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| SOUTH DAKOTA<br><br>DEPARTMENT OF CORRECTIONS<br>POLICIES AND PROCEDURES |                              | POLICY NUMBER<br>1.3.A.8  | PAGE NUMBER<br>1 OF 8                                  |
|   |                              | DISTRIBUTION: Public  | SUBJECT: Offender Drug Testing, Sanctions, & Treatment |
| RELATED STANDARDS: ACI-5-3A-42, ACI-5-6A-41 (M), ACI-5-6A-42  | EFFECTIVE DATE: June 1, 2022 | SUPERSESSION: 07/12/2021  |  |
| DESCRIPTION:<br>Security and Control  | REVIEW MONTH:<br>May         | <br><b>KELLIE WASKO</b><br>SECRETARY OF CORRECTIONS |  |

### I. POLICY

It is the policy of the South Dakota Department of Corrections to utilize offender drug testing to reduce the introduction and use of dangerous drugs inside DOC facilities.

### II. PURPOSE

The purpose of this policy is to establish procedures for staff to follow to obtain specimens and detect the use of drugs and alcohol by adult and juvenile offenders.

### III. DEFINITIONS

#### Blood Alcohol Content (BAC):

The measurement of alcohol content in the body, as determined by measuring the weight of alcohol in the breath or blood, as shown by chemical analysis. It is a violation for any offender to have a BAC of more than two thousandths (.002).

#### Chain of Evidence:

A record of the movement and location of evidence, including a complete chronological history of those persons who had the evidence in their custody, starting from the time the evidence is obtained, until any disciplinary or criminal response to a positive result is complete.

#### Comprehensive Offender Management System (COMS):

A DOC data management system which stores pertinent offender information.

#### Confirmation Test:

The re-test or second test of a positive urine specimen using the same or different approved testing system. Typically performed to confirm the initial finding obtained from the same specimen.

#### Controlled Substance:

Any material, compound, mixture or preparation which contains any quantity of hallucinogenic substances, salts, isomers, and salts of isomers included in Schedule I drugs, unless specifically exempted, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation, as contained within SDCL § 34-20B-14.

|                      |   |            |                          |
|----------------------|---|------------|--------------------------|
| SECTION              | SUBJECT                                       | DOC POLICY | Page 2 of 8              |
| Security and Control | Offender Drug Testing, Sanctions, & Treatment | 1.3.A.8    | Effective:<br>06/01/2022 |

### **Drug:**

All non-prescribed substances, including such examples as, alcohol, marijuana, cocaine, amphetamines, methamphetamines, barbiturates, benzodiazepine, opiates, and hallucinogens.

### **Marijuana:**

All parts of any plant of the genus cannabis, whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds.

### **Negative Result:**

The total absence of the targeted substance or presence of a substance below the cutoff level of the initial test or confirmatory test of targeted substances. Negative results do not guarantee the offender did not consume the substance(s) tested.

### **Positive Result:**

Shows a presumptive or confirmed presence of targeted substances at a detectable level. A positive result indicates the offender has ingested the targeted substance(s) and has tested positive.

### **Preliminary Breath Test (PBT):**

A device used to detect and measure Breath Alcohol Level (BAL) through chemical test analysis of an offender's breath. The test may be administered by an appropriately trained person.

### **Random Testing:**

Testing of offenders based on chance selection criteria. Typically, these tests are unscheduled and unannounced.

### **Specific Urinalysis:**

A urinalysis test conducted by a laboratory, usually the South Dakota Department of Health Public Health Lab located in Pierre, SD. The test will be conducted upon a specific urine sample to detect the presence of targeted illegal or illicit substances.

## **IV PROCEDURES**

### **1. Overview:**

- A. Offenders in DOC custody and those under supervision of the DOC, shall not take into their body, any substance prohibited or controlled by any law of the State of South Dakota and shall avoid injurious actions, such as intoxication caused by ingestion of drugs.
  1. Wardens, Directors, or their designees will assign staff to ensure the provisions of this policy are implemented, including but not limited to
    - a. Random testing of offenders,
    - b. Testing when there is a reasonable suspicion of drug use.
    - c. Complete and accurate collection of specimens and documentation of test results,
    - d. Staff training, and
    - e. Implementation of appropriate responses/sanctions for positive results to deter offenders from using drugs and support rehabilitation.
  
- B. A portable breath test (PBT) is sufficient to confirm the presence of alcohol. An offender may be found to have ingested alcohol within their body based solely on the results of a PBT. In addition to, or in place of a PBT, an offender may be required to submit to a urinalysis (UA) or blood test (requires appropriately trained medical staff to obtain the sample).
  1. Staff conducting a PBT shall adhere to all instructions pertaining to the proper use and operation of the testing equipment

|                      |   |            |                          |
|----------------------|---|------------|--------------------------|
| SECTION              | SUBJECT                                       | DOC POLICY | Page 3 of 8              |
| Security and Control | Offender Drug Testing, Sanctions, & Treatment | 1.3.A.8    | Effective:<br>06/01/2022 |

- C. Drug testing kits and materials administered and utilized by DOC staff must be issued and approved by the DOC.
- D. A portion of the offender population will be drug tested each month, as determined by random selection. Offenders will not be tested solely on the basis of sexual orientation, race, color, religion, gender, age, or national origin.
  - 1. DOC facilities and the Division of Juvenile Services will use the random selection report in COMS to select offenders for random drug testing.

## 2. Urinalysis Testing:

- A. Offenders will not be informed in advance when urine specimen collections are scheduled. Inability or refusal by an offender to provide an adequate urine specimen, as ordered by staff, may be treated as an admission of usage and a positive result.
- B. Offenders housed in a DOC institution are required to produce an adequate urine specimen for a urinalysis test within two (2) hours of being ordered to produce the specimen.
  - 1. The offender will be held in a secure cell or room.
  - 2. Offenders who fail to initially produce the required specimen shall remain in a secured area (dry cell or other approved area supervised by staff) until he/she produces the required specimen, or two (2) hours has elapsed.
  - 3. An offender who is unable to produce an adequate urine specimen when directed, will be given liquids to drink. If an offender fails to produce the minimum amount of specimen required within two (2) hours, the offender's actions may be considered a positive result.
- C. Offenders are responsible for fully disclosing to staff, any prescription, or over-the-counter medications they are taking prior to the test. If a positive result is obtained from an offender who has disclosed they are taking medications, and the offender alleges such medication may affect the result, a health care provider or a pharmacist may be consulted to determine if the medication may affect the results of a drug test.
- D. Staff collecting a UA specimen from an offender will be of the same sex as the offender and will maintain direct, visual contact of the offender during the entire collection process. Exceptions to the same sex requirement may be made in the case of an emergency or safety issue. Such exceptions must be documented and forwarded to the staff member's supervisor.
- E. Staff must directly observe the offender urinating into the collection container. If staff does not observe the offender urinating into the collection container, the specimen will not be accepted, and the offender will be required to produce another specimen. The minimum amount of specimen required to complete testing by the Public Health Laboratory is approximately twenty-five milliliters (25 ml), or .85 fluid ounce. A standard issue UA test container that is one-third to one-half full will contain a sufficient sample for testing.
- F. If the specimen is negative, the specimen will be promptly disposed of in the toilet (may be in the presence of the offender). The container used to collect the sample will be properly disposed of in the trash.
- G. If a specimen is sent to the Public Health Laboratory for confirmation testing, staff will typically request the lab conduct a "Five Panel" drug screen. The "Five Panel" drug screen is designed to detect the presence of marijuana (THC), opiates, cocaine, and amphetamines/methamphetamines. Additional drug screening may be requested in situations where the presence of other substances is suspected.
  - 1. The Drug Test Submission form is available in COMS as an IWP.

| SECTION              | SUBJECT                                       | DOC POLICY | Page 4 of 8              |
|----------------------|---|------------|--------------------------|
| Security and Control | Offender Drug Testing, Sanctions, & Treatment | 1.3.A.8    | Effective:<br>06/01/2022 |

- H. All offenders received at a DOC institution to include, suspended sentence, parole violators, and detainees, who test positive for cannabinoids (marijuana plants and plant products that contain tetrahydrocannabinol (THC)) within the first forty-five (45) days following admission, will be considered to have a positive test result and staff will document the positive result.
1. Health Services will be notified of all institutional offenders testing positive for cannabinoids. Response will be determined based on the level of drug in the inmate's system.
  2. The offender must be re-tested at various intervals until the test result registers zero/negative, or otherwise drops below the minimum reading of the testing device.
  3. Offenders housed in a DOC institution who are found to have used cannabinoids while in DOC custody (supported by a positive test result), are subject to disciplinary action.
- I. If the result of the urinalysis test is positive, or the offender refuses to provide an adequate sample, or the offender provides a sample which has been altered or is determined not to be legitimate (synthetic urine or urine not from the offender), the staff member conducting the test will document the result/outcome and generate a report. Every positive result from an offender may result in disciplinary action, response/sanction. Law enforcement and/or Special Investigations Unit staff may be notified of positive test results, as deemed appropriate.
- J. A confirmation test is not required for staff to proceed with disciplinary action, response, and sanctions, or to document the test as a positive result.
- K. Offenders may request a confirmation test of the sample only if the result is positive, and the substance that was detected can be tested at the Public Health Lab. Synthetic marijuana and controlled substance analogues may be excluded from confirmation testing. The results of the field test supporting the presence of such substances shall be sufficient to initiate a response/sanction by staff.
1. Offenders are responsible for all expenses, costs and fees associated with a confirmation test by the Public Health Lab. Offenders who are indigent may request confirmation testing and will be billed for all costs associated with the confirmation testing.
  2. Any pending disciplinary action, hearing, sanction, or response related to the positive test result which the offender is requesting confirmation of, will be suspended until the results of the confirmation test are received from the Public Health Lab. When the results are received, the disciplinary process will resume.
  3. A copy of a statement of the methods and findings of any examination or analysis conducted by an employee of the Public Health Lab may be introduced as evidence by the DOC during hearings, responses, reviews, etc. involving the offender. The result of confirmation drug test shall have the same force and effect as if the person who performed the analysis or examination testified in person (See SDCL § 23-3-19.3).

### 3. Drug Testing:

- A. Drug testing of offenders.
1. Drug testing will be used in the following situations:
    - a. New admission inmates, detainees, suspended sentence violators, , etc. shall be tested upon admission/receipt.
    - b. There is reason to believe, or some evidence/information to support, an offender has used, or is in possession of drugs.
    - c. An offender is found in possession of suspected drugs; or when suspected drugs are detected in an area controlled, occupied, or inhabited by the offender.
    - d. An offender is observed in possession of suspected drugs, but those supervising the offender are unable to obtain a sample of suspected drugs.
    - e. Information is received that suggests an offender is under the influence, or has recently used, possessed, or attempted to possess suspected drugs. May include reliable information from a confidential informant.

| SECTION              | SUBJECT                                       | DOC POLICY | Page 5 of 8              |
|----------------------|---|------------|--------------------------|
| Security and Control | Offender Drug Testing, Sanctions, & Treatment | 1.3.A.8    | Effective:<br>06/01/2022 |

- f. When staff observe any of the following symptoms: the odor of alcohol or drugs on the offender's breath, clothing or in the proximity of the offender; erratic behavior; incoherent, staggering, or disoriented demeanor; fresh needle marks; slurred speech; glassy eyes or dilated pupils or other potential signs of drug use.
  - g. An offender admits to using drugs while in custody or on DOC supervision (tests shall be administered to confirm use, type, amount, etc.).
  - h. An offender fails to attend a meeting with staff, counselor, or parole agent.
  - i. Offenders housed in a DOC institution returning from temporary absence (TAP) or any unsupervised departure from the institution, including walkaways who are returned or turn themselves into the institution.
  - j. Offenders housed in a DOC institution who return late (past their scheduled return time, i.e., work release, furlough.
  - k. Offenders considered for placement in a community-based program, such as work release, etc.
  - l. Offenders who are returned to custody from parole, suspended sentence, CTP for a violation or as a sanction/response to a violation (detainee), and those who test positive while on supervision who are then returned to DOC custody.
  - m. Offenders with a history of testing positive.
  - n. Offenders receiving or being considered for certain medical treatment, procedures, or prescription drug management. Testing shall be as directed by a health care professional.
  - o. As part of a random selection process as a means of deterring the use of illicit substances
- B. Supervisory staff from contract facilities, community agencies, employers, community treatment program, medical staff, etc. may require an offender placed in their care/custody/supervision to submit to a UA, PBT or blood test. The test shall be administered by trained DOC staff or other person with proper authority and training to administer such a test.
- C. Offenders who test positive may be subject to disciplinary action, detainment, approved sanctions, required treatment or assessment, and criminal prosecution.
- D. Any **withdrawal management** or monitoring required as a result of an offender testing positive for drugs **shall be determined by a qualified medical provider and conducted under medical supervision at a DOC institution, hospital, or clinic [See ACA ACI-5-6A-41 (M)]**.
- E. The Warden, Director or designee may order off-site lab screening and confirmation testing of any collected specimen.
- F. Upon directive from the Warden, Director, or designee:
- 1. DOC facilities and juvenile units will use the Random Selection Report in COMS to select offenders for targeted drug testing.

#### 4. Staff Training:

- A. All DOC staff assigned the duty of obtaining and testing specimens from offenders will receive appropriate training. Staff that has successfully completed training has authority to collect, process and appropriately dispose of specimens obtained, administer drug tests, and interpret/determine the results of any test administered.
- B. All staff involved in administering and processing drug tests will receive instruction and training on proper chain of evidence.

#### 5. Sanctions and Responses:

| SECTION              | SUBJECT                                       | DOC POLICY | Page 6 of 8              |
|----------------------|---|------------|--------------------------|
| Security and Control | Offender Drug Testing, Sanctions, & Treatment | 1.3.A.8    | Effective:<br>06/01/2022 |

- A. Positive results, offender admission of use, disclosure of evidence supporting a finding the offender has used or possessed drugs or alcohol, may result in a sanction and response. Sanctions and responses shall include a range of escalating responses for continued positive test results by an offender.
- B. Parolee sanctions and responses (See DOC Policy 1.5.G.6 *Parole Services – Response to Violations*).
- C. Inmate sanctions and responses (includes those housed in Minimum Centers). May include any of the following (also see SDCL §§ 24-2-9 and 24-15A-4):
  - 1. Imposition of fines, fees, or costs (including medical copayments).
  - 2. Extra duty.
  - 3. Restriction or loss of privileges.
  - 4. Required programming and/or treatment.
  - 5. Loss of good time (if applicable and subject to certain provisions).
  - 6. Transfer to a more secure housing unit or institution.
  - 7. Change in classification status.
  - 8. Denial of parole release.
  - 9. Criminal charges and prosecution.

## 6. Testing Procedures:

- A. Each DOC unit responsible for conducting offender drug testing will ensure there is sufficient staff trained and available to conduct drug testing and to maintain documentation, tracking and reporting of drug testing, including ensuring the security and integrity of chain of evidence. Staff shall be knowledgeable in the following processes and procedures:
  - 1. How to properly obtain a specimen from an offender, including proper use of approved testing equipment.
  - 2. Staff is responsible for ensuring the **chain of evidence is maintained [ACA ACI-5-3A-42]**. The process shall ensure the specimen is not altered or tampered with from the point of collection through final disposition. Staff will follow policy and best practice standards when collecting and storing evidence.
  - 3. Proper processing of a specimen includes the procedures and timelines for sending the specimen to the Public Health Lab for confirmation testing.
  - 4. All positive field tests without an admission will be packaged, labeled, and mailed out via the United States Postal Service to the lab for confirmation testing immediately.
  - 5. Proper disposal of specimens and related testing materials.
  - 6. Safely conducting a PBT or a UA test (utilization of DOC approved protective gloves throughout the collection process and during the disposal of the sample is required).
- B. Procedures and training curriculum will be reviewed by the Inspector General and Director of Prisons on an annual basis. Training processes, information presented, and the topic curriculum shall be revised as needed, based on changes in policy, standards, accepted practices, and protocols.

## 7. Report on Drug Test Results:

- A. Institutional staff, Parole Services and Division of Juvenile Services staff will document all drug tests administered to an offender in the Comprehensive Offender Management System (COMS), Substance Testing screen. All positive test results will be recorded in the Tested section of the Substance Testing screen in COMS.
- B. When counting the number of tests administered, each panel/test is not included as a separate test. If a panel tests for four (4) different drugs, this is counted as one (1) test.
  - 1. Positive tests for cannabinoids from offenders during the first forty-five (45) days following admission to a DOC institution are not to be included in the report, unless it is determined the offender used cannabinoids while incarcerated.

| SECTION              | SUBJECT                                       | DOC POLICY | Page 7 of 8              |
|----------------------|---|------------|--------------------------|
| Security and Control | Offender Drug Testing, Sanctions, & Treatment | 1.3.A.8    | Effective:<br>06/01/2022 |

2. Tests initially found to be positive, but later found to be negative through the results of a confirmation test or medical reason, are not to be counted as positive.

## **V. RESPONSIBILITY**

The Inspector General and Director of Prisons are responsible for the oversight and annual review of this policy.

## **VI. AUTHORITY**

- A. SDCL §§ 23-3-19.3, 24-2-9, 24-15A-4, 34-20B-1(23), and 34-20B-14.

## **VII. HISTORY**

July 2021  
July 2020  
April 2019  
May 2018  
May 2017  
May 2016  
May 2015  
May 2014  
July 2013  
January 2013

## **ATTACHMENTS** (Published in PolicyTech unless otherwise noted)

1. DOC Policy Implementation / Adjustments

## DOC POLICY IMPLEMENTATION/ADJUSTMENTS

| DESCRIPTION          | TITLE   | POLICY # | EFFECTIVE  |
|----------------------|---|----------|------------|
| Security and Control | Offender Drug Testing, Sanctions, & Treatment | 1.3.A.8  | 06/01/2022 |

**(JUVENILE SERVICES)**

WILL ACCEPT AND IMPLEMENT THE PROVISIONS OF THE ABOVE ADMINISTRATIVE REGULATION:

AS WRITTEN

NOT APPLICABLE

WITH THE FOLLOWING PROCEDURES TO ACCOMPLISH THE INTENT OF THE POLICY

**I. POLICY**

None

**II. PURPOSE**

None

**III. DEFINITIONS**

None

**IV PROCEDURES**

**2.L.1:**

Juveniles are not responsible for any expenses related to confirmation testing.

(SIGNED) \_\_\_\_\_ (DATE) \_\_\_\_\_  
Director