting trial or has been convicted of or admitted committing any offense listed A.R.S. § 8-203.01 or a similar offense in another state or jurisdiction whether or not the conviction has been sealed or expunged.
 - c. The applicant is awaiting trial for, or has been convicted of the following misdemeanor criminal offenses in this state or similar offenses in another state or jurisdiction:
 - (1) A violent misdemeanor offense, including an offense that involves domestic violence;

- (2) A DUI within the last 36 months, or more than one DUI; or
 - (3) More than one offense while legally intoxicated within 36 months.
- d. The applicant sold, produced, manufactured, cultivated, or transported any illegal substance or drug.
 - e. The applicant used any illegal substance including cannabis/marijuana while employed as a probation officer or in a position with peace officer status.
 - f. The applicant has been disciplined for more than one incident for use of alcohol during previous employment.
 - g. The applicant has been dishonorably discharged from the United States Armed Services.
- 2. Departments may disqualify an applicant for appointment if the applicant has been adjudicated delinquent for a felony offense in this state or a similar offense in another state or jurisdiction, whether or not the adjudication has been sealed or expunged based upon the circumstance of the offense including, but not limited to (I)(3)(a) through (d).
 - 3. Departments shall consider a disqualified applicant's request for an exception to disqualification under subsection (I)(1)(a) through (h) and (I)(2) for any matter disclosed in the application, based upon the circumstances of the offense, including, but not limited to:
 - a. Age of the applicant at the time of conviction, adjudication or occurrence;
 - b. The degree of violence and injury or property damage;
 - c. The applicant's record since the conviction, adjudication or occurrence; and
 - d. The applicant's qualifications for the particular position sought.
 - 4. Departments shall not make exceptions for juvenile officers for offenses listed in A.R.S. § 8-203.01.

J. Continuing Employment Requirements.

- 1. Each department shall, at a minimum:
 - a. Provide all probation department employees with access to and training regarding the Code of Conduct for Judicial Employees and the Arizona Code of Judicial Administration.

- b. Have all probation department employees certify that they have received training and shall adhere to the Code of Conduct for Judicial Employees and Arizona Code of Judicial Administration provisions concerning probation.
 - c. Adopt and integrate policies and procedures for random sampling and reasonable suspicion drug screening for illegal substances which conform with Appendix A, "Model Policy for Drug Testing."
 - d. Have a written policy and procedure requiring all employees to immediately disclose to the employee's supervisor if the employee is the subject of any of the following:
 - (1) Citation for a misdemeanor or felony offense;
 - (2) Arrest;
 - (3) Conviction;
 - (4) Order of protection; and
 - (5) Warrant.
 - e. Have a written policy and procedure addressing department action in response to a disclosure or discovery that the employee is the subject of any action identified in (J)(1)(d).
 - f. Conduct criminal history and MVD records checks of all probation employees every two years, at minimum. For department employees that have need to operate a state, county or personal vehicle in the execution of their duties, conduct annual MVD reviews pursuant to ACJA 6-111.
 - g. Remove any probation department employee from the chain of supervision of relatives or members of the officer's household who are on probation.
2. Each probation department may, for good cause, require an employee to undergo an evaluation to determine the employee's emotional, psychological or physical ability to safely perform the employee's assigned duties.
- a. The department shall choose a licensed or certified professional to complete the evaluation.
 - b. The department shall pay for the cost of the evaluation.
 - c. Based on the evaluation, the chief probation officer or director of juvenile court services shall review the assignment of an employee to determine whether the employee can perform the assigned job duties consistent with the safety of the employee, other employees and the public.

- d. The chief probation officer or director of juvenile court services may reassign the employee or take other appropriate action when it is determined that an employee can no longer perform the assigned job duties consistent with the safety of the employee, other employees or the public.
 - e. For physical examinations, departments shall comply with the additional requirements of A.R.S. § 38-1140.
 - (1) Pursuant to A.R.S. § 38-1140(A), a department may order a probation officer to submit to a physical examination:
 - [O]nly if . . . the probation officer has acted or failed to act in an observable manner that indicates that there is a physical condition materially limiting the . . . probation officer's ability to perform the essential functions of the probation officer's job within the . . . probation officer's job description. The order shall state all of the specific objective facts on which the order for the physical exam is based except that the order may omit the specific names of individuals who reported the . . . probation officer's conduct to the supervisor.
 - (2) Each department shall adopt policies and procedures that comply with the substantive and procedural requirements set forth in A.R.S. § 38-1140.
3. All probation department employees shall:
- a. Disclose to the appropriate supervisor, in writing, any of the following:
 - (1) The employee is a party or subpoenaed witness in any pending litigation that is not related to the business of probation.
 - (2) A relative, member of the household or close friend of the employee becomes a probationer under the supervision of the department.
 - (3) Any appearance of impropriety of the relationship with a probationer occurs in the course of supervision.
 - (4) The employee is the subject of any of the following:
 - (a) Citation for a misdemeanor or felony offense;
 - (b) Arrest;
 - (c) Conviction;
 - (d) Order of protection; and
 - (e) Warrant.
 - b. Conduct relationships with relatives or members of their household on probation in a manner that does not interfere with professional duties or reflect negatively on the court.
 - c. Avoid any intimate or personal business relationship with, a probationer, the probationer's family and friends, or members of the probationer's household for a period of one year following discharge or termination from custody or supervision

unless the relationship is approved in writing by the chief probation officer or the director of juvenile court services.

- d. Conduct any approved relationship in a manner that does not interfere with professional duties of the employee.
- e. Be prohibited from engaging in any sexual conduct with a current probationer, including:
 - (1) Engaging in sexual contact of any type.
 - (2) Cohabitation or marriage, unless the cohabitation or marriage existed prior to employment with the department.
- f. Adhere to:
 - (1) Federal, state and local laws and ordinances.
 - (2) The Code of Conduct for Judicial Employees;
 - (3) The Code of Ethics for Arizona Probation Personnel; and
 - (4) The Arizona Code of Judicial Administration (ACJA).
- g. Comply with all training requirements specified by:
 - (1) Administrative orders;
 - (2) The ACJA;
 - (3) The AOC;
 - (4) The Committee on Judicial Education and Training; and
 - (5) Local departments.

K. Psychological evaluation standards.

- 1. Departments shall conduct a psychological evaluation, prior to employment, for any officer applicant for a safety sensitive position or an officer applicant who performs safety sensitive duties to determine suitability to perform the duties of the position, which may include carrying a firearm.
- 2. Departments shall conduct a psychological evaluation for all current officers requesting firearms authorization or prior to reassignment to a position designated by the chief probation officer or director of juvenile court services as requiring an armed officer.
- 3. Departments may conduct a psychological evaluation for good cause to determine the psychological fitness of any current employee.
- 4. Departments shall only employ or contract with an evaluator that, at minimum, is trained and experienced in:

- a. Psychological test interpretation; and
 - b. Law enforcement psychological assessment techniques.
5. Departments shall use a battery of objective, job-related and validated psychological testing instruments and a semi-structured clinical interview in the analysis of a candidate for a safety sensitive position or a candidate for assignment to safety sensitive duties.
- a. The department may proctor the psychological test at the local department pursuant to the directions of the evaluator scoring the test. The psychological testing shall include, at a minimum, testing across the following areas:
 - (1) A measure of psychopathology, for example, the MMPI-2, PAI or Millon-3.
 - (2) A measure of normal personality functioning, for example, the 16PF, LEADER or Inwald Personality Inventory.
 - b. The department shall provide the evaluator with the following prior to the semi-structured clinical interview:
 - (1) Information for pre-employment evaluation.
 - (a) The employment application;
 - (b) A questionnaire provided by the evaluator and completed by the applicant; and
 - (c) Any background information gathered through the employment application process that may be useful in the evaluation of the applicant.
 - (2) Information for firearm authorization or fitness for duty evaluation. The chief probation officer, director of juvenile court services, or designee shall complete a questionnaire provided by the evaluator that includes:
 - (a) Information regarding any disciplinary actions or behavior problems;
 - (b) Job performance evaluation; and
 - (c) Current issues that may affect job performance or safety.
6. The evaluator shall provide, in writing, the results of the evaluation directly to the chief probation officer, director of juvenile court services, or the designee.
- a. The report shall evaluate the suitability of:
 - (1) The applicant for the position;
 - (2) An existing employee's request for authorization to carry a firearm; or
 - (3) An existing employee's fitness for duty.
 - b. The evaluator's report to the agency shall contain:
 - (1) A recommendation for employment, firearm authorization or fitness for duty;
 - (2) Justification for the recommendation; and
 - (3) Any clinical observations that the psychologist might have regarding the validity or reliability of the results.

- c. The chief probation officer, director of juvenile court services or the designee shall keep the results of the evaluation as part of the applicant or employee's confidential records.

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.
 - (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. Ecstasy (MDMA);
 - f. Alcohol (only for pre-employment and reasonable suspicion testing);
 - g. Oxycodone;
 - h. Heroin.
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. Conditional Employment Offers. The offer of employment shall be conditioned upon verification of criminal history results through fingerprint analysis and successful completion of all applicable training requirements.

Adopted by Administrative Order 2003-92, effective September 18, 2003. Amended by Administrative Order 2005-06, effective January 12, 2005. Amended by Administrative Order 2005-33, effective May 19, 2005. Amended by Administrative Order 2005-35 effective June 7, 2005. Amended by Administrative Order 2005-41, effective July 1, 2005. Amended by Administrative Order 2009-41, effective April 8, 2009. Amended by Administrative Order 2013-88, effective October 30, 2013. Amended by Administrative Order 2015-67, effective July 22, 2015. Amended by Administrative Order 2016-24, effective March 30, 2016.

Section 6-106: Personnel Practices
APPENDIX A

MODEL POLICY FOR DRUG TESTING

I. Definitions. In this section the following definitions apply:

“Alcohol” means the intoxicating agent in a beverage, ethyl, or other low molecular weight drink, including methyl and isopropyl, and includes any medication, food, or other products containing intoxicants.

“Alcohol use” means the consumption of any beverage, mixture or preparation, including any medication containing intoxicants.

“Employee Assistance Program” (EAP) means an agency-based counseling program that offers assessment, short-term counseling and referral services to employees for a wide range of drug, alcohol, and mental health problems, and monitors the progress of employees while in treatment.

“Illegal drugs” means a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title and as defined in A.R.S. § 13-3401. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

“On duty” means the time period during which the employee is involved in performing the employee’s respective probation duties or functioning at the direction of the department.

“Off duty” means the time period during which the employee is not involved in performing the employee’s respective probation duties or functioning at the direction of the department.

“Reasonable suspicion” is a belief based on specific objective facts and logical inferences drawn from those facts.

"Safety sensitive duties" means duties that involve assigned responsibilities for direct community or custodial supervision of probationers, defendants or juveniles pending adjudication or that involve authorization to carry and to use a firearm in the performance of other assigned responsibilities.

“Safety sensitive positions” means officers, community service coordinators and other employees as designated by the chief probation officer or director of juvenile court services who provide direct supervision or services to adult or juvenile offenders who are subject to the jurisdiction of the court.

II. Authority. Arizona Code of Judicial Administration Section 6-106: Personnel Practices, Federal Drug-Free Workplace Act of 1988, and A.R.S. § 13-3401, et seq.

III. Purpose. To establish and maintain a drug-free and alcohol-free workplace in adult and juvenile probation departments.

- A. The unlawful manufacture, distribution, dispensation, possession, or use of an illegal drug by any court employee at any time is absolutely prohibited.
- B. Reporting to work or while on duty and having any detectable or measurable presence of alcohol or illegal drug is absolutely prohibited.
- C. Violations of this policy shall result in appropriate disciplinary action, up to and including termination, and may also result in legal consequences.

IV. Procedure. All employees shall be notified of:

- A. The department's intent to maintain a drug and alcohol-free workforce;
- B. The availability of substance abuse treatment and employee assistance programs;
- C. The penalties that may result from substance abuse violations;
- D. The requirement to abide by the terms of this policy as a condition of employment; and
- E. Random testing, detailed in subsection V(E), that shall apply to safety sensitive positions or any other employee who requests to be included in random testing.

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.
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.

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 samples 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 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, 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, 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 Collection.

- A. Random Sample Collection. All employees shall adhere to the following random sample 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 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, 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 while being observed by a same sex employee of the collection site, and both samples will be tested.

6. Insufficient Urine Sample.

- 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 using a fresh collection container.
- b. If a sufficient urine sample cannot be obtained after the two hours, the insufficient sample shall be discarded and the urine collection process discontinued. The department shall immediately prescribe an approved alternative testing methodology.

7. Once a sample is given, the employee will remain in possession of the sample until custody is transferred to collection site personnel.

8. The sample will be examined by collection site personnel for indications of tampering. If no problem is noted, the sample will be transferred by collection site personnel to the split sample 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 Collection. An employee required to provide a urine sample as a result of reasonable suspicion shall follow the collection site procedures outlined in section VII(A)(1-11), except that the urine sample 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. Ecstasy (MDMA);

6. Alcohol (only for pre-employment and reasonable suspicion testing);
 7. Oxycodone;
 8. Heroin.
- 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 sample;
 - 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 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.

X. Reporting Requirements.

A. Violations While On Duty.

1. Immediately upon committing or learning that another employee has committed a violation of this policy while on duty, an employee shall report that violation to his or her supervisor or other management personnel.
2. The knowing failure to report an "on duty" violation of this policy is, by itself, a violation of the policy and subjects an employee to disciplinary action, up to and including termination.

3. The supervisor or manager shall document and forward the documentation to the appointing authority for review and authorization of testing, if needed.

B. Violations While Off Duty.

1. Immediately upon committing, or learning that another employee has committed a violation of this policy while off duty, an employee shall report that violation to an immediate supervisor or other management personnel.
2. The knowing failure to report an “off duty” violation of this policy is, by itself, a violation of the policy and subjects an employee to disciplinary action, up to and including termination.
3. All reports received shall be held in confidence to the extent possible to conduct a fair investigation and determine the appropriate action to be taken.
4. The supervisor or manager shall document and forward the documentation to the appointing authority for review and authorization of testing if needed.

C. Violations Resulting in Arrest or Arraignment.

1. Any employee arrested or charged with any criminal charge involving any drug or alcohol violation shall report the matter to their immediate supervisor on the next business day.
2. The supervisor shall forward the report to the appointing authority through the chain of command. The appointing authority shall initiate an administrative investigation and may reassign the employee, place the employee on administrative leave and take disciplinary action, up to and including termination, prior to the final legal disposition of the criminal case.

D. Violations Resulting in Conviction. As mandated by the Drug-Free Workplace Act of 1988, a report to the appointing authority shall be made within five business days following a conviction.

XI. Confidentiality of Test Results.

- A. Employees and the drug testing laboratory involved in any aspect of the department=s drug testing program shall maintain strict standards of confidentiality of test results and related medical and rehabilitation records. This includes:
1. Maintaining maximum respect for individual privacy consistent with safety and security issues.

2. Handling of test results.
3. All contacts with medical and health personnel, counselors, employee assistance program coordinators and administrators.

B. Records.

1. Records maintained in connection with this program that contain the identity, diagnosis, prognosis, or treatment of any person shall be kept confidential.
2. Records shall be disclosed under limited circumstances and for specific purposes by consent of the employee.
 - a. Written consent shall be obtained from the person to be tested to disclose results of tests administered and related medical and rehabilitation records to the chief adult probation officer, director of juvenile court services, or designee.
 - b. This consent shall be obtained prior to the test itself.
 - c. Refusal to consent to the release of this information shall be considered a refusal to take the test.
3. Drug abuse or alcohol treatment records may be disclosed without the consent of the employee:
 - a. To medical personnel, to the extent necessary, to meet a genuine emergency.
 - b. To qualified personnel for conducting scientific research, management audits, financial audits, or program evaluations, with all identifying information removed from data.
 - c. When authorized by an appropriate court-order granted after application showing good cause.
4. Other disclosure may be made only with the written consent of the employee. Such consensual disclosure may be made for verification of treatment or a general evaluation of treatment progress.