

# YOUTH SERVICES POLICY

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| <b>Title:</b> Drug-Free Workplace<br><b>Next Annual Review Date:</b> 03/16/2018   | <b>Type:</b> A. Administrative<br><b>Sub Type:</b> 2. Personnel<br><b>Number:</b> A.2.7 |
| <b>Page 1 of 13</b>   |   |
| <b>References:</b><br>La. R.S. Title 40, 49:1001 through 1015; 30:2173(2) and 32:1502(5); American Federation of Government Employees v. Roberts, 9 F.3d 1464 (9th Cir. 1993) and American Federation of Government Employees Local 2391 v. Martin, 969 F.2d 788 (9th Cir. 1992); Division of Administration, Office of State Purchasing Bid Laws; 69 FR 19644, Executive Order No. BJ 08-69 "State Employee Drug Testing Policy"; ACA Standards 2-CO-1C-20 (Administration of Correctional Agencies) and 4-JCF- 6D-03 (Performance Based Standards for Juvenile Correctional Facilities; 2-7164-1(Standards for Juvenile Probation and Aftercare Services); YS Policy Nos. A.1.14 "Unusual Occurrence Reports", A.2.1 "Employee Manual", A.2.5 "Family and Medical Leave of Absence", A.2.11 "Employee Assistance Program", A.2.12 "Personnel Records", A.2.19 Commissioned Probation and Parole Officer – Juvenile Special Agents", C.1.8 "Firearms Training, Use and Revocation" and C.5.5 "Performance Standards" |   |
| <b>STATUS: Approved</b>   |   |
| <b>Approved By:</b> <i>James Bueche, Ph.D., Deputy Secretary</i>  | <b>Date of Approval:</b> 03/16/2017   |

**I. AUTHORITY:**

Deputy Secretary of Youth Services (YS) as contained in La. R.S. 36:405. Deviation from this policy must be approved by the Deputy Secretary.

**II. PURPOSE:**

To establish guidelines for employee drug screens and drug/alcohol testing, including post-accident drug testing and substance abuse training.

**III. APPLICABILITY:**

This policy applies to all staff employed by YS.

Unit Heads are responsible for ensuring the procedures set forth in the policy are adhered to and for conveying the contents of this policy to all YS employees.

**IV. DEFINITIONS:**

**Confirmatory Test** - Drug testing conducted by a CAP-FUDD, CAP-FDT or SAMHSA certified laboratory after a "positive" result on an initial screen for the presence of drugs.

**Contracted Health Care Provider (CHP)** - Contracted licensed practitioners responsible for the physical and mental well-being of the secure care youth population. Services include medical, dental, and mental health services, nursing, pharmacy, personal hygiene, dietary services, health education, and environmental conditions.

**Continuous Quality Improvement Services (CQIS)** -The Central Office performance-based and results-driven competency and efficiency management system.

**Drug Testing** - For the purpose of this policy, drug testing programs will generally be comprised of two testing components: 1) initial drug screen; and 2) confirmatory test. Performing a confirmatory test may be contingent upon the results of the initial drug screen.

**Employee Assistant Program (EAP)** - A program designed to assist and support employees who are experiencing personal problems. The program operates as a peer referral service to any employee with a personal problem that is affecting or has the potential to affect the individual's work performance.

**FMLA** – Family and Medical Leave Act of 1993, as amended in 2008, 2010 and 2013.

**Human Resources (HR) Liaison** – The staff person designated by the Unit Head with the responsibility for collecting and retaining documents pertaining to drug / alcohol screen/test results of employees.

**Illegal Substances** - Controlled dangerous substances as defined in La. R.S. Title 40, alcohol, over the counter drugs, or any substance declared contraband or prohibited by policy and/or practice.

**Initial Drug Screen** - The first analytical procedure to detect the presence of drugs or metabolites using approved drug-testing instruments. (See Section VIII.A. for additional information.)

**Louisiana Employees Online (LEO)** – Statewide management system which includes the Comprehensive Public Training Program (CPTP) providing online courses accessible to all state employees and which can be accessed at: <http://www.civilservice.louisiana.gov/Divisions/Training/Default.aspx>.

**Office of State Human Capital Management (OSHCM)** - A system that captures transactions involving state funds which was formerly performed by the Integrated Statewide System (ISIS).

**Medical Review Officer (MRO)** - A licensed physician holding either a Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.) degree who has:

- Knowledge about and clinical experience in controlled substance abuse disorders;
- Detailed knowledge of alternative medical explanations for laboratory “positive” drug test results;
- Knowledge about issues relating to adulterated and substituted specimens; and
- Knowledge about possible medical causes for specimens reported as having an invalid result.

**Occupational Health Clinic (OHC)** - Any general hospital, or any other medical facility which operates a corporate medicine program or an employee wellness program which includes any of the following: (1) Routine commercial activities, such as pre-employment examinations; (2) mandated examinations, such as Federal Occupational Safety and Health Administration examinations; (3) routine workers' compensation cases; (4) routine medical evaluations involving establishment of product liability; (5) evaluations consigned to independent medical Examiners; (6) employee physical programs; (7) employee wellness programs; or (8) employee drug testing programs.

**“Positive” Results** - Results at or above the concentration cutoff levels previously established by the Substance Abuse and Mental Health Services Administration (“SAMHSA”), in a publication entitled “Mandatory Guidelines for Federal Workplace Drug Testing Programs” located in the Federal Register. A table of the specific cutoff levels that will be used for initial and confirmatory tests appear on the attached “Initial and Confirmatory Test Cutoff Concentrations” [refer to Attachment A.2.7 (b)].

**Safety/Security Sensitive Position** - All positions within YS are considered to be safety/security sensitive positions.

**Sample** –Includes urine, blood, saliva or hair provided by an employee for purposes of drug testing.

**Sample Collection** –) A procedure meeting guidelines as dictated by state law. (La.R.S.49:1005)

**Testing Instruments** – Approved testing devices which include, but are not limited to, a urine “tox cup” or saliva swab.

**Training Records Entry Completed (TREC)** – The learning management system database used to track training hours of all YS employees.

**Unit Head** - Deputy Secretary, Facility Directors and Regional Managers.

***Unusual Occurrence Report (UOR)*** – A form/document that must be completed by employees to report incidents or observations of events that may have an impact on any aspect of the agency. Employees must complete and submit a UOR prior to the end of their tour of duty on the day an incident is observed or comes to the employee’s attention in any way. If a UOR form is not available, the employee must use any paper available to him to report the pertinent information. UORs may also be submitted by email in any format. (Refer to YS Policy No. A.1.14)

***Workplace*** - Any location including all property, offices and facilities (including all vehicles and equipment) whether owned, leased or otherwise used by Youth Services or by an employee on behalf of Youth Services in the conduct of its business in addition to any location from which an individual conducts Youth Services business while such business is being conducted.

**V. POLICY:**

The Office of the Governor and this state has a long-standing commitment of working toward a drug-free Louisiana. Since substance abuse is a major contributor to activity which results in adjudication and is particularly detrimental to the mission of providing safety for YS employees, youth and the public, it is the Deputy Secretary's policy to promote increased employee awareness of substance abuse and to achieve and maintain a workplace free of drugs and alcohol.

In addition, employees who engage in substance abuse are less likely to enforce policies and procedures effectively to control or to prevent illicit drug and alcohol use by other employees and youth.

Employees with personal problems, such as alcohol or drug dependency, mental or emotional disturbances, marital, family, financial or legal concerns, etc., that are affecting or might affect job performance are encouraged to seek help voluntarily through the EAP. Self-referrals may be made confidentially. Supervisors may also refer an employee to the EAP if they have reason to believe that a personal problem may be affecting work performance. All such referrals shall remain confidential. (Refer to YS Policy No. A.2.11)

YS Policy No. A.2.1, Attachment (b) “Employee Rules of Conduct”, Rule #2.c., prohibits employees from reporting for or being on duty under the influence of alcohol or other intoxicants. Each employee is responsible for refraining from illegal use, possession, sale or manufacture of controlled substances, and from reporting to work or working while under the influence of or impaired by alcohol or drugs.

**VI. TYPES OF TESTING:**

**A. Drug Testing Types Performed by CHP for Secure Care:**

1. Pre-employment;
2. Random;
3. Probable Cause/Reasonable Suspicion (includes Triggering Events); and
4. Post-Accident/Incident

The CHP will utilize the saliva swab drug screening instrument when conducting random, post-accident/incident and probable cause/reasonable suspicion testing of secure facility employees.

**B. Drug Testing Types Performed by OHC for Secure Care:**

1. Rehabilitative; and
2. Promotional.

**C. Drug Testing Types Performed by OHC for CO/CBS:**

1. Accidental Discharge of Firearm (refer to YS Policy Nos. A.2.19 and C.1.8);
2. Pre-employment;
3. Random;
4. Probable Cause/Reasonable Suspicion
5. Post-Accident/Incident;
6. Rehabilitative; and/or
7. Promotional.

**D. Pre-employment:**

Drug screening shall be conducted after a conditional offer of employment is made, but no later than the date work begins, by the CHP for secure care staff, and by an OHC for CBS and CO staff.

For those individuals who are being screened / tested for pre-employment purposes, if the initial drug screen produces a “positive” result, the prospective employee will either be referred for additional confirmatory testing or not considered for the position. No individual whose confirmatory test is “positive” shall be considered for employment.

**E. Reasonable Suspicion/Probable Cause - Drugs:**

These types of tests must be authorized and documented on an “Unusual Occurrence Report” (UOR) by the Unit Head/Regional Director. The UOR shall be maintained by the unit’s HR Liaison (refer to YS Policy No. A.1.14).

Reasonable suspicion/probable cause, initial screening/confirmatory testing may be based on any of the following:

1. Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug or alcohol, or when the odor of alcohol, marijuana smoke or other substance is present;
2. Abnormal conduct or erratic behavior;

3. Arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use or trafficking (the term "trafficking" shall also mean "distribution");
4. Information provided by reliable and credible sources that are independently corroborated;
5. Newly discovered evidence that the employee tampered with a previous drug screen; and/or
6. Credible allegation or confirmation of involvement in a significant violation of policy which suggests drug/alcohol abuse.

**F. Post-Accident/Incident:**

1. An employee shall be subject to drug screen/test following an accident/incident that occurs during the course and scope of their employment that:
  - a. Involves circumstances leading to a reasonable suspicion of the employee's drug/alcohol use;
  - b. Involves an accidental discharge of a firearm;
  - c. Results in a fatality; or
  - d. Results or causes the release of hazardous waste as defined in La. R.S. 30:2173(2) or hazardous materials as defined in La. R.S. 32:1502(5).
2. Additional requirements for post-accident drug testing:
  - a. As required by Division of Administration Policy No.19 "Substance Abuse and Drug-Free Workplace Policy", any person having an employment relationship with the Agency including: employees, who are full and part-time, classified and unclassified, students, interns and temporaries, involved in an accident which results in any workplace injury, which injury necessitates or should reasonably necessitate medical attention to the employee as determined by the employee, the employee's supervisor, or the department head, regardless of whether the employee actually desires, agrees to, seeks, or receives medical attention shall be subject to and shall cooperate in drug and/or alcohol testing.

The employee shall submit to the testing whether or not prior notification of the testing is provided and shall occur as soon as practicable after the accident.

Testing is required where an accident occurs under any circumstance, regardless of fault and regardless of whether an injury, compensable under the workers' compensation laws of Louisiana, is immediately claimed by the employee.

Employees testing positive or failing to promptly submit to testing may be subject to discipline up to and including dismissal or denial of their Workers' Compensation benefits. Employees and supervisors may also be subject to discipline, up to and including dismissal for failing to cooperate with, or to follow, these post-accident drug testing requirements.

- b. An employee who is involved in an accident/incident that results in property damage may be subject to a drug screen or drug/alcohol test, and the incident shall be documented on a UOR and maintained by the unit's HR Liaison.
- c. As required, YS shall coordinate post-accident drug testing activities with the State's Third Party Administrator.
- d. Each unit's HR Liaison shall perform the functions of post-accident testing.

**G. Rehabilitative:**

An employee who has gone into a rehabilitation program as a result of a work related incident or confirmatory "positive" drug test result must agree to and participate in a 48 month program consisting of periodic drug screens or drug/alcohol testing, at the employee's own expense.

Additionally, medical professionals who are in an impaired program or who have a documented substance abuse history must agree to periodic drug screens or drug/alcohol testing throughout the course of their employment.

**H. Random:**

All YS employees shall be subject to random drug screening / testing. On a quarterly basis, a list of first and last names and social security numbers representing at least five percent (5%) of a Unit's employees shall be selected at random by a computer-generated selection process through the Department of Public Safety, Human Resources (DPS/HR). This list shall be forwarded directly to the Unit Head and the unit's HR Liaison for handling in accordance with the procedures outlined in Section VIII of this policy.

**I. Promotional:**

Drug screening/testing shall be conducted prior to any promotion.

**J. Triggering Events:**

When events occur in a secure care unit or sub-unit that indicate illegal substances have been or are present, screening/testing of all staff who might have contact with that unit (or any of its subdivisions) may be conducted by order of the Unit Head, Regional Director, Assistant Secretary or Deputy Secretary.

- K. Employees failing to promptly submit to screening/testing where applicable, or testing positive may be subject to discipline, up to and including dismissal.

**VII. SUBSTANCES TO BE TESTED FOR:**

As provided by statute, drug screening/testing may be performed for any of the following classes of drugs:

- A. Amphetamine (AMP);
- B. Barbiturates (BAR);
- C. Benzodiazepines (BZO);
- D. Cocaine (COC);
- E. Marijuana (THC);
- F. Methadone (MTD);
- G. Methamphetamine (mAMP);
- H. MDMA (Ecstasy);
- I. Opiate (OPI 300, MOP, MOR and OPI 2000);
- J. Oxycodone (OXY); and
- K. Phencyclidine (PCP).

This does not preclude testing for any other drugs or alcohol.

**VIII. GENERAL PROCEDURES OF THE DRUG TESTING PROGRAM:**

Random Screening/Testing List –

- A. DPS/HR shall generate the random employee selection list at the prescribed interval and ensure the lists are distributed directly to the Unit Heads and the unit HR Liaisons on Monday morning of the week the screens/tests for the quarter are to occur.
- B. If on the week the quarterly screen/test list is distributed an employee is on leave and his name appears on the list, the unit's HR Liaison shall email the DPS/HR contact and request a replacement employee name be provided which shall be selected using the random computer-generated selection process as described in Section VI.E of this policy.
- C. The unit's HR Liaison shall present the randomly selected employees with the "YS Random Employee Drug Screen/Test Notification" form [refer to Attachment A.2.7 (a)]. Employees shall sign, date and note the time on the form indicating they have been notified to immediately report to the secure care infirmary or the identified OHC for screening/testing prior to the end of their tour of duty. The notification form shall be maintained by the unit's HR Liaison as described in Section XI of this policy.
- D. The unit's HR Liaison shall provide to staff reporting to an OHC with the attached and completed "OHC Employee Health Referral Form" [refer to Attachment A.2.7 (c)] authorized by the Unit Head, which shall include any special instructions.

- E. Once notified to report for a drug screen, a secure care employee shall not be allowed to leave the facility prior to reporting to the infirmary for a random drug screen by the CHP, unless the departure is work related and cleared by the Facility Director/Regional Director. Departure from the facility without reporting may subject the employee to disciplinary action.

Secure care staff shall be screened initially using a saliva swab drug screening instrument supplied by the CHP.

Once notified to report for a drug screen, regional and CO staff must report to the OHC prior to the end of the business day unless the employee's inability to report is job related and cleared by the Regional Manager/Regional Director, Undersecretary/designee, in which case the employee must report the following work day.

During collection of urine specimens, medical or non-medical personnel, regardless of gender, may stand directly outside the bathroom door while the employee provides the specimen, as this helps ensure that the sample is not diluted or tampered with. If there is reason to believe that the employee may alter or substitute the specimen, then the specimen collection is directly observed and the observer, medical or non-medical personnel, should be the same gender as the person providing the sample.

**All employee drug screens/tests must be completed the week the random computer-generated lists are issued to the Units.**

- F. Employees shall provide a list of all prescription medications they are taking at the time of the test to the Medical Review Officer (MRO) at the OHC. Failure of an employee to list a prescribed or non-prescribed medication prior to the testing, which results in a positive drug screening may result in disciplinary action.
- G. All screens/tests shall be conducted during the selected employees' work hours; no employee shall be called in on his day/night off or while on approved leave specifically for the purpose of a random drug screen/test.
- H. Results of drug screens conducted by the CHP shall be delivered directly to the Facility Director in a sealed envelope.

Results of drug tests conducted by an OHC shall be delivered to the Unit Head on a dedicated Fax line located in the Unit Head's office for confidentiality purposes.

If the results of a drug screen or drug test are "negative", the results shall be hand-delivered by the Unit Head to the unit's HR Liaison, for record keeping in a secured location and for reporting requirements in accordance with Section XI of this policy.

If the results of a drug screen or drug test are “positive”, the Unit Head shall adhere to the procedures outlined in Section IX of this policy. The “positive” results shall be hand-delivered by the Unit Head to the unit’s HR Liaison, for record keeping in a secure location and for reporting requirements in accordance with Section XI of this policy.

**IX. POSITIVE DRUG SCREEN/DRUG TEST RESULTS:**

A. If the result of a secure care employee’s drug screen is “positive”, the Unit Head/designee shall immediately contact the employee to advise them of the following:

1. To report immediately to the unit’s HR Liaison to retrieve the “OHC Employee Health Referral Form” [refer to Attachment A.2.7 (c)].
2. The employee will be kept under direct observation at all times until the confirmatory test is conducted. The employee shall not be allowed to drink fluids or ingest substances before the confirmatory test has been conducted. The employee must be escorted and observed at all times. If the employee must use the restroom, the escort shall stay in direct observation of the employee to ensure that he/she does not ingest any substance while in the restroom.
3. The employee will be escorted off the premises and transported by a staff member, designated by the Unit Head, to the nearest confirmatory testing site. The transporting staff shall ensure that the employee does not ingest any substances, including any fluids before the confirmatory test is completed. The transporting staff shall report any observed conduct indicating impairment and/or statements related to drug usage made by the employee during and after the escort to the confirmatory test. Transporting staff shall report any observations and/or statements on an Unusual Occurrence Report which shall be turned in immediately upon return from the confirmatory testing.

Upon return to the facility from the OHC, if the employee appears to be impaired and does not have available transportation, the Unit Head/designee shall designate an employee to transport the impaired employee to their residence. If the impaired employee has an automobile at the Unit, the keys shall be retrieved by the Unit Head/designee until it is safe for the employee to retrieve the vehicle.)

4. The employee will be placed on “forced annual leave” if their leave balance is more than 240 hours; if less than 240 hours, the employee will be placed on “leave pending investigation” until the results of the confirmatory drug test are received from the OHC.

In the event the OHC is not open for confirmatory testing due to the time/day the screening results are received by the Unit Head, the Unit Head/designee shall inform the employee they are being placed on leave status as outlined in Section IX A.3 of this policy, until such time as the OHC is open during regular business hours (Monday-Friday / 8:00 a.m. – 5:00 p.m.) and the test results are received.

The employee shall not be allowed to return to work until the impaired condition is resolved and no earlier than the next scheduled work day if the Unit Head/ Regional Director approves the return to work.

- B. If the results of a CBS or CO employee's confirmatory drug test from the OHC are "positive", the Unit Head/designee shall immediately notify the employee of the test results and of their continued placement on "leave", as outlined in IX.A.3 of this policy, with YS until further notice.
- C. The Unit Head/designee shall immediately notify the Assistant Secretary, appropriate Regional Director, and Legal Services of a "positive" confirmatory drug test, and shall schedule a meeting within 48 hours to discuss the employee's future status with YS.
- D. A confirmatory test may be utilized in lieu of the initial drug screen at the discretion of the Facility Director / Regional Director, Undersecretary/designee, and may result in disciplinary action (refer to YS Policy No. A.2.1).

**X. GENERAL PROCEDURES FOR ALCOHOL TESTING:**

- A. Alcohol testing shall be conducted by the CHP for secure care staff, and by an OHC for CBS and CO staff. Confirmatory testing is not applicable; breathalyzer testing provides necessary results.
- B. In order for an employee to be tested, a supervisor and at least one other person must be a witness to and write a UOR about what objective signs they observed, to include:
  - 1. The odor of alcohol on the employee's breath or about his person;
  - 2. Red and/or bloodshot eyes;
  - 3. Impaired balance;
  - 4. Impaired speech; and
  - 5. Admissions the employee makes about when and how much alcohol he has consumed.
- C. The procedures in Section IX of this policy shall be adhered to relative to the following:
  - 1. Reporting to a CCS/OHC;
  - 2. Escort off the premises;
  - 3. Placement on leave;

4. Notifications to appropriate staff; and
5. Consultation with Legal Services.

**XI. RECORD KEEPING AND REPORTING REQUIREMENTS:**

- A. The unit's HR Liaison is required to maintain records of the following:
  1. Each employee who has submitted to a drug screen or drug/alcohol test;
  2. The date of such screen/test;
  3. The name of the person or OHC performing the screen/test;
  4. The number of screens/tests performed; and
  5. Results of the screens/test.
  
- B. Pursuant to YS Policy No. C.5.5, the secure care facility's HR Liaison shall provide Continuous Quality Improvement Services (CQIS) with a monthly facility report of employee confirmatory drug test activities conducted by the OHC for quality assurance purposes on the 10<sup>th</sup> day of the month following the quarter (October/January/April/July). The report shall include the following indicators:
  1. The categories of tests conducted;
  2. The number of tests conducted by category;
  3. The number of "positives";
  4. The percentage of "positives"; and
  5. The number of "negatives".
  
- C. The Health Services Administrator (HSA) shall provide CQIS with a secure care facility monthly report of employee drug screening/alcohol testing activities for quality assurance purposes on the 10<sup>th</sup> day of the month following the quarter (October/January/April/July). The report shall include the following indicators:
  1. The categories of screenings/tests conducted;
  2. The number of screenings/tests conducted by category;
  3. The number of "positives";
  4. The percentage of "positives; and
  5. The number of "negatives".
  
- D. All drug screens and drug/alcohol test results, including post-accident drug testing results, shall be retained for a minimum of five (5) years by the unit's HR Liaison in a secured location pursuant to YS Policy No. A.2.12.

Legal Services shall be consulted prior to the destruction of these records due to possible pending litigation.

- E. All information, interviews, reports, statements, memoranda and/or test results received through the unit's drug testing program are confidential communications pursuant to La. R.S. 49:1012, and may not be used or received in evidence, obtained in discovery or disclosed in any public hearing or private proceedings, except in an administrative or disciplinary proceeding or hearing or civil litigation where drug use by the tested individual is relevant.

All such confidential information shall be maintained in a secure manner by the unit's HR Liaison.

- F. By November 1st of each year, each Unit Head shall submit a report to DPS/HR detailing the following:
  - a. Number of employees affected by the drug testing program;
  - b. The categories of screens/tests conducted;
  - c. The associated costs of screening/testing; and
  - d. The effectiveness of the program.
- G. By December 1<sup>st</sup> of each year, in conjunction with the Deputy Secretary/ designee, DPS/HR shall compile the attached "YS Annual Drug Testing Report" for submission to the Office of the Governor through the Division of Administration.

**XII. STAFF DEVELOPMENT:**

- A. All new hires shall receive pre-service/orientation training, including post-accident drug testing, within 90 days of hire by Legal Services.
- B. All employees shall receive annual in-service training, including post-accident drug testing.
- C. Records of compliance shall be documented in TREC and/or LEO.

**Previous Regulation/Policy Number:** A.2.7

**Previous Effective Date:** 11/29/2016

**Attachments/References:**

A.2.7 (a) Random Employee Drug Screen Notification July2014.doc

A.2.7 (b) Test Cutoff Concentrations 0413.doc

A.2.7 Drug Testing Report.doc

A.2.7 OHC Employee Health Referral Form.July 2016