

<b>GEORGIA DEPARTMENT OF JUVENILE JUSTICE</b>	Transmittal # 16-09	Policy # 3.56
Applicability: {x} All DJJ Staff {x} Administration {x} Community Services {x} Secure Facilities (RYDC's and YDC's)	Related Standards & References: O.C.G.A. 45-20-90 et.seq, §45-20-110 et.seq, §45-23-1 et seq. State Personnel Board Rule 478-1-.21 Federal Drug-free Workplace Act of 1988 4-JCF-6D-03, 3-JDC-1C-15 HHS Regulations, 53 Fed. Reg. 11979, et seq., as amended DJJ 3.15, 3.80	
Chapter 3: PERSONNEL	Effective Date: 7/15/16	
Subject: EMPLOYEE AND APPLICANT ALCOHOL AND DRUG TESTING	Scheduled Review Date: 7/15/17	
Attachments:	Replaces: 4/1/12	
Attachment A: Alcohol and Drug Testing User's Manual	Office of Human Resources	
	APPROVED:	
		
	<hr/> Avery D. Niles, Commissioner	

## I. POLICY:

Employees shall not report for duty under the influence of alcohol or use alcohol while in working status. Employees shall not use illegal drugs at any time. The Department of Juvenile Justice shall comply with all pertinent state and federal laws, rules, and regulations in the administration of applicant and employee alcohol and drug testing.

## II. DEFINITIONS:

**Applicant:** Any individual who has been offered initial employment with the Department of Juvenile Justice in a position subject to pre-employment drug testing or a current DJJ employee who is an incumbent of a position not subject to pre-employment drug testing and who has been offered employment in a position subject to pre-employment drug testing.

**Drug Testing Coordinator:** The person designated by the Director of Human Resources to monitor the drug-testing program.

**High-Risk Position:** A position where an employee's inattention to duties or errors in judgment has the potential for significant risk of harm to the employee, other employees, or the public. For the purposes of this policy, high-risk positions will include, but are not limited to:

- Those who regularly come in contact with youth;
- Any position that requires certification as peace officers under the Georgia Peace Officers Standards and Training Act;
- Any employee providing direct nursing services to youth in a secure facility;
- Any Juvenile Probation Officer positions and Juvenile Program Manager positions which routinely or occasionally require the incumbent to transport youth; and

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- Any of the above positions if conducted by a contracted worker.

**Illegal Drug:** Any drug that is not dispensed according to a legal prescription, other than medications purchased over the counter that are still in their original form. Use of another individual's prescription medication constitutes illegal drug use for the purposes of this policy.

**Observed Sample:** The collection of a drug testing urine sample conducted in the presence of a representative of the collection site.

**Reasonable Suspicion:** An observable specific, timely, and describable judgment that an employee has violated the State's Drug and Alcohol Free Workplace Program (see DJJ 3.15, Drug and Alcohol Free Workplace Program) regarding an employee's behavior, appearance, or other evidence found or reported that may be based on but will not be limited to:

- An on-the-job incident such as a medical emergency that is likely to be attributable to illegal drug use by an employee; or
- Observation of behavior exhibited by an employee that might render the employee unable to perform his/her job or that might pose a threat to the safety or health of the employee, fellow employees, or the general public (see Reasonable Suspicion Checklist in Attachment A); or
- Reliable information that an employee may be illegally using drugs or under the influence of illegal drugs or alcohol; or
- Physical on-the-job evidence of drug use by an employee; or
- Documented deterioration in an employee's job performance that is likely to be attributable to drug use by the employee; or
- The results of other scientific test(s) that may tend to indicate possible use of drugs or alcohol; or
- Any other specific, timely, and describable action that would give reason to suspect that an employee may have broken a substance abuse prohibition.

**Refusal or Failure to Appear for Substance Abuse Testing:** An individual is considered to have refused or failed to appear for substance abuse testing when he/she:

- Expressly declines to submit to testing;
- Engages in conduct that clearly obstructs the testing process;
- Fails to appear for testing after proper notification;
- Fails to remain readily available for testing;

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- Fails to provide adequate urine for drug testing without a valid medical explanation;
- Fails to provide adequate breath or saliva for alcohol testing without a valid medical explanation;
- Provides a urine sample determined by the testing laboratory and the Medical Review Officer to have been adulterated; or
- Provides a urine sample determined by the testing laboratory and the Medical Review Officer to have been a substitute sample.

### III. GENERAL PROCEDURES:

- A. The Director of Human Resources or designee will identify which Department positions are subject to pre-employment and random drug and/or alcohol testing subject to approval by the Director of Human Resources Administration at the Department of Administrative Services. When making that identification, the Director will analyze the position based on its assigned duties and responsibilities in conjunction with applicable laws, rules, and/or regulations.
- B. Any change in assigned duties and responsibilities that may impact the inclusion or exclusion of a position from alcohol and/or drug testing should be reported to the Director of Human Resources within 15 days of these change(s).
- C. Applicant Notification.
  1. At the time the initial interview is scheduled, each applicant for a high-risk position must be verbally notified that:
    - a) Employment is contingent upon an individual's passing a pre-employment drug test; and
    - b) Employment in this capacity subjects the individual to random drug testing.
  2. During the initial interview, each applicant must complete a Drug Testing Notice). If an applicant refuses to sign the statement, he/she will not be considered further for the position.
- D. Any employee selected for or directed to substance abuse testing will be considered as being on duty for all time necessary to undergo the testing process. This duty time will include any time required for transportation to and from the sample collection facility.
- E. The Department is responsible for the expense of drug and alcohol testing.
- F. Reporting for Testing.

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1. The Department may direct an applicant to appear for pre-employment drug testing only after giving the applicant a conditional offer of employment.
2. When an applicant or employee is directed to appear for substance abuse testing, the Department will give the individual notice of the date, time and testing/collection facility. The template letters are located in the Manual.
3. The applicant or employee must report to the designated facility as specified in the notice to report for testing.

#### **IV. TYPES OF SUBSTANCE ABUSE TESTING:**

##### **A. Pre-Employment:**

1. All applicants for high-risk positions are subject to pre-employment drug testing.
2. All job announcements for high-risk positions will include a statement that applicants are subject to pre-employment drug testing.
3. An applicant for a high-risk position will not commence employment until the Drug Testing Vendor's Medical Review Official (MRO) has notified the Department that the pre-employment test result is negative.
4. Any applicant who tests positive, or who refuses to be tested, is disqualified from state employment for a minimum of 2 years.

##### **B. Random:**

1. Any change in assigned duties and responsibilities that may impact the inclusion or exclusion of a position from random drug testing must be reported to the Director of Human Resources within 15 days of these change(s).
2. The Department will conduct random drug testing in accordance with the Alcohol and Drug Testing User's Manual.

##### **C. Reasonable Suspicion:**

1. From the Commissioner down to a Facility/Program/Office Director may require an employee to submit to screening for the presence of alcohol and/or illegal drugs if he/she has a reasonable suspicion that the employee has consumed/used alcohol and/or illegal drugs or impaired and/or is under the influence of alcohol and/or illegal drugs while on duty.
2. Requests for any reasonable suspicion testing must be approved by the Director of Human Resources, Office of Legal Services, and the respective

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Facility/Program/Office Director prior to requiring the employee to undergo reasonable suspicion drug and/or alcohol testing.

3. A reasonable suspicion drug test will be conducted as an observed sample.
4. An employee who tests positive for illegal drugs will be separated from employment. The employee is ineligible for re-employment with the State for a minimum of 2 years.
5. An employee in high-risk position who test positive for alcohol will be separated from employment. P.O.S.T. certified employees will be ineligible for re-employment with the State for a minimum of 2 years.
6. Employees not in high risk positions who test positive for alcohol will be subject to Adverse Action (see DJJ 3.80, Employee Discipline), up to and including termination. As a condition of return to duty, the employee must sign a written agreement in which the employee agrees to random, unannounced alcohol testing for a period of five (5) years, and acknowledges that failure of any subsequent alcohol test during that period will result in termination.

D. Alcohol:

1. All employees are subject to alcohol testing in accordance with this and other applicable Department policies.
2. An employee whose alcohol test results indicate an alcohol concentration of 0.08 or greater will not be permitted to return to duty and will be placed on Adverse Action in accordance with DJJ 3.80, Employee Progressive Discipline. Prior to returning to duty, the employee must successfully complete a Return to Duty breath alcohol test and signs a written agreement in which the employee:
  - a) Agrees to random unannounced alcohol testing for a period of one year; and
  - b) Acknowledges that failure of any subsequent alcohol test during the one-year period will result in dismissal from employment.
3. An employee driving under the influence of alcohol while in a state vehicle will be subjected to termination in accordance with DJJ 3.80 Employee Progressive Discipline.
4. An employee whose alcohol test results indicate an alcohol concentration of less than 0.08 shall be subject to such action, as the appropriate Office/Facility Director, in consultation with the Director of Human Resources, shall deem appropriate.

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- a) An employee who has a second alcohol test result of more than 0.08 will be terminated in accordance with the Dismissal section of this policy.
- b) An employee who has a second alcohol test result of less than 0.08 will not be permitted to return to duty the day of the test and will be placed on an Adverse Action in accordance with DJJ 3.80, Employee Progressive Discipline.

E. Return to Duty:

Any employee who has utilized the self-disclosure provisions of DJJ 3.15, Drug and Alcohol Free Workplace Program, must successfully complete the alcohol and/or drug testing process and obtain a negative result before returning to duty. A return to duty drug test will be conducted as an observed sample.

F. Follow-up:

Any employee who returns to duty following self-disclosure of a substance abuse problem is subject to unannounced alcohol and/or drug testing for up to 5 years. All follow-up drug tests will be conducted as an observed sample.

G. Post-Accident

All employees who are involved in an on-the-job accident which causes or contributes to a lost time injury that requires medical attention away from the worksite or that results in more than \$2,000.00 in damage to State property, is subject to undergo Post-Accident drug and alcohol testing as soon as possible following the accident.

**V. REFUSAL OR FAILURE TO APPEAR FOR SUBSTANCE ABUSE TESTING:**

- A. Any applicant who declines an offer of employment for reasons not related to drug testing will not be deemed to have refused drug testing.
- B. The Department will withdraw the contingent offer if an applicant refuses to undergo drug testing, fails to appear for drug testing as directed, or tests positive for the presence of one or more illegal drugs. Further, the applicant will be disqualified from employment with any state employer for a minimum period of 2 years. The Drug Testing Coordinator will notify the local facility/office will notify the applicant/employee in writing that he/she is deemed to have used an illegal drug and is therefore disqualified from state employment for a period of 2 years from the date of testing (see Withdrawal of Employment Offer sample letter).
- C. The Department will terminate an employee who refuses to undergo drug testing, who fails to appear for drug testing as directed, or whose test results indicate the presence of an illegal drug in accordance with Section VII of this policy.

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- D. Further, the employee will be disqualified from employment with any state employer for a minimum period of 2 years.
- E. The Drug Testing Coordinator will maintain a listing of applicants/employees deemed to have refused or failed to appear for testing and those who test positive of when their two (2) year ban expires.
- F. The Department will terminate an employee who refuses alcohol testing or who fails to provide adequate breath for alcohol testing without a valid medical explanation. See Section VIII of this policy.
- G. An applicant who has been disqualified from state employment due to refusing or failing to appear for drug testing may file a written request with the Commissioner of the Department of Administrative Services to remove the disqualification. The Commissioner's decision is final.

**VI. POSITIVE LABORATORY REPORTS:**

- A. Applicant/Employee Contact Procedure:
  1. Upon receipt of a positive laboratory report, the Medical Review Officer will attempt to contact the applicant or employee who provided the sample at the daytime or home phone number indicated on the drug testing form. The Medical Review Officer will attempt to determine if there is an alternative medical explanation for the positive result.
  2. If the applicant or employee expressly refuses to discuss the results of a drug test, declines the opportunity to provide an explanation of the results, or admits to the usage of an illegal drug(s), the Medical Review Officer will immediately report to the DJJ that the drug testing results indicate that the applicant or employee has used an illegal drug(s).
  3. If the Medical Review Officer is unable to directly contact the applicant or employee within two business days of the initial attempt, the Medical Review Officer will contact the Drug Testing Coordinator. The Drug Testing Coordinator will contact the appropriate Local Human Resources Representative. The Local Human Resources Representative will attempt to contact the applicant or employee and will inform the applicant or employee that he/she must personally contact the Medical Review Officer by the end of the next business day or the applicant or employee will be considered to have tested positive for the use of illegal drugs.
  4. If the local Human Resources Representative is unable to contact the applicant or employee within two business days of the initial attempt, the Medical Review

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Officer will then deem the applicant or employee to have tested positive for the use of illegal drugs.

5. The Medical Review Officer's decision regarding the verification of a positive drug test result is final. The applicant or employee may not appeal or seek review of the Medical Review Officer's decision.

**B. Reporting Results:**

1. If an applicant or employee is unable to provide an alternative medical explanation for the presence of an illegal drug(s), the Medical Review Officer, after appropriate review, will notify the Drug Testing Coordinator that the test is positive.
2. The Drug Testing Coordinator will forward test results to the local human resources representative.

**C. Re-testing:**

If the testing laboratory rejects an applicant's or employee's urine sample for any reason other than an adulterated or substituted sample such as loose seal, spilled in transit or determining the sample is diluted, the Director of Human Resources may allow a retest up to 2 times.

**D. Observed Samples:**

1. Every reasonable suspicion, return to duty, and follow-up drug test and every 2<sup>nd</sup> re-test will be conducted as an observed sample.
2. If a collection site representative determines that a sample temperature is outside the acceptable range of 90 through 100 degrees Fahrenheit, determines that the sample has an unusual appearance, or observes unusual behavior or appearance of the subject during the collection steps, then the collection may be conducted as an observed sample. A sample will not be collected as an observed sample under these circumstances unless a supervisor of the site representative or other appropriate collection site personnel has confirmed the necessity for it.
3. The Drug Testing Coordinator, in consultation with the Director of Human Resources and the Office of Legal Services may direct a sample to be collected as an observed sample if he/she has reason to believe that a donor may attempt to alter or falsify a sample, or as otherwise provided in this policy. The local Human Resources Representative will mark the lab form (Custody Control form [CCF]) as an Observed Sample.

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**VII. CONFIRMED POSITIVE TEST REPORTS:**

- A. The Department will withdraw a conditional offer of employment if an applicant tests positive for illegal drugs or alcohol.
- B. The Department may terminate an employee who tests positive for illegal drugs or alcohol.
- C. Any applicant or employee who tests positive for illegal drugs or alcohol is ineligible for employment with the State for a minimum of 2 years.

**VIII. DISMISSAL:**

- A. This Section is the exclusive procedure for termination under this policy.
- B. If an employee refused or failed to appear for substance abuse testing, or was determined by the Medical Review Officer to have used an illegal drug, the Facility/Program/Office Director, or designee will notify the employee, in writing, of immediate termination of employment (see Notice of Termination of Employment). Following delivery of the notice of dismissal, the employee will be immediately removed from the work site.
- C. For classified employees, the notice of dismissal is the final determination of adverse action and will include:
  - 1. The effective date of the action;
  - 2. A statement indicating: the date the employee underwent drug testing; that the Medical Review Officer subsequently determined the employee to have used one or more illegal drug(s); the specific illegal drug(s) so identified, or the date the employee expressly refused substance abuse testing;
  - 3. A statement notifying the employee that he/she is disqualified from any state employment for a minimum of 2 years from the date of notification; and
  - 4. A statement advising that the employee may appeal the action to the State Personnel Board by filing an appeal with the Office of State Administrative Hearings within 10 calendar days from the date the employee receives written notice of the final action or the effective date of the action, whichever is later. Any filing will be considered timely if postmarked within the time allowed for an appeal but will not be considered filed until actually received by the Office of State Administrative Hearings.

**IX. LOCAL OPERATING PROCEDURES REQUIRED: NO**