

SUPREME COURT OF ARIZONA

ADULT AND JUVENILE PROBATION AND PRE-TRIAL SERVICES DRUG TESTING POLICIES AND PROCEDURES

Effective March 16, 1995

I. INTRODUCTION

These policies and procedures are adopted pursuant to Administrative Order No. 95-20.

The American Probation and Parole Association (APPA) monograph entitled Drug Testing Guidelines and Practices for Adult Probation and Parole Agencies which outlined applicable procedures for the use of drug testing in the criminal justice setting, provides the basis for these drug testing policies and procedures.

For purposes of consistency of drug testing in Arizona's probation departments and pretrial services agencies, the Administrative Director of the Courts (Director) adopts these policies and procedures. It is the responsibility of the chief probation officer, juvenile court director or pre-trial services director to ensure that the agency develops and implements drug testing policies and procedures complying with this document. These policies and procedures shall apply to all laboratory services including contract laboratories and on-site instrument and non-instrument drug testing methods.

II. PURPOSE OF DRUG TESTING

Drug or alcohol screening by probation departments or pre-trial services agencies shall be used to detect the presence of drugs or alcohol in offenders to determine compliance with court imposed conditions, confinement, detention, probation, court supervised release or presentence investigations. Extreme diligence must be used in all drug and alcohol testing procedures and practices to ensure that:

1. The offender is meeting all conditions of confinement, detention, probation or release regarding the use of chemical substances.
2. All procedures, protocols and quality assurance controls are valid.

3. Privacy and other rights of the offender are preserved.

Anytime a breach of protocol or procedures may impact an offender's status or liberty, testing shall stop at once until the problem is fixed.

III. PERSONS TO BE TESTED

Drug testing shall be used when: 1) the offender has a recent history of substance use or substance related arrests; 2) it is part of drug rehabilitation or compliance with the conditions of confinement, detention, release or probation; 3) the offender is suspected of substance use; 4) applicable statutes or administrative orders require drug testing; or 5) the supervising probation officer thinks that testing will help provide better probation supervision.

Each probation department and pre-trial services agency shall establish policies and procedures outlining the methods used: 1) to select offenders for testing; 2) to set the frequency of that testing and 3) to conduct drug testing on special populations, such as those requiring psychotropic medication.

IV. INITIAL AND CONFIRMATION PROCEDURES

The initial laboratory test shall be an immunoassay meeting the requirements of the Food and Drug Administration for commercial distribution for those drugs which can be detected by an immunoassay technique.

All specimens shall be tested at cutoff levels that meet or exceed the levels of sensitivity established by the Substance Abuse and Mental Health Services Administration (SAMHSA).

The department/agency shall follow these procedures to confirm samples that tested positive on an initial screening. The degree of required confirmation is dictated by: 1) the intended use of the results; and 2) the offender's admission or denial of related substance use. The test results may be used for court purposes or administrative disciplinary actions. Administrative disciplinary actions refer to sanctions the officer is authorized to impose without judicial approval. These may include confrontation, loss of privileges, or referral to treatment, but shall not include incarceration. The greater the likelihood of incarceration or imprisonment, the greater the need for the use of the most accurate confirmation test.

1. If the offender **admits** substance use that would explain the positive results of the initial screening, no confirmation is necessary. The officer may use the results and admission for court proceedings or administrative disciplinary actions.
2. If the offender **denies** substance use, and the officer's use of the results is limited to administrative disciplinary action not resulting in a period of

commitment, incarceration or imprisonment, the sample may be confirmed by a retest using the same technology or one of equal or greater sensitivity. The results from this confirmation procedure cannot be used as the only evidence in a revocation proceeding which may result in incarceration or imprisonment.

3. If the offender **denies** substance use, and the results are to be used in court proceedings, the sample shall be retested by Gas Chromatography/Mass Spectrometry (GC/MS).

Any sample failing confirmation testing shall be considered negative.

An offender who denies substance use despite a positive test result shall be permitted to submit, at the offender's expense, a sample of the specimen to a probation department or pre-trial services agency-approved laboratory for GC/MS testing.

V. COLLECTION PROCEDURES BY PROBATION OR CONTRACTED STAFF

Rigorous procedures shall be used to collect, handle and test urine specimens to ensure a continuous and reliable chain of custody for court purposes. All collected specimens shall be submitted for testing and stored in secured containers. These procedures, at a minimum, shall be reviewed annually and updated accordingly.

Each urine specimen shall be processed as if it contained a highly communicable disease (universal precaution).

Each department/agency shall develop written directions and protocol for specimen collection and the possible consequences of a positive result and/or for failure to submit to testing. These possible consequences shall be reviewed with offenders who are ordered to submit to drug testing.

Any offender under medical or psychiatric attention should provide to the officer, in advance of testing, notification from the attending physician or psychiatrist of any medicine prescriptions. The officer shall put a copy of this information in the case file.

Each probation department and pre-trial services agency shall develop a chain of custody form which shall, for each urine specimen submitted for testing include:

- a. offender's name and/or case number;
- b. drugs to be screened;
- c. supervising officer's name;
- d. collection personnel's name;

- e. date the specimen was collected;
- f. date the specimen was transported to the test site;
- g. transporting personnel's name;
- h. date the specimen was received by the testing facility; and
- i. testing personnel's name.

Collection of the specimen shall be observed by a person of the same gender as the offender.

The collection personnel shall make a positive offender identification before directing the offender to provide a specimen.

The collection personnel shall ensure the offender submits a specimen for drug testing that has not been substituted or diluted, but at the same time shall not unduly intrude on the offender's privacy.

The collection personnel shall have the offender affix to the specimen container an identification label which shall include:

- a. the offender's name or case number;
- b. the date of collection; and
- c. a space for the offender's initials.

When handling the specimen, staff shall wear rubber gloves.

The collection personnel shall have the offender, before affixing the label, review the information on it. The offender shall then write his or her initials on the label to indicate the information is accurate and to identify the source of the specimen.

Each person transporting and/or handling urine specimens shall sign and date the chain of custody form(s) when the specimens are transported.

All transported specimens shall be maintained in a secure container.

The chain of custody form(s) shall be signed or initialed and dated by authorized testing personnel upon receipt.

The original chain of custody document or a copy shall always accompany each container sent to the test site. The original or a copy of that document shall remain with

the department/agency. The testing facility shall retain the original chain of custody form and provide a copy noting all results to the department/agency.

Each probation department and pre-trial services agency shall establish and ensure the implementation of written policies regarding the release of testing results in compliance with applicable statutes and rules concerning confidentiality of court records.

Each probation department and pre-trial services agency that collects urine specimens for drug testing purposes shall designate an individual, hereafter referred to as "designee," as an onsite drug testing program coordinator whose responsibilities shall include, but not be limited to:

- a. Coordination of the department's/agency's testing in accordance with established policies and procedures.
- b. Maintaining the integrity of the collection sites as outlined by this document.
- c. Establishing, reviewing and enforcing the department's/agency's protocol for chain of custody in accordance with this document.

VI. GENERAL PROCEDURES FOR ALL LABORATORIES

The department/agency designee shall ensure that the laboratory testing staff meet the professional requirements and fulfill the responsibilities concerning laboratory procedures, quality assurance and control, security, initial and confirmation capabilities and the evaluation of testing established by Administrative Order No. 95-20 and these policies and the department's/agency's drug testing policies and procedures.

A forensic reference laboratory shall have on site the capability to conduct both initial and confirmatory tests including GC/MS, while a criminal justice drug testing laboratory shall be used only to provide initial screening and confirmation procedures used solely for administrative disciplinary actions.

Laboratories shall have a qualified individual to assume professional, organizational, educational, and administrative responsibility for the laboratory's urine drug testing operations and provide expert testimony as needed.

Laboratories shall participate in performance testing at least three times per year conducted by the College of American Pathologists, the American Association of Bio-Analysts, or any other testing performance agency approved by the AOC. Failure to meet a passing or acceptable level of performance or any false positive confirmation shall be cause for suspension of screening until remedial action is taken and another performance test has been completed in which a passing or acceptable level of performance and no false positive confirmations are achieved.

Appointed department/agency personnel shall review the laboratory's performance testing results and/or any state or federal licensing requirements to verify passing levels of performance.

Laboratories shall adhere to chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results, during storage and continuing until final disposition of specimens.

Laboratories shall be secure at all times to ensure that no unauthorized personnel enter the premises or handle specimens, or records.

For specimens testing positive, the testing facility shall identify the testing methodology and the cutoff levels used for each test.

Laboratories shall maintain documents for any specimen under legal challenge for an indefinite period. Unchallenged specimen results shall be maintained for at least two years.

Negative specimens need not be stored and can be discarded immediately upon identifying the negative results from the test.

Unless otherwise authorized in writing by the supervising officer, drug testing sites shall retain, freeze, and place the positive specimen in properly secured long-term storage for a period of one year. Prior to disposal, the testing site shall contact the submitting department/agency staff to inform them that the specimen is scheduled for disposal.

Laboratory facilities shall comply with applicable provisions of any state licensure requirements.

Laboratories shall comply with state and federal legislation and case law regarding privacy of the testing results and release of such information.

At a minimum, the laboratory director should be responsible for the following:

- a. day-to-day management of the drug testing laboratory even where another individual has overall responsibility for an entire multi-specialty laboratory;
- b. ensuring that there are enough personnel with adequate training and experience to supervise and conduct the work of the drug testing laboratory;
- c. maintaining a laboratory procedure manual which is complete, up-to-date, available to all personnel performing tests, and rigorously followed by those personnel; and

- d. maintaining a quality assurance program which encompasses all aspects of the chain of custody and testing process.

The director for any laboratory with GC/MS confirmation capability shall have one of the following as minimum qualifications:

- a. certification as a laboratory director in compliance with federal regulations; or,
- b. a Ph.D. in one of the natural sciences with undergraduate and graduate education in biology, chemistry, pharmacology or toxicology; or,
- c. training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree with additional training and laboratory/research experience in biology, chemistry, and pharmacology or toxicology; and
- d. in addition to the requirements in (a), (b), or (c) above, minimum qualifications also require the following:
 - 1. appropriate experience in analytical forensic toxicology including experience with the analysis of biological material for drugs of abuse; and
 - 2. appropriate training and/or experience in forensic applications of analytical toxicology, e.g., publications, court testimony, research concerning analytical toxicology of drugs of abuse, or other factors which qualify the individual as an expert witness in forensic toxicology.

In addition to fulfilling educational and training requirements necessary for assuming a supervisory level position, the director of a criminal justice laboratory performing only initial screening services or confirmations used for administrative disciplinary action, shall have training and expertise in:

- a. the theory and practice of the procedures used in the test site resulting in understanding of quality control practices and procedures;
- b. the review, interpretation, and reporting of test results;
- c. maintenance of chain of custody;
- d. the proper remedial actions to be taken in response to test systems being out of control limits; and
- e. detecting aberrant test or quality control results.

The laboratory shall provide the department/agency drug testing program designee with a monthly statistical summary of test results. This summary should include:

- a. number of specimens received;
- b. number of specimens tested;
- c. number of positives confirmed; and
- d. number of specimens that screened positive and for which drugs.

Refrigerators and freezers shall be secured with a lock, in addition to the room lock, when the test site is not in use.

VII. CONTRACT LABORATORY SERVICES

The department/agency shall provide in the contract that the laboratory must adhere to proper chain of custody procedures and must comply with all procedures regarding privacy of the testing results and release of such information.

VIII. ON-SITE INSTRUMENT BASED TESTING

Any probation department or pre-trial services agency utilizing any on-site instrument based drug testing technology or procedure(s) shall adhere to all specifications and requirements of an instrument's manufacturer, including control procedures, maintenance schedules and logs. Test results shall be documented.

At least twice each year, or in compliance with a manufacturer's standards if more frequent, the department/agency shall have the manufacturer conduct a formal site visit, inspection and review, to include analysis of compliance with required procedures, etc. This inspection shall include conducting appropriate testing, calibration and maintenance adjustments.

The site visits and inspections shall conclude with a written report from the manufacturer, with one copy for the department's/agency's files and one copy to be filed with the appropriate probation division of the AOC.

Any deficiency cited in a manufacturer's inspection report shall require a follow-up inspection and report(s) within 30 days to ensure remediation of the deficiency. Copies of all follow-up inspection reports shall be filed with the presiding judge and the appropriate probation division of the AOC. Failure to resolve any deficiency within the prescribed 30 days shall be cause for a written review and specific course of remediation to be implemented as detailed by the department director or chief. This shall include a scheduled reinspection and report by the manufacturer within 30 days, to

be filed by the chief probation officer or director with the presiding judge and copies to the appropriate probation division of the AOC. All final reports and documentation of return to proficiency shall be similarly reported.

Test sites shall retain documentation of every aspect of the testing process for at least two years.

Action taken following the discovery of any false positive result shall be documented and at a minimum include:

- a. retesting the specimen;
- b. checking for operator error;
- c. contacting the manufacturer for information; and
- d. placing a temporary hold on testing with the particular drug assay that produced the false positive (unless a confirmatory method is used) until the problem is resolved.

Department/agency staff shall establish policies for handling court challenges to test results and the testing staff shall be prepared to provide evidence to support the results provided.

The test site shall maintain documentation on every aspect involved with the testing process.

Lab testing personnel shall assist the department's/agency's training staff and/or manufacturer in the development and implementation of initial and in-service training for on-site instrument testing staff.

The test site shall have qualified individual(s) designated as technician(s) who shall assume professional, organizational, and administrative responsibility for the drug testing site.

The technician shall be responsible for the day-to-day management of the drug testing site even when another individual has overall administrative responsibility for the test site and/or the office in which the test site is located.

Documentation of technicians' qualifications, including relevant training shall be maintained.

IX. ON-SITE NON-INSTRUMENT BASED TESTING

The on-site non-instrument based test shall be an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution.

The on-site non-instrument based test shall be used solely as an initial screening tool.

Personnel who operate the on-site non-instrument tests shall be trained and certified in the use and operation of the test instrument by the manufacturer or a specialist specifically trained for this purpose by the manufacturer. Documentation of this training shall be maintained in the personnel files.

The department/agency shall appoint an on-site non-instrument testing specialist at each office/facility using on-site non-instrument drug testing.

The on-site non-instrument testing specialist shall have primary responsibility for the on-site non-instrument testing at that site.

The probation department or pre-trial services agency shall appoint a drug testing program coordinator who shall be responsible for the coordination of the department's/agency's drug testing program, in addition to other administrative responsibilities within the department/agency.

Qualified testing personnel shall maintain strict adherence to manufacturer's procedures regarding aspects of storage and testing operations in order to ensure the reliability and validity of results.

On-site non-instrument test sites shall routinely run partial screens on each specimen, and department/agency policy shall be established regarding the frequency of random full screens.

Testing personnel shall comply with the quality assurance guidelines for on-site instrument based testing outlined in this document.

Testing personnel shall comply with the manufacturer's established quality control procedures.

Testing equipment shall not be used past the expiration date.

Non-instrument test sites shall maintain documentation on every aspect of the testing process.

An evidence log shall be maintained with the testing supplies for the purpose of documenting the drug testing operational process.

A monthly statistical summary of drug testing shall be maintained.