

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
AMENDING ARIZONA CODE OF) Administrative Order
JUDICIAL ADMINISTRATION § 6-106:) No. 2005 - 41
PROBATION PERSONNEL PRACTICES) (Affecting Administrative
) Order No. 2003-92 and repealing
) Administrative Order Nos. 2005-33
) and 2005-35)
)
_____)

The Arizona Judicial Council (AJC) approved and recommended for adoption amendments to the above captioned section of the Arizona Code of Judicial Administration on March 30, 2005. Administrative Order No. 2005-33 and Administrative Order 2005-35 were approved to implement the Code amendments approved by the AJC. Recently, technical inconsistencies between the existing Code and the amended Code provisions have been identified. This order will consolidate all of the approved changes in one document and clarify placement of amended language within the text of the code section.

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, which reflects changes made following the January 12, 2005 amendment to this section. All other provisions of § 6-106, as amended, remain unchanged and in effect.

IT IS FURTHER ORDERED that Administrative Order Nos. 2005-33 and 2005-35 are repealed.

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.

Dated this 1st day of July, 2005.

REBECCA WHITE BERCH
Vice Chief Justice

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

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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 ~~any~~ 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:

* * *

d. Random Testing.

- (1) Departments shall include ~~the following~~ ALL employees WHO PERFORM SAFETY SENSITIVE DUTIES 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.~~
- (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 AOC ADMINISTRATIVE DIRECTOR in consultation with COP. The ~~AOC or designee~~ 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 ~~any~~ other assigned responsibilities.

* * *

V. Authorized Testing Conditions.

* * *

D. Random Testing.

1. DEPARTMENTS SHALL INCLUDE ALL EMPLOYEES ~~Safety sensitive positions, employees who perform safety sensitive duties and any other probation department employee who requests to be included in random DRUG testing shall be subject to random 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 testing of a percentage of employees at a frequency determined by the AOC ADMINISTRATIVE DIRECTOR ~~in conjunction~~ CONSULTATION with the COMMITTEE ON PROBATION (COP). ~~The AOC or designee~~ 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.

3 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.

4 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.

5 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.
67. 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.