

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
AMENDING ARIZONA CODE OF)	Administrative Order
JUDICIAL ADMINISTRATION § 6-106:)	<u>No. 2005 - 35</u>
PROBATION PERSONNEL PRACTICES)	(Affecting Administrative
)	Order No. 2003-92 and Repealing
)	Administrative Order No. 2005-33)
)	

The Arizona Judicial Council approved and recommended for adoption an amendment to the above captioned section of the Arizona Code of Judicial Administration on March 30, 2005. Administrative Order No. 2005-33 included some but not all of the approved changes. In order to facilitate access to the revisions, it has been determined they should be consolidated into one administrative order.

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 documents. All other provisions of § 6-106, as amended, remain unchanged and in effect.

IT IS FURTHER ORDERED that staff of the Administrative Office of the Courts move forward as expeditiously as possible to implement on-site testing for detention officers as recommended by the Arizona Judicial Council.

IT IS FURTHER ORDERED that Administrative Order No. 2005-33 is repealed.

Dated this 7th day of June, 2005.

CHARLES E. JONES
Chief Justice

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

Deletions are shown with ~~strikethrough~~, additions are shown in CAPS

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

“Safety sensitive duties” means duties that involve assigned responsibilities for ~~the~~ direct COMMUNITY OR CUSTODIAL supervision of probationers, DEFENDANTS OR JUVENILES PENDING ADJUDICATION ~~within the community and/or~~ that involve authorization to carry and to use a firearm in the performance of other assigned responsibilities.

* * *

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 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, 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 DRUG Testing.
- (1) Departments shall include ~~the following~~ ALL employees WHO PERFORM SAFETY SENSITIVE DUTIES in random drug testing:
 - ~~(a) All employees in safety sensitive positions~~
 - ~~(b) Employees who perform safety sensitive duties; and~~
 - ~~(c) Any other probation department employee who requests inclusion.~~
 - (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 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:
 - 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.

Section 6-106: Personnel Practices
APPENDIX A

MODEL POLICY FOR DRUG TESTING

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

“Safety sensitive duties” means duties that involve assigned responsibilities for ~~the~~ direct COMMUNITY OR CUSTODIAL supervision of probationers, DEFENDANTS OR JUVENILES PENDING ADJUDICATION ~~within the community and/or~~ that involve authorization to carry and to use a firearm in the performance of other assigned responsibilities.

* * *

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.
 - (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, 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 DRUG Testing.
- 1. Departments shall include ~~the following~~ ALL employees WHO PERFORM SAFETY SENSITIVE DUTIES in random drug testing:
 - ~~(a) All employees in safety sensitive positions~~
 - ~~(b) Employees who perform safety sensitive duties; and~~
 - ~~(c) Any other probation department employee who requests inclusion.~~
 - 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 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.