

KANSAS DEPARTMENT OF CORRECTIONS

	INTERNAL MANAGEMENT POLICY AND PROCEDURE	SECTION NUMBER 12-124D	PAGE NUMBER 1 of 8
		SUBJECT: SECURITY AND CONTROL: Offender Drug Abuse and Intoxicants Testing	
Approved By:  Secretary of Corrections		Original Date Issued: 03-08-16	Replaces Version Issued: N/A
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APPLICABILITY:	<input type="checkbox"/> ADULT Operations Only	<input type="checkbox"/> JUVENILE Operations Only	<input checked="" type="checkbox"/> DEPARTMENT-WIDE
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POLICY STATEMENT

Consistent with the mission statement of the Department, which is to promote public safety, incarcerated offenders shall be closely monitored and/or tested by trained personnel for the use of illicit drugs and/or intoxicants. Drug testing of offenders, combined with appropriate sanctions and treatment is an effective means of suppressing drug use, drug trafficking, and drug related infractions. Any offender shall, upon request of an authorized staff member, submit to drug abuse or intoxicant testing to determine if the offender is using contraband drugs or intoxicants. All tests shall be approved by the Secretary of Corrections/designee and conducted by either trained KDOC personnel, or by certified laboratories. Refusal to submit to testing shall be subject to disciplinary action. Drug screening tests shall not be conducted for purposes of harassment. (ACI 3-4269) When test results indicate an offender's use of illicit substances, the results shall be documented and with limited exceptions, a disciplinary report written. Additionally, counseling/treatment intervention may be implemented, if appropriate.

Offenders on post-incarceration supervision status shall be tested in accordance with the provisions of IMPP 14-112A.

Offenders testing positive for the use of illicit drugs using urine sample screening, shall be assessed a fee of five dollars and thirty-five cents (\$5.35) for each drug testing positive. Additionally, if a laboratory fee is incurred as the result of a positive confirmation test, the offender shall be assessed a fee for these as well. The staff person(s) responsible for drug testing at the facility shall be responsible for notifying the offender and facility accounting office of the exact amount of any laboratory fee incurred so that this money may be withdrawn from the offender's account. If alternative drug testing methods are used and the offender tests positive for the use of illicit drugs, the offender shall be assessed a fee of \$60 for the hair test, \$11.75 for the on-site oral fluids test **and** \$30 for each drug of the oral fluids test that is confirmed positive by laboratory testing. Offenders that refuse drug testing shall be assessed a fee of \$5.35. All fees collected shall be payable to the Kansas Department of Corrections.

DEFINITIONS

Alternative Drug Testing Methods: Methods other than urine testing used to test for the use of illicit drugs. KDOC approved alternative drug testing methods are oral fluids and hair testing.

Alternative Drug Testing List: A comprehensive listing of offenders with a substantiated medical or psychological condition that prevents collection of a urine sample necessary for established drug test protocol. This list shall include only the name (s) and number of the offender(s), not the specific medical or psychological condition. The health care provider shall update the list as needed.

Certification: The completion of the course of instruction necessary to prepare an individual to train others to train operators of the testing equipment.

Contaminated: A urine sample that has been subjected to the introduction of a material, substance, or chemical that is not part of the testing materials or naturally occurring in human urine.

Contraband: Any item, which has not been approved for introduction into a correctional facility by law, regulation, or policy.

Drug Testing: Using specialized equipment and chemical techniques to identify the presence of a drug or drug metabolite through testing a biological specimen from an offender.

Expiration Date: The date after which a reagent cannot be used to produce a valid test.

G.C.M.S. Testing: G.C.M.S. testing identifies the existence of certain controlled substances via its reliance upon the combined sciences of Gas Chromatography and Mass Spectrometry. Gas Chromatography is an analytical separation method in which chemical components are separated by a combination of three mechanisms: partition, adsorption and volatility (differences in boiling points). The chemical components are then identified through the use of a mass spectroscope. This analysis is conducted only by a professional laboratory certified in the use of these combined sciences.

Negative Control: A test specimen for certain drug detection systems.

Offender: For the purpose of this policy, a person who has been sentenced to the custody of the Secretary of Corrections who is currently assigned to a KDOC facility, contract facility, or housed in another state pursuant to the Interstate Corrections Compact. This also includes persons from other jurisdictions who are housed in KDOC facilities pursuant to the Interstate Corrections Compact.

Random Selection: Selection, which lacks a definite plan or pattern, composed of offenders or activities of a given set, each of who has an equal probability of being selected.

Reasonable Suspicion: A conclusion drawn from specific objective facts that would permit a reasonable and experienced staff member to suspect that an offender is under the influence of drugs, alcohol or a combination of drugs and alcohol.

Training: Instruction in the actual operation of the test equipment.

Treatment: Contracted substance abuse services provided to offenders including, but not limited to, therapeutic community, intermediate inpatient, reintegration, relapse prevention, outpatient counseling, and after care.

PROCEDURES

I. Applicability

- A. While all offenders are subject to drug abuse and/or intoxicant testing, the drug screening program shall target the following:
 - 1. Offenders suspected of contraband drug usage and/or being under the influence of alcohol or drugs.
 - 2. High-risk group including:
 - a. Offenders with a history of drug or alcohol abuse.
 - b. Groups of offenders by living/work/program assignment where a pattern of drug and/or alcohol abuse is discovered.
 - c. Offenders whose custody/program increases the potential for contact with contraband drugs and/or alcohol (includes furloughs, work release, and community work assignments).

4. Offenders participating in substance abuse treatment programs shall be subject to testing upon the request of the treatment provider.
- B. **JUVENILE:** In addition to those requirements of Section I.A., offenders shall also be tested upon intake, as follows:
1. Upon intake into a juvenile facility, offenders shall be notified of:
 - a. The drug testing procedures (Attachment A) utilized by the facility; and
 - b. The consequences for refusing to participate in drug testing.
 2. All newly admitted offenders shall be tested within eight (8) hours of arrival to the admitting facility.

II. Testing Authorization

- A. The shift supervisor, acting as the warden's/superintendent's designee, may authorize a drug abuse and/or intoxicants test for any offender or group of offenders. (ACI 3-4269)

III. Drug/Intoxicant Testing Materials

- A. All drug/intoxicant testing materials shall be handled in a manner that preserves their integrity and reliability including, but not limited to:
1. Storage in accordance with the manufacturer's instructions;
 2. Storage in a locked, secure area that ensures unauthorized individuals do not handle tests, supplies, or testing records; and,
 3. Disposal of any drug/intoxicant testing materials that have met or exceeded their expiration date.

IV. Urine Sample Collection

- A. Sample collection shall be conducted by trained personnel in accordance with the following:
1. The collection area shall be clean, sanitary, and out of the public view.
 2. Only new, leak-proof containers designed for the purpose of urine collection shall be used.
 3. The officer or staff member observing the urination shall be the same gender as the test subject.
 4. Before being tested, offenders shall be thoroughly searched including a visual examination of the groin area for foreign objects or materials.
 5. The offender shall wash hands prior to giving the urine sample.
 6. Information regarding the test shall be logged in a drug-screening log, which provides the following information:
 - a. Offender's name;
 - b. Offender's number;
 - c. Date the sample is taken;
 - d. Time the sample is taken;

- e. Specific drugs to be tested for; and,
 - f. Name of staff witness(es).
7. The offender's name, number, date and time the sample was produced shall be recorded on an identification label/tape and placed on the container
- a. The officer or staff member collecting the sample shall verify the identity of the subject offender by checking the offender's I.D. badge against the drug screening log and label/tape placed on the sample container, and shall require the offender to initial the label/tape.
8. Offenders shall be under continuous observation until the sample is collected.
- a. Offenders shall be required to provide a urine sample of sufficient quantity to meet the testing requirements as specified by either the test manufacturer or any laboratory, which regularly performs the analysis of urine samples submitted by the facility, and to initial the tape sealing the urine sample container.
 - b. Offenders shall be required to produce a sample within 150 minutes.
9. To the extent possible and in accordance with general orders, the actual urination shall be observed for possible attempts by the offender to dilute or contaminate the sample.
10. A chain of evidence form shall accompany the urine sample at all times.
11. As each sample is received, the offender's name, number, date, and time the sample was produced shall be recorded on a tape and the tape placed on the sample container.
12. All samples not tested immediately shall be sealed with evidence tape.
13. If a sample is contaminated or otherwise rendered untestable, the following action shall be taken:
- a. If the sample was contaminated or is otherwise untestable, due to actions of the offender, the offender's conduct has raised the presumption of substance use. The offender shall be charged with a violation of the applicable K.A.R. for use of stimulants.
 - b. If the sample was contaminated, or is otherwise untestable, due to actions of staff, the testing procedures outlined in this policy shall be repeated in their entirety until a testable sample is produced.
14. Samples not immediately tested shall be placed in a designated refrigerator. This refrigerator shall be lockable and access shall be by authorization of the warden/superintendent or designee only.
15. In the event an offender claims to be unable to provide a urine sample, the following action shall be taken:
- a. The offender shall be taken to a designated area and kept under continuous observation until the requested sample is provided;
 - b. As soon as practical, the offender shall be provided 16 oz. of plain water.
 - (1) Offenders shall be advised that they may submit a request to the medical/mental health provider requesting to be screened to determine if a physiological or psychological disorder prevents the offender from providing a urine sample under the conditions outlined in this policy.

- (2) If medical or mental health staff substantiate that a physiological or psychological disorder prevents the offender from providing a urine specimen, the offender's name shall be placed on the Alternative Drug Testing List.
 - (a) Alternate test methods shall be used in accordance with section VI of this policy.
- c. If a sample is not produced, the offender's conduct has raised the presumption of substance use. The offender shall be charged with a violation of the applicable K.A.R. for Use of Stimulants.
16. If the offender refuses to participate in substance abuse testing, the offender shall be charged with a violation of the applicable K.A.R. for disobeying orders and use of stimulants.

V. Drug Testing Procedures

- A. Drug abuse testing shall be conducted by either personnel trained in the use of the approved detection system, or by personnel employed by a certified laboratory.
 1. Certification and documentation of training in the use of the approved drug detection system currently in use shall be maintained in the operator's training record.
 2. Certification shall be accomplished through training from the manufacturer and/or distributor of the drug detection system product.
- B. Drug testing shall consist of a protocol approved by the Secretary of Corrections or designee that shall test for the presence of the following substances:
 1. Cannabinoids;
 2. Cocaine;
 3. Opiates;
 4. Amphetamine;
 5. Methamphetamine;
 6. Benzodiazepine;
 7. Oxycodone; and
 8. Synthetic Cannabinoids.
- C. The Secretary or designee may authorize testing for additional illicit drugs not listed in Section IV. B. if the substance(s) has created a risk to facility security.
- D. If an offender tests positive through the use of the approved KDOC drug detection system, a disciplinary report shall be issued for violation of K.A.R. 44-12-312(a) (adult) or K.A.R. 123-12-312 (a) (juvenile).
 1. Following service of a disciplinary report, the offender shall be advised of the availability of GCMS confirmation testing.
 2. The offender may request GCMS testing by completing a Drug Test Waiver and Agreement (Attachment B)

3. The offender's request for GCMS confirmation shall be conveyed to the disciplinary Hearing Officer.
 - a. A continuance shall be granted pending GCMS confirmation.
 4. If the GCMS test result is positive for drug usage, the offender shall pay the cost of the testing.
 5. If the GCMS test result is negative, the facility shall pay the cost of the testing.
 6. The disciplinary hearing shall continue upon receipt of the GCMS confirmation.
- E. Samples which have tested positive under the KDOC approved drug detection system shall be frozen and retained at the facility until final resolution of any disciplinary action.
- F. **JUVENILE:** These procedures may be excluded if the juvenile offender knowingly and voluntarily completes an Admission of Guilt form (Attachment C).

VI. Alternative Drug Testing Methods

- A. The department shall utilize drug-testing methods other than urinalysis when urine collection (using procedures and timeframes set forth in this policy) is not possible due to an offender's substantiated physiological condition or psychological disorder or when an alternative drug testing method can more reliably detect illicit drug use. When alternative drug testing methods are used, staff must be trained in the use of the specific alternative drug testing methods employed before performing the test or collecting the sample.
1. Offenders that have been identified as having a substantiated physiological condition or psychological disorder that precludes them from providing a urine sample shall be offered a treatment program specific to the treatment of the identified physiological condition or psychological disorder.
 - a. If an offender refuses to participate in the treatment of the condition or disorder, he/she shall be tested using alternative drug testing methods and shall be responsible for all costs associated with the testing regardless whether the test is positive or negative.
 - b. If the offender is on the Alternative Drug Test List, the cost for such testing shall be bore by the facility with the exception that the offender shall bear the cost for any test results that are confirmed positive.
 2. The health care provider shall make the Alternative Drug Testing List available to each facility.
 3. Offenders whose name appears on the *Alternative Drug Test List* shall be tested using **both** hair sample and oral fluids sample testing methods.
 - a. Should the offender lack sufficient hair for testing, fingernail clippings may be collected instead of hair.

VII. Calibration/Negative Controls/KDOC Drug Detection System

- A. Any negative controls and/or calibrations which may be required as a part of the drug detection system testing process shall be made at the beginning of each testing day in accordance with manufacturer's instructions to determine the proper working condition of the test material.
- B. If the facility uses a breath test, which has to be calibrated with a canister, the facility shall arrange to purchase a calibration agent from the State Department of Health and Environment or have the unit calibrated bi-monthly by a local law enforcement agency.

VIII. Intoxicant Testing Procedures

- A. When intoxicant testing is ordered, the following procedures shall be followed:
1. The Department shall utilize either of the following tests:
 - a. An approved field test; or,
 - b. A digital read out machine, which traps a sample of the person's breath through a plastic tube, inserted into the machine, and after an established time period, produces a read out in percentages.
 2. Testing may take place at any location.
 3. The information regarding the test shall be logged in a log, which lists the following information:
 - a. Offender's name;
 - b. Offender's number;
 - c. Date test was conducted;
 - d. Time test was conducted;
 - e. Result of test; and
 - f. Names of operator and witnesses.
 4. Testing shall be conducted by a certified or properly trained operator with documentation of training on file in the operator's training record.

IX. Disciplinary Action

- A. Pursuant to the appropriate K.A.R. for Use of Stimulants, positive test results for drug abuse and/or intoxicants shall result in disciplinary action against the offender. A refusal to submit to a drug abuse or intoxicants test shall be presumed to be a positive test result.
1. Newly admitted and re-admitted offenders, in the custody of the Department for 14 days or less at the time the random test was administered, shall be exempt from disciplinary action in response to a positive test result.
 - a. Offenders in this category who produce a positive test result shall be administered a subsequent drug abuse or intoxicant test at least 14 days from their admission or re-admission date but no later than 25 days from that date.
 - b. Positive test results from the re-test shall result in disciplinary action in accordance with Section VIII. A. above.

X. Reports

- A. All reports concerning drug abuse and/or intoxicants testing shall be made available as soon as possible after the test is performed.
- B. Each facility shall develop General Orders regarding drug and intoxicant testing with specific instructions to staff.

NOTE: The policy and procedures set forth herein are intended to establish directives and guidelines for staff and offenders and those entities that are contractually bound to adhere to them. They are not intended to establish State created liberty interests for employees or offenders, or an independent duty owed by the Department of Corrections to employees, offenders, or third parties. Similarly, those references to the standards of various accrediting entities as may be contained within this document are included solely to manifest the commonality of purpose and direction as shared by the content of the document and the content of the referenced standards. Any such references within this document neither imply accredited status by a Departmental facility or organizational unit, nor indicate compliance with the standards so cited. The policy and procedures contained within this document are intended to be compliant with all applicable statutes and/or regulatory requirements of the Federal Government and the state of Kansas. This policy and procedure is not intended to establish or create new constitutional rights or to enlarge or expand upon existing constitutional rights or duties.

REPORTS REQUIRED

None.

REFERENCES

IMPP 14-112A
K.A.R. 44-12-304, 44-12-312, 123-12-304, 123-12-312
ACI 3-4269

ATTACHMENTS

Attachment	Title of Attachment	Page Total
A	Drug Test Procedures	1 page
B	Drug Test Waiver and Agreement	1 page
C	Admission of Guilt	1 page

DRUG TESTING PROCEDURES
(Juvenile Correctional Facility Use Only)

I, _____, _____, hereby affirm that I
(Designated Facility Staff Member's Printed Name) (Title)
that I have read the following drug testing procedures to _____,
(Offender's Printed Name)
_____.
(Offender's Number)

(Check each box after it has been read to the offender, verifying that he/she has been given an opportunity to ask questions, and verbally acknowledges that he/she understands what has been read to him/her.)

You shall be required to submit to drug testing:

- At intake;
- Randomly;
- During treatment planning;
- Upon reasonable suspicion; and
- Annually, during your birth month.

You shall:

- cooperate during the drug testing and answer any and all questions honestly.
- be thoroughly searched by a designated facility staff member of the same gender before providing a urine specimen.
- be under continuous observation by a designated facility staff member of the same gender until the specimen is collected;
- be given two (2) and a half hours (150 minutes) to produce a urine sample. The testing period shall be terminated at the end of that time period.
 - If you are unable to produce a urine specimen within the designated time frame, you may be provided 16 ounces of water and shall be required drink it while under a designated facility staff member's supervision.
 - If your drug test produces a positive result, a confirmation test may be required.

You shall be charged with a rule violation and served with a disciplinary report for:

- Failing to produce a urine sample within the two (2) and a half hours' time period;
- Refusing to submit to a drug testing;
- Tampering with a urine specimen; or
- Having a positive test result.

DESIGNATED FACILITY STAFF MEMBER'S ACKNOWLEDGMENT

With my signature below, I further state and acknowledge that: (Please Check)

- I have read the Drug Testing Procedure to the offender.
- I have given the juvenile offender an opportunity to ask questions about the drug testing procedures.
- The offender has verbally acknowledged to me and the witness that he understands the drug testing procedures.

Designated Facility Staff Member's Signature Date

Witness' Printed Name Witness' Signature Date

Drug Test Waiver and Agreement

Drug Test Waiver and Agreement

I, _____, Offender # _____, have provided a urine/oral fluids sample for drug testing. I have tested positive and Disciplinary Report No. _____ has been issued. I have been offered an opportunity for additional testing on the following terms and if confirmation testing is requested:

1. I waive any objections that might be raised to the admission of the additional test result in any proceeding including but not limited to: the chain of custody, foundation, subpoena and cross-examination of the technician or chemist, the testing protocol, instrument operation, or any other matter. I agree and stipulate to the admission of the additional test result.
2. I agree to pay \$_____ the costs of the additional testing including packaging, shipping, analysis, reporting, and any other related expenses, in the event the additional test is positive for drug use. In the event the test is negative, the costs of the additional testing are to be paid by the facility/KDOC.¹
3. I agree that if there are insufficient funds in my account at present, my account will nonetheless be debited and the cost will be collected as soon as funds are available.
4. I agree and understand that any measurable amount of unlawful drug is a violation of KDOC regulations.
5. I agree and request that my disciplinary case be continued until the additional test report is available and I waive any otherwise applicable time limits in this matter.

I request confirmation testing

I waive confirmation testing

Executed on this _____ day of _____, 20_____.

Offender Signature

Offender Number

Hearing Officer or Witness (Print Name)

Hearing Officer/Witness' Signature

Date

¹As per Section III.A.14.e.(3), I will remain responsible for the costs of the onsite test if I do not have a substantiated psychological or physiological disorder preventing me from producing a urine sample.

