

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	
	)	
ARIZONA CODE OF JUDICIAL	)	Administrative Order
ADMINISTRATION § 6-110:	)	No. 2011 - <u>137</u>
OFFENDER ALCOHOL AND DRUG	)	(Replacing Administrative
TESTING	)	Order No. 95-20)
	)	

The above-captioned provision having come before the Arizona Judicial Council on October 28, 2011, and having been approved and recommended for adoption,

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the above-captioned provision, attached hereto, is adopted as a section of the Arizona Code of Judicial Administration replacing Administrative Order No. 95-20, as well as the Adult and Juvenile Probation and Pre-Trial Services Drug Testing Policies and Procedures established by the Administrative Director.

IT IS FURTHER ORDERED that the requirements of this code section shall be fully implemented no later than July 1, 2012, to allow courts sufficient time to make any necessary contractual adjustments in order to comply with the code section.

Dated this 21 day of December, 2011.

REBECCA WHITE BERCH
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION

Part 6: Probation

Chapter 1: General Administration

Section: 6-110 Offender Alcohol and Drug Testing

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

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

“Alcohol and drug testing” means any validated or verified method of determining the level of identifiable substances in the body including, but not limited to breath, blood, oral fluid, urine, hair and sweat testing.

“Confirmation testing” means the re-analysis of a positive sample with a methodology of greater sensitivity and specificity than the initial immunoassay screening methodology.

“Court” means superior court.

“Immunoassay” means an initial screening methodology, the basis of which is the chemical process known as mass action reaction, for determining small amounts of material in the sample.

“Instrument based testing” means a screen or analysis system that utilizes a piece of laboratory equipment, dedicated personnel, location, and supplies to determine the level of identifiable substances in the body.

“Retest” means a repeated or second immunoassay to verify the findings of the initial screening immunoassay.

B. Applicability. Article VI, Section 3 of the Arizona Constitution authorizes the supreme court to establish requirements for offender alcohol and drug testing conducted by the probation departments and contracted laboratories.

C. Purpose. To provide minimum standards for offender alcohol and drug testing practices and requirements.

D. General Administration.

1. The AOC shall:

- a. Monitor probation department’s alcohol and drug testing policies and procedures;

- b. Prepare written material setting forth various techniques, practices, guidelines and other recommendations regarding alcohol and drug testing and distribute this material to superior court judges and probation personnel;
 - c. Inspect, audit, or have audited the alcohol and drug testing records of any probation department;
 - d. Contract with laboratories to perform alcohol and drug testing on behalf of juvenile probation departments and require those agencies to comply with the requirements within this code;
 - e. Provide general assistance to probation departments on alcohol and drug testing; and
 - f. Adopt other administrative practices and procedures consistent with this code, as necessary for alcohol and drug testing.
2. Each probation department shall:
- a. Have a written alcohol and drug testing policy and procedure in accordance with this code which includes, but is not limited to:
 - (1) The selection of offenders to be tested;
 - (2) The type of drugs to be tested;
 - (3) The type of tests utilized;
 - (4) Field, office and laboratory testing;
 - (5) Method to verify the identity of offenders that appear for testing
 - (6) Frequency of testing;
 - (7) The process to ensure specimen samples
 - (a) Have not been substituted, adulterated or tampered; and
 - (b) Are handled with a reliable chain of custody for supervision and court purposes;
 - (8) Offender's use of prescription medication not prescribed for the offender or taking prescribed medication more than ordered by physician;
 - (9) The release of testing results in compliance with applicable statutes, administrative orders, and codes concerning confidentiality of court records;
 - (10) Handling court challenges to test results; and
 - (11) Develop, implement, and document training for staff who conduct instrument or non-instrument based tests according to the manufacturer's requirements and departmental policy.
 - b. Designate an individual who shall be responsible for the oversight of the probation department's alcohol and drug testing practices in accordance with established policies and procedures and this code;

- c. Require all specimens be immediately discarded if there has been a breach of protocol or procedure;
- d. Retain documentation for at least five years of the testing process utilized by the probation department;
- e. Provide the AOC with any requested alcohol and drug testing data, performance reviews or inspection results performed by non-probation or non-AOC entities; and
- f. Obtain, maintain, or access a properly procured contract with a laboratory which requires the laboratory to adhere to all the requirements in this code and provide results of performance audits, licensing reviews and or certification reviews to the probation departments or the AOC.
- g. Use alcohol and drug testing as necessary when:
 - 1) Ordered by the court;
 - 2) It is part of drug rehabilitation;
 - 3) The officer suspects the offender of substance abuse;
 - 4) Applicable statutes, administrative orders, or codes require drug testing;
 - 5) The officer believes testing will improve compliance to the conditions of probation; or
 - 6) The offender has a history of substance use or abuse, or alcohol or drug related arrests.

E. Alcohol and Drug Testing and Collection Requirements. Each probation department shall adhere to the following requirements for instrument based, on site and field testing:

- 1. Adhere to all the manufacturer specifications and requirements;
- 2. Require all collected specimens to be stored in a secured area and submitted for testing in secured transport containers;
- 3. Utilize a chain of custody form for each specimen submitted for testing to a test site which shall include, but not limited to:
 - a. Offender's name, date of birth, and court case number;
 - b. Drugs to be tested;
 - c. Supervising probation officer's name;
 - d. Name of collection personnel;
 - e. Date the specimen was collected;

- f. Date the specimen was transported to the testing facility;
 - g. Transporting personnel's name, agency and date (If specimens are transferred to a commercial third party courier service for delivery, separate transport logs may alternately be maintained documenting transporting personnel's name, agency and date of transport.);
 - h. Date the specimen was received by the testing facility and name of laboratory personnel receiving specimen; and
 - i. Name of testing personnel.
- 4. Require that the original chain of custody form accompany each container sent to the test site and a copy of the file document remain with the probation department;
 - 5. Require the test site to retain the original chain of custody form and provide a report of all offender test results to the probation department;
 - 6. Require an employee of county, state or contracted vendor of the same sex as the offender to conduct a visual observation of the collection of a urine specimen;
 - 7. Require the offender to review the information on the label which shall include:
 - a. Offender's name, date of birth, and case number and JOLTS number, if applicable;
 - b. Date the specimen was collected; and
 - c. Offender's signature, indicating the information is accurate.
 - 8. Require the collector of sample to initial the label and the offender to initial and affix the label to the specimen container and secure the specimen;
 - 9. Require the laboratory to retest each positive screening with a second immunoassay prior to reporting the positive screening to the probation department;
 - 10. Use the result of the immunoassay urine screening with no confirmation if the offender admits substance use and the results are to be used in court proceedings or for officer imposed sanctions;
 - 11. Use the result of the immunoassay urine screening with no confirmation test if the offender denies substance use and the results are limited to officer imposed sanctions;
 - 12. Confirm the positive urine sample by using a confirmatory methodology approved by the administrative director and allowable under the laboratory accrediting body as a

methodology of higher sensitivity and specificity, if the offender denies substance use and the results are to be used in court proceedings;

13. All field test devices are to be immunoassay-based tests approved by the United States Food and Drug Administration. Field tests include Point of Collection Testing devices for conducting drug screening tests on urine and/or oral fluid samples. Testing is conducted by trained non-laboratory personnel to obtain immediate presumptive screening results. Preliminary breath tests that utilize chemical or fuel cell technologies are considered field tests; and
14. Document the drug testing operational process and generate a monthly statistical summary of drug testing.

F. Laboratory Testing Requirements. Each probation department or the AOC shall require all contracted alcohol and drug testing laboratories to:

1. Obtain and maintain accreditation in good standing by the College of American Pathologists for Forensic Drug Testing (CAP-FDT);
2. Notify the probation department or AOC on loss of accreditation for non-compliance within 72 hours. The laboratory will have 30 days from notification of the probation department or AOC to come back into compliance or be removed from the list of approved laboratories;
3. Require all urine specimens be tested at cutoff levels that meet or exceed the levels of sensitivity established by CAP-FDT and the Substance Abuse and Mental Health Services Administration;
4. Comply with applicable provisions of any state licensure requirements;
5. Comply with state and federal legislation and case law regarding privacy of testing results and release of such information;
6. Maintain all positive test specimens for a minimum of one year;
7. Negative test specimens may be discarded immediately upon identifying the negative results from the test;
8. Provide the probation department or AOC with drug testing data as requested and any explanation of test results and laboratory policy and procedure; and
9. Provide court testimony relevant to any issue involved with the testing and or collection of a specimen.

G. Chain of Custody for Specimen Collection. Each probation department shall develop a policy and procedure to collect and handle specimens to ensure a continuous and reliable chain of custody for court purposes. The probation department shall adhere to the following minimum standards:

1. The collector shall verify the identity of the offender presenting for drug testing. The collector shall request the offender, upon the offender's arrival at the collection site, to verify identity through the presentation of personal identification information such as driver's license or other government issued photo, school I.D, or other information stipulated by the probation department.
2. The collector shall have the offender remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the offender's specimen.
3. A chain of custody form for each specimen submitted for analysis, which shall include:
 - a. Offender's name, date of birth and case number;
 - b. Drug [or drugs] to be screened;
 - c. Supervising probation officer's name;
 - d. Name of collection personnel;
 - e. Date the specimen was collected;
 - f. Date the specimen was transported to the testing facility;
 - g. Transporting personnel's name, agency and date (If specimens are transferred to a commercial third party courier service for delivery, separate transport logs may alternately be maintained documenting transporting personnel's name, agency and date of transport.); and
 - h. Date the specimen was received by the testing facility and name of personnel receiving specimen.
4. The collector shall instruct the offender to wash and dry their hands prior to collecting the specimen.
5. The collector shall remain in the offender's presence at all times prior to collecting the specimen in order to ensure that there is no contact with any materials that could adulterate the specimen.

6. The collector of the same sex as the offender shall accompany the donor into the designated collection room which shall be made secure during the collection procedure. The collection personnel shall observe the offender as they submit a specimen for drug testing to ensure that the sample has not been substituted, adulterated or tampered with in any way.
7. The collector shall ensure that the offender keeps the specimen bottle or container in view at all times prior to its being sealed and labeled.
8. The collector shall have the offender review the information on the label which shall include:
 - a. Offender's name, date of birth, and case number and JOLTS number, if applicable;
 - b. Date the specimen was collected; and
 - c. Offender's signature, indicating the information is accurate.
9. The offender shall write their initials on the label to indicate the information is accurate.
10. The offender in the presence and under the assistance of the collector shall place a tamper-proof label-seal on the specimen bottle, and shall place the bottle in the specimen container. This container is then to be placed into secure locked storage until it is released for transport to the laboratory facility. At that time the specimen bottles and chain of custody forms are placed in a specimen transport container for shipment to the laboratory.
11. Each person transporting or handling the specimen [or specimens] shall sign and date the chain of custody form [or forms] when the specimen [or specimens] are transported. (If specimens are transferred to a commercial third party courier service for delivery, separate transport logs may alternately be maintained documenting transporting personnel's name, agency and date of transport.)
12. All transported specimen [or specimens] shall be maintained in a specimen transport container pursuant to laboratory specifications.
13. The chain of custody form [or forms] shall be signed or initialed and dated by authorized laboratory personnel upon receipt.
14. The original chain of custody document or a copy shall always remain in the secured specimen transport container.