

ARKANSAS REGISTER

FILED Transmittal Sheet

FEB 22 1994



W. J. "BILL" McCuen
SECRETARY OF STATE

Secretary of State
State Capitol Rm. 010
Little Rock, Arkansas 72201-1094

For Office

Use Only:

Effective Date

3/10/94

Code Number

004.00.94--020

Name of Agency Arkansas Department of Correction

Department of Correction

Contact Person Larry Norris, Director

Statutory Authority for Promulgating Rules Act 50 of 1968, First Extraordinary Session,
as amended, Act 549 of 1993

Title of Rule: AR 202 Employee Drug Testing;

Intended Effective Date

Date

☐ Emergency

Legal Notice Published

2/3-9/94

☐ 20 Days After Filing

Final Date for Public Comment

2/16/94

☒ Other

Filed With Legislative Council

2/3/94

Please use 3/10/94

as the effective date

Reviewed by Legislative Council

Adopted by State Agency

2/17/94

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 As Amended.

[Signature]
Signature

Director
Title

2/17/94
Date

Date



ADMINISTRATIVE REGULATIONS
STATE OF ARKANSAS
BOARD OF CORRECTION AND
COMMUNITY PUNISHMENT

Section Number:
DCP 3.2
DOC 202

Page Number:

1 of 7

Board Approval Date:

2/17/94

Supersedes:
DCP 3.2 EMERG.
DOC 202

Dated:
1/19/94
7/30/93

Reference:
AD 93:25

Effective Date:
3/10/94

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SUBJECT: Employee Drug Testing

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W. J. "BILL" MCQUEEN
SECRETARY OF STATE
BY

I. AUTHORITY:

The Board of Correction and Community Punishment is vested with the authority to promulgate Administrative Regulations by Act 50 of 1968, First Extraordinary Session, as amended; Acts 548 and 549 of 1993, Regular Session (Ark. Code Ann. 16-93-1203 and 12-27-105 of 1993).

II. PURPOSE:

To establish the policy on drug testing for specified employees of the Department of Correction/Community Punishment and testing of applicants conditionally offered employment.

III. APPLICABILITY:

To the Director, Deputy, Assistant Director, Warden/Center Supervisors/Administrators, any employee involved in the process of drug testing, all employees currently employed by the Department of Correction/Community Punishment, and all applicants conditionally offered employment.

IV. DEFINITIONS:

A. Specified Employees: Employees whose job duties may require the use of a firearm; who are in contact with the general offender population; or employees who would pose a direct threat to the health or safety of themselves or others or to the safety and security of departmental operations if their general functioning was impaired. This may include contracted employees.

B. Reasonable Suspicion: Exists if specific objective facts and circumstances warrant rational inferences that a person is using or is under the influence of controlled substance. Reasonable suspicion may be based upon, among other matters:

1. Observable phenomena, such as direct observation of use and/or the physical symptoms of using or being



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under the influence of controlled substance such as,
but not limited to, slurred speech, and/or
disorientation;

2. Information that an employee has caused or contributed to a serious accident while on duty;
3. A pattern of abnormal conduct, erratic behavior, or deterioration in work performance; or
4. Information of drug use provided by reliable and credible sources and which has been independently corroborated and documented.

Drug testing of specified employees based on reasonable suspicion shall be requested at the discretion of the Unit Warden/Center Supervisor/Administrator.

- C. Serious Accident: While the employee is on duty, an accident that occurs which results in death, bodily injury, or serious property damage.
- D. Controlled Substance: Mind-altering and/or addictive substance(s) included under the provisions of the United States Government's Controlled Substances Act of 1970, as amended. Examples include but are not limited to:
 1. Opiates
 2. Cocaine
 3. Cannabinoids (i.e. marijuana, hashish)
 4. Amphetamines
 5. Barbiturates
 6. Narcotics and hallucinogens (i.e. phencyclidine (PCP), Methaqualone (quaalude), peyote, LSD)
 7. Benzodiazepines (i.e. Valium, Librium)

Also encompassed by this definition are substances not sold as drugs or medicines but which are used for mind-behavior-altering effect.



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- E. Illegal/Abuse of Drugs: Any use of narcotics or controlled substances not prescribed by a physician or abuse of legal drugs that may interfere with one's performance of duty.
- F. Under The Influence: Any detectable level of a controlled substance in a urine specimen that results in a positive reading.
- G. Rehabilitation Program: Refers to both in-patient and out-patient programs as well as Employee Assistance Programs and professionally required self-help programs.
- H. Offenders: Persons sentenced to the Department of Correction, persons sentenced to the Department of Correction for judicial transfer to the Department of Community Punishment or persons confined in a community punishment center as a condition of probation, suspended imposition of sentence, or post prison transfer.

V. POLICY:

It shall be the policy of the Board of Correction and Community Punishment that a drug testing program be established for the testing of applicants conditionally offered employment and for the testing of specified employees of whom there is reasonable suspicion that the employee is under the influence of, or using, illegal or controlled substances and/or abusing legal drugs.

VI. PROCEDURE:

A. Americans with Disabilities Act

The Americans with Disabilities Act provides that an individual currently engaging in the illegal use of drugs is not an individual with a disability when the employer or other covered entity acts on the basis of such use.

Individuals who are no longer engaging in the illegal use of drugs and who have either been rehabilitated



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successfully or are in the process of completing a rehabilitation program are considered individuals with a disability.

1. The Department of Correction/Community Punishment is entitled to seek reasonable assurances that no illegal use of drugs is occurring or has occurred recently enough so that continuing use is a real and ongoing problem.
2. Applicants or employees may be asked to provide evidence that the individual is participating in a drug treatment program (i.e. drug test results).

B. Testing of Individuals Conditionally Offered Employment

1. Individuals who have been conditionally recommended for employment shall be required to provide a urine sample as part of the background investigation.
2. When employment testing is being administered by Central Personnel or unit/center designee, all individuals shall be notified of the Department's drug testing requirements and that the conditional offer of employment will be withdrawn if test results are positive for illegal drug usage or if they refuse to provide a urine specimen or attempt to tamper with or adulterate the specimen.

At the request and expense of the individual, a confirmation test of the positive preliminary result may occur.

3. If the individual refuses to sign the consent form (F-202-1 or F-3.2-1), the refusal shall be documented and that person shall be advised that he or she cannot be considered for employment for a twelve month period. Application may be resubmitted after this time.



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4. All conditional hires shall be interviewed regarding present drug usage and shall be requested at the time of the test to complete a form listing prescription and over-the-counter drugs currently being used.
5. Each person being tested shall be required to produce acceptable verification of his or her identity.

C. Employee Testing

1. If any employee is required to take medicine or narcotics prescribed by a physician, the warden/center supervisor/administrator must be notified.
2. Specified employees for which it is determined and documented reasonable suspicion exists shall be tested for unauthorized drug use.
3. The testing procedure itself includes a preliminary test which, if positive, is followed by a confirmation test.
4. If a positive result occurs in an employee's specimen, a hearing will be conducted. Depending on the outcome of the hearing, pursuant to the Administrative Regulation governing Employee Conduct Standards, disciplinary action up to and including termination may occur.

The Department fully supports the Employee Assistance Referral Program and encourages employees to seek this confidential service.

5. If the preliminary test is positive, the employee will be notified, and a confirmation test conducted by another laboratory approved by the Department will occur. Also, the employee will be given the opportunity to present evidence and/or information that the positive test resulted from prescribed or over-the-counter drugs, or that special circumstance



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may have affected the test results. The employee will be required to sign a release of information form in the event that a physician must be contacted for clarification or verification.

6. Refusal to provide a specimen, attempts to tamper or adulterate the specimen or positive results which cannot be justified, will result in the employee being placed on leave pending the results of the test and/or a disciplinary hearing.

D. General Procedures

1. Employees shall be provided with a copy of this Administrative Regulation and are required to sign the form (F-202-2 OR F-3.2-2) acknowledging they have received a copy of the regulation and that they support the department's drug free workplace program.
2. Chain of custody documentation for each specimen shall be maintained from collection to analysis to destruction.
3. Records concerning test results of the employee will be stamped "Confidential," sealed in a envelope marked "Confidential" and mailed to Central Office Personnel for secure maintenance in the employee's personnel file.
4. Confirmed positive urine samples shall be retained until the confirmation tests are complete.
5. The Training staff shall include in its curriculum a course for all new officers enrolled in Basic Correctional Officers Training on the effects, consequences and indications of controlled substances.

The Training Staff will coordinate the disbursement of any updated materials on substance abuse to



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correctional supervisors and provide a record of
distribution.

E. Testing Procedures

Testing procedures to include but not limited to collection
kits, type of test required, collection of urine specimens
and documentation of tests will be addressed in an
Administrative Directive on Employee Drug Testing.

AR202

Conditional Employee Acknowledgement: Drug Testing Requirements
Conditional for Employment

As an individual conditionally recommended for employment with the Arkansas Department of Correction/Community Punishment, I acknowledge I understand:

- (1) The Arkansas Department of Correction/Community Punishment requires drug testing of persons conditionally offered employment;
- (2) Conditional Employment offer shall be withdrawn if test results are positive for illegal or abuse of drugs;
- (3) Employment shall be denied if I refuse to provide a urine specimen or attempt to tamper with or adulterate the specimen provided;
- (4) I will be pat searched prior to drug testing in accordance with departmental regulations and grant permission to do so;
- (5) I will not be considered for employment if I refuse to sign this form (F-202-1 OR F-3.2-1).

I hereby give my consent to be tested for drug usage at present and in the future pursuant to the conditions of the policy attached herein.

Conditional Employee's Signature

Date Signed

Conditional employee refused to sign and his/her conditional employment offer is withdrawn.

Personnel Administrator

Date

Routing: Original to Central Office Personnel marked CONFIDENTIAL

(Additional forms are to be requested from Duplicating Program at Wrightsville)

F202/1(TXTADMRE)

Employee Acknowledgement of Receipt of AR 202 OR AR 3.2: Employee Drug Testing

I have received a copy of the Arkansas Department of Correction's/Community Punishment's Employee Drug Testing procedures, and I understand that it is my responsibility to read and become familiar with all rules, policies, regulations, etc., contained therein. I further understand if I have questions regarding this information, it is my responsibility to contact my immediate supervisor for assistance and/or explanation.

I support the Department's Drug Free Workplace Program; whereby acknowledging:

- (1) the illegal manufacture, distribution, dispensing, possession or use of a controlled substance and abuse of legal drugs is prohibited in the workplace. Violators will be disciplined pursuant to Administrative Regulation 202 OR AR 3.2, Employee Drug Testing; and Administrative Regulation 225 OR AR 3.4, Employee Conduct Standards.
- (2) as condition of employment, I will abide by the terms and conditions set forth in the aforementioned regulations in statement (1) above.

I hereby give my consent to be tested for drug usage pursuant to the conditions of the policy attached herein.

Name of Employee

Division/Unit/Center

Signature of Employee

Date

Social Security Number of Employee

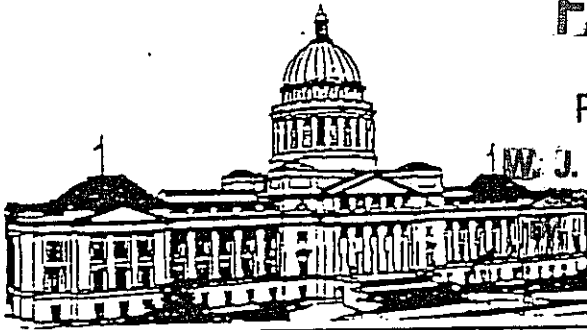
Routing: Original - Central Personnel Office
Copy (2) - Unit/Center Personnel Officer
Supervisor

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Department of Correction

Contact Person Larry Norris, Director

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as amended, Act 649 of 1993

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☐ Emergency

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2/3-9/94

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2/17/94

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 As Amended.


Signature

Director

Title

2/17/94

Date



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2. Information that an employee has caused or contributed to a serious accident while on duty;
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4. Information of drug use provided by reliable and credible sources and which has been independently corroborated and documented.

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V. POLICY:

It shall be the policy of the Board of Correction and Community Punishment that a drug testing program be established for the testing of applicants conditionally offered employment and for the testing of specified employees of whom there is reasonable suspicion that the employee is under the influence of, or using, illegal or controlled substances and/or abusing legal drugs.

VI. PROCEDURE:

A. Americans with Disabilities Act

The Americans with Disabilities Act provides that an individual currently engaging in the illegal use of drugs is not an individual with a disability when the employer or other covered entity acts on the basis of such use.

Individuals who are no longer engaging in the illegal use of drugs and who have either been rehabilitated



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2. When employment testing is being administered by Central Personnel or unit/center designee, all individuals shall be notified of the Department's drug testing requirements and that the conditional offer of employment will be withdrawn if test results are positive for illegal drug usage or if they refuse to provide a urine specimen or attempt to tamper with or adulterate the specimen.

At the request and expense of the individual, a confirmation test of the positive preliminary result may occur.

3. If the individual refuses to sign the consent form (F-202-1 or F-3.2-1), the refusal shall be documented and that person shall be advised that he or she cannot be considered for employment for a twelve month period. Application may be resubmitted after this time.



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4. All conditional hires shall be interviewed regarding present drug usage and shall be requested at the time of the test to complete a form listing prescription and over-the-counter drugs currently being used.
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1. If any employee is required to take medicine or narcotics prescribed by a physician, the warden/center supervisor/administrator must be notified.
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6. Refusal to provide a specimen, attempts to tamper or adulterate the specimen or positive results which cannot be justified, will result in the employee being placed on leave pending the results of the test and/or a disciplinary hearing.

D. General Procedures

1. Employees shall be provided with a copy of this Administrative Regulation and are required to sign the form (F-202-2 OR F-3.2-2) acknowledging they have received a copy of the regulation and that they support the department's drug free workplace program.
2. Chain of custody documentation for each specimen shall be maintained from collection to analysis to destruction.
3. Records concerning test results of the employee will be stamped "Confidential," sealed in a envelope marked "Confidential" and mailed to Central Office Personnel for secure maintenance in the employee's personnel file.
4. Confirmed positive urine samples shall be retained until the confirmation tests are complete.
5. The Training staff shall include in its curriculum a course for all new officers enrolled in Basic Correctional Officers Training on the effects, consequences and indications of controlled substances.

The Training Staff will coordinate the disbursement of any updated materials on substance abuse to



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E. Testing Procedures

Testing procedures to include but not limited to collection
kits, type of test required, collection of urine specimens
and documentation of tests will be addressed in an
Administrative Directive on Employee Drug Testing.

AR202

Conditional Employee Acknowledgement: Drug Testing Requirements
Conditional for Employment

As an individual conditionally recommended for employment with the Arkansas Department of Correction/Community Punishment, I acknowledge I understand:

- (1) The Arkansas Department of Correction/Community Punishment requires drug testing of persons conditionally offered employment;
- (2) Conditional Employment offer shall be withdrawn if test results are positive for illegal or abuse of drugs;
- (3) Employment shall be denied if I refuse to provide a urine specimen or attempt to tamper with or adulterate the specimen provided;
- (4) I will be pat searched prior to drug testing in accordance with departmental regulations and grant permission to do so;
- (5) I will not be considered for employment if I refuse to sign this form (F-202-1 OR F-3.2-1).

I hereby give my consent to be tested for drug usage at present and in the future pursuant to the conditions of the policy attached herein.

Conditional Employee's Signature Date Signed

Conditional employee refused to sign and his/her conditional employment offer is withdrawn.

Personnel Administrator Date

Routing: Original to Central Office Personnel marked CONFIDENTIAL

(Additional forms are to be requested from Duplicating Program at Wrightsville)

F202/1 (TXTADMRE)

Employee Acknowledgement of Receipt of AR 202 OR AR 3.2: Employee Drug Testing

I have received a copy of the Arkansas Department of Correction's/Community Punishment's Employee Drug Testing procedures, and I understand that it is my responsibility to read and become familiar with all rules, policies, regulations, etc., contained therein. I further understand if I have questions regarding this information, it is my responsibility to contact my immediate supervisor for assistance and/or explanation.

I support the Department's Drug Free Workplace Program; whereby acknowledging:

- (1) the illegal manufacture, distribution, dispensing, possession or use of a controlled substance and abuse of legal drugs is prohibited in the workplace. Violators will be disciplined pursuant to Administrative Regulation 202 OR AR 3.2, Employee Drug Testing; and Administrative Regulation 225 OR AR 3.4, Employee Conduct Standards.
- (2) as condition of employment, I will abide by the terms and conditions set forth in the aforementioned regulations in statement (1) above.

I hereby give my consent to be tested for drug usage pursuant to the conditions of the policy attached herein.

Name of Employee

Division/Unit/Center

Signature of Employee

Date

Social Security Number of
Employee

Routing: Original - Central Personnel Office
Copy (2) - Unit/Center Personnel Officer
Supervisor

(Additional forms are to be requested from Duplicating Program at
Wrightsville)