

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PD-17 (rev. 5), “DRUG FREE WORKPLACE”
JUNE 1, 2011
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Attachment A, PERS 378, Reasonable Suspicion Determination Checklist (06/11)

Attachment B, PERS 377, Substance Abuse Treatment Agreement (06/11)



TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE

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SUPERSEDES: PD-17 (rev. 4)
October 1, 2005

EXECUTIVE DIRECTIVE

SUBJECT: DRUG FREE WORKPLACE

AUTHORITY: Texas Government Code § 493.007; *Drug-Free Workplace Requirements for Federal Grant Recipients*, 41 U.S.C. § 8103; 49 CFR Parts 40, 382

References: American Correctional Association (ACA) Standard: 4-4063

APPLICABILITY: All Texas Department of Criminal Justice (TDCJ) employees and applicants for employment, including employees performing job duties arising from federal grants. In addition, commercial drivers are subject to PD-37, "Employee Commercial Drivers' Physical Examination and Alcohol/Drug Testing Programs," in all matters covered by PD-37. For all other matters, commercial drivers are covered by PD-17 in the same manner as other employees. Although this directive does not apply to employees of the Windham School District (WSD), the TDCJ's Human Resources Division shall provide administrative support to WSD's Alcohol and Drug Testing Program.

EMPLOYMENT AT WILL CLAUSE:

These guidelines **do not** constitute an employment contract or a guarantee of continued employment. The TDCJ reserves the right to change the provisions of these guidelines at any time.

Nothing in these guidelines and procedures limits the executive director's authority to establish or revise human resources policy. These guidelines and procedures are adopted to guide the internal operations of the TDCJ and **do not** create any legally enforceable interest or limit the executive director's, deputy executive director's, or division directors' authority to terminate an employee at will.

POLICY:

The TDCJ shall maintain a drug free workplace through the implementation of the provisions within this directive. All unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace and corrective action shall be taken against employees for violations of such prohibitions. In addition, to ensure the safety and security of institutions, employees, and the general public, the TDCJ shall administer drug and alcohol testing programs in accordance with the provisions of this directive.

DEFINITIONS:

“Adequate Urine Specimen” is at least 45 milliliters of urine produced by and collected from an applicant or employee.

“Alcohol” is an intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol.

“Alcohol Test” consists of an alcohol screening test only or may also include an alcohol confirmation test.

- a. “Alcohol Screening Test” is an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.
- b. “Alcohol Confirmation Test” is a second test that: (a) is conducted not less than 15 and not more than 30 minutes after completion of a reasonable suspicion, return to duty, or follow-up alcohol screening test revealing an alcohol concentration of 0.02 or greater; and (b) provides quantitative data of alcohol concentration.

“Alcohol Use” is drinking, swallowing, or inhaling any beverage, liquid mixture, or preparation (including medications) containing alcohol.

“Breath Alcohol Technician” (BAT) is an individual who instructs and assists employees in the alcohol testing process and operates an evidential breath testing (EBT) device.

“Collection Site” is a place designated by the TDCJ where final applicants or employees present themselves for the purpose of providing a breath or urine specimen to be analyzed for the presence of alcohol or drugs.

“Collector” is a person who instructs and assists final applicants or employees at a collection site, who receives and makes an initial inspection of the specimen provided by those applicants or employees, and who initiates and completes the Chain of Custody Form.

“Commercial Driver” is an employee who has a commercial driver license (CDL) and operates a commercial motor vehicle (CMV) for the TDCJ on any occasion.

“Contracted Vendor,” for the purpose of this directive, is an outside service agent meeting the requirements of 49 CFR Part 40 and contracted by the TDCJ to be responsible for: (1) collecting breath and urine specimens; (2) preserving the integrity of the collection and transfer process; and (3) analyzing the specimens for the presence of alcohol or drugs.

“Drug(s),” for the purpose of this directive, includes any of the following:

- a. Marijuana;
- b. Cocaine;
- c. Opiates;
- d. Phencyclidine (PCP);
- e. Amphetamines;
- f. Methadone;
- g. Propoxyphene;
- h. Barbiturates;
- i. Benzodiazepines; and
- j. Methaqualone.

“Drug Test” consists of a drug screening test only or may also include a drug confirmation test.

- a. “Drug Screening Test” is an analytical procedure to eliminate “negative” urine specimens from further analysis or to identify a specimen requiring additional testing for the presence of drugs.
- b. “Drug Confirmation Test” is a second analytical procedure performed on the urine specimen provided for the drug screening test to identify and quantify the presence of a specific drug or metabolite.

“Employee” is a full-time, part-time, or temporary TDCJ employee.

“Employee Assistance Program” (EAP) is an outside company contracted by the TDCJ to provide information and referral services to employees and their family members. This information may be related to the promotion of general wellness programs; identification of and treatment for alcoholism, drug dependency, or psychological disorders; resources for financial or legal problems; and other personal problems affecting an employee’s job performance. The EAP refers employees or family members to proper treatment or assistance.

“Hazardous Duty Pay” is a pay incentive received by an employee who is authorized custodial officer certification.

“Inhalant,” for the purpose of this directive, is any substance inhaled contrary to the substance’s intended use.

“Medical Review Officer” (MRO) is a licensed physician under contract with the TDCJ’s contracted vendor responsible for receiving and reviewing laboratory results generated by the TDCJ’s drug testing program and evaluating medical explanations for certain drug test results.

“Negative Alcohol Test Result,” for a return to duty or follow-up alcohol test, is a test result revealing an alcohol concentration of 0.00. For a reasonable suspicion alcohol test, it is a test result revealing an alcohol concentration less than 0.02.

“Negative Drug Test Result” is a test result revealing no presence of drugs, other than the presence of a drug for which the MRO has determined that a legitimate medical explanation exists.

“Outside Final Applicant,” for the purpose of this directive, is any applicant not currently employed by the TDCJ, who has been selected for a temporary, part-time, or full-time TDCJ position. Former TDCJ employees are included in this definition.

“Positive Alcohol Test Result,” for a return to duty or follow-up alcohol screening test, is a test result revealing an alcohol concentration greater than 0.00. For a reasonable suspicion alcohol confirmation test, it is a test result revealing an alcohol concentration of 0.02 or greater.

“Split Specimen,” for the purpose of drug testing, is a part of the urine specimen sent to a first laboratory and retained unopened, and then transported to a second laboratory in the event the applicant or employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result of the primary specimen.

“Substance Abuse” is the abuse or misuse of alcohol or inhalants or the use of drugs other than the use of a drug for which a legitimate medical explanation exists.

“Substance Control Officer” (SCO) is the TDCJ employee in the Labor Relations Section, Human Resources Division, responsible for the coordination of the TDCJ’s alcohol and drug testing programs. Such coordination includes: (1) taking immediate action(s) to remove employees from duty or causing employees to be removed from duty; (2) making required decisions in the testing and evaluation processes; and (3) receiving test results and other communications for the TDCJ, consistent with the requirements of 49 CFR Part 40. The SCO is also known as the TDCJ’s designated employer representative.

“Trainee,” for the purpose of this directive, is an employee attending the TDCJ Pre-Service Correctional Officer Training Course or Non-Correctional Officer Training Course at the TDCJ Correctional Institutions Division’s Pre-Service Training Academy (PSTA).

“Unit Pay Differential,” for the purpose of this directive, is a pay entitlement for unit based employees in non-targeted positions and is not included in the established salary rate and not subject to salary provision calculations.

“Verified Confirmed Positive Drug Test Result” is a test result revealing the presence of drug(s) after all of the following:

- a. A drug confirmation test by gas chromatography/mass spectrometry (GC/MS); and
- b. A determination by the TDCJ designated MRO that no legitimate medical explanation exists for the positive test.

“Workday” is Monday through Friday, excluding state and national holidays when TDCJ administrative offices are closed, and days when offices are closed at the direction of the executive director.

DISCUSSION:

I. Dangers of Substance Abuse Within the Workplace

In a criminal justice environment, it is especially important to maintain a workplace free of substance abuse. Substance abuse can and does impair the ability of an employee to effectively perform duties and may endanger the employee, coworkers, and the public, as well as property. Substance abuse in the workplace may also increase the potential for delivery of contraband to offenders.

II. Maintaining a Workplace Free of Substance Abuse

The TDCJ seeks to prevent substance abuse by TDCJ employees through the following:

- A. Implementation of an alcohol and drug testing program that includes:
 1. Pre-employment or pre-assignment drug testing;
 2. Reasonable suspicion alcohol or drug testing;
 3. Return to duty and follow-up alcohol or drug testing as part of an eligible employee’s rehabilitation program; and
 4. Random drug testing of employees in safety sensitive positions.
- B. Referrals to the EAP in accordance with the procedures in this directive; and
- C. Disciplinary action in accordance with PD-22, “General Rules of Conduct and Disciplinary Actions for Employees.”

PROCEDURES:

I. Dissemination of PD-17, “Drug Free Workplace”

This directive shall be published in the TDCJ *Personnel Manual*, which is available on the TDCJ Mainframe report system known as INFOPAC and the TDCJ website. In addition, an employee performing job duties arising from a federal grant shall receive a copy of this directive before beginning job duties in connection with the federal grant.

II. Prescription Drugs

A. Reporting Requirements

If an employee is taking a drug prescribed by the employee’s attending physician and the employee believes the prescription drug’s side effects, such as drowsiness or hallucinatory effects, may interfere with the performance of the employee’s assigned duties, the employee shall provide the employee’s supervisor with the drug information sheet received with the prescription(s) or a written statement from the physician containing the name of the prescribed drug, name of the prescribing health care provider, possible side effects, and approximate length of time the employee is required to take the drug. Such notification prevents side effects from being misinterpreted as substance abuse.

The employee shall provide the written notification directly to the supervisor prior to commencing work while taking such medication. All such information shall be kept confidential, and the written notification shall be maintained in the employee’s unit or department medical file.

B. Effect on Job Performance

If an employee’s job performance appears to be affected as a result of taking a prescription drug, a supervisor or manager shall contact the substance control officer (SCO). Based on the information provided by the supervisor, the SCO shall determine whether the employee may remain at work. If the SCO determines the employee may not remain at work, the supervisor shall document the conversation with the SCO via a note to file. Such documentation shall be maintained in the employee’s unit or department medical file.

C. Safety Measures

While on TDCJ premises, an employee is required to keep all prescription drugs in the original container in a location secure from offenders.

III. Alcohol and Drug Testing General Provisions

A. Testing Sites

All alcohol and drug tests required by the TDCJ shall be conducted by a TDCJ contracted vendor. Final applicants and employees shall normally report to collection sites not located on TDCJ property. In some cases, onsite collections may be conducted by a contracted vendor.

B. Time Reporting for Alcohol and Drug Testing

1. An employee shall report the time required for travel to and from the collection site and the testing duration as time worked if:
 - a. The employee is required to submit to an alcohol or drug test other than a return to duty or follow-up test; or
 - b. The employee is transporting another employee to a testing site for a reasonable suspicion alcohol or drug test.
2. Overtime may be accrued by an employee required to report for random drug testing after an employee's shift.

C. Travel for Random Drug Testing

1. A state vehicle shall be made available to an employee required to submit to random drug testing.
2. An employee required to submit to random drug testing shall receive reimbursement in accordance with the standard rules governing mileage if a state vehicle is not available and the employee's personal vehicle is used.
3. The unit or department may provide group transportation for employees required to submit to random drug testing.

D. Confidentiality

Alcohol and drug test results and medical information are confidential and may not be released without the applicant's or employee's specific written consent, except in connection with legal or administrative proceedings relating to the information, for example a lawsuit, unemployment compensation hearing, disciplinary, or grievance process.

An employee who willfully discloses or releases information in violation of the procedures within this directive shall be subject to disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees."

IV. Alcohol and Drug Testing Occasions Not Related to a Substance Abuse Treatment Agreement

A. Pre-Employment and Pre-Assignment Drug Testing

1. General Provisions

- a. All outside final applicants and all correctional officers (COs) shall be required to submit to a pre-employment or pre-assignment drug test as a condition of employment. Notification of the pre-employment or pre-assignment drug test requirement shall be included in all job postings and in the TDCJ supplement to the application for employment.
- b. An employee in a leave without pay (LWOP) status shall not be required to submit to a pre-employment or pre-assignment drug test upon returning to work.
- c. An employee who separates from employment and who is rehired by the TDCJ shall be required to submit to a pre-employment or pre-assignment drug test, except for an employee who is reinstated through a grievance, settlement agreement, or other action resulting in employment reinstatement.
- d. The SCO shall coordinate receipt of all pre-employment or pre-assignment drug test results with the contracted vendor.

2. Pre-Employment and Pre-Assignment Drug Testing Sites

a. Trainees

A trainee shall be required to submit to a pre-assignment drug test while attending the PSTA. The contracted vendor shall collect urine specimens on site at the PSTA.

b. CO Applicants Not Required to Attend the PSTA

A CO applicant who is not required to attend the PSTA shall be required to take a pre-employment drug test within 48 hours from the date indicated on the conditional offer of employment, which provides the applicant with information regarding collection site locations.

c. Outside Final Applicants Not Required to Attend the PSTA

If an outside final applicant who is not required to attend the PSTA indicates at the beginning of the conditional offer of employment that the applicant is still interested in the position being offered, the applicant shall be informed of the following:

- (1) The location of the nearest testing site; and
- (2) Pre-employment drug testing shall take place within 48 hours from the time the conditional offer of employment is extended in order to remain eligible for the position being offered or for any TDCJ position in the future. This requirement applies even if the applicant declines the position after being notified of the pre-employment drug test requirement.

3. Negative Drug Test Results

- a. A trainee who has a negative drug test result shall be eligible to continue the PSTA.
- b. If a CO applicant who is not required to attend the PSTA has a negative drug test result, the SCO shall notify the Employment Section, Human Resources Division that the applicant is cleared for hire.
- c. If an outside final applicant who is not required to attend the PSTA has a negative drug test result, the SCO shall send an e-mail to the TDCJ official who made the conditional offer of employment stating the outside final applicant is cleared for hire.

4. Failure to Have a Negative Drug Test Result

Failure to have a negative test result may be due to a refusal to test, including inability to provide an adequate specimen, specimen tampering, or a verified confirmed positive drug test result. (See testing process procedures in Section VI.)

- a. If a trainee fails to have a negative drug test result, the training director or designee shall separate the trainee from employment in accordance with PD-33, "Trainee Management."

- b. If a CO applicant or outside final applicant who was not required to attend the PSTA fails to have a negative drug test result, the SCO shall:
 - (1) Notify the Employment Section and, if applicable, the TDCJ representative who made the conditional offer of employment that the applicant failed to have a negative drug test result;
 - (2) Advise the applicant that due to the applicant's failure to have a negative drug test result, the applicant is not eligible for any future employment with the TDCJ; and
 - (3) Refer the applicant to the EAP.

Applicants are referred to the EAP as a courtesy only; this referral simply consists of advising the applicant that they may contact the EAP. It is up to the applicant to contact the EAP, and such contact does not result in any fees being charged to the TDCJ. If an applicant does contact the EAP, the EAP simply provides the applicant with names and addresses of substance abuse treatment programs.

B. Reasonable Suspicion Alcohol and Drug Testing

An employee who is reasonably suspected of using alcohol or drugs in the workplace or performing official duties while under the influence of alcohol or drugs shall be required to submit to a reasonable suspicion alcohol or drug test.

1. Conditions Required for Reasonable Suspicion Testing

Reasonable suspicion testing shall be conducted only when one of the following occurs.

- a. The supervisor observes specific, contemporaneous, articulable conduct or symptoms concerning the employee's appearance, behavior, speech, body odors, or performance indicators of probable alcohol or drug use. The observations regarding suspected drug use may include indications of the chronic and withdrawal effects of controlled substances.
- b. It is determined alcohol or drugs may be a contributing factor in a work related accident. An employee who is involved in a work related accident shall immediately notify the employee's supervisor of the accident. The employee shall remain readily

available for reasonable suspicion testing for a maximum period of 32 hours after the accident. Failure to remain readily available for reasonable suspicion testing shall be treated as a refusal to test. These procedures are not intended to delay necessary medical attention for an injured employee following a work related accident or to prohibit an employee from leaving the employee's assignment to obtain assistance or necessary medical care.

- c. There is a positive reading from electronic drug detection equipment.
- d. There is a positive reaction from a narcotic detection canine to an employee's property.
- e. An employee arrested for a drug related offense notifies the employee's supervisor of the arrest in accordance with PD-27, "Employment Status Pending Resolution of Criminal Charges or Protective Orders," and a reasonable suspicion test can be conducted within the applicable time limits as set forth in Section IV.B.3. of this directive.

2. Supervisor and SCO Responsibilities

- a. When one of the incidents listed in Section IV.B.1. occurs, the supervisor shall immediately:
 - (1) Relieve the employee from duty;
 - (2) Obtain a copy of the PERS 378, Reasonable Suspicion Determination Checklist (Attachment A);
 - (3) Contact the SCO by telephone to discuss the incident;
 - (4) Complete the PERS 378; and
 - (5) Fax the completed PERS 378 to the SCO as soon as possible after the telephone contact.
- b. The decision to recommend reasonable suspicion testing shall be made by the SCO based on the supervisor's observations. The SCO, in conjunction with the appropriate manager or director in salary groups B23/C6 and above, shall have final authorization for reasonable suspicion testing to be conducted.

- c. If it is determined that a reasonable suspicion test shall be conducted, the supervisor or designee and another employee of the same gender as the employee being tested shall take the employee to the testing site.

3. Timeframes for Conducting Reasonable Suspicion Alcohol and Drug Tests

- a. Alcohol Tests

Alcohol testing shall be administered as soon as practicable following the observable incident.

If the test is not administered within eight hours following the incident, attempts to administer the alcohol test shall cease. The SCO shall prepare and maintain a record on file documenting the reason the test was not administered within the eight hour time limit.

- b. Drug Tests

Drug testing based on a reasonable suspicion determination shall be administered as soon as practicable following the observable incident or following the time the employee notifies the supervisor of an arrest for a drug related offense. A drug test shall be administered no later than 32 hours following the observable incident or such notification. If a drug test is not administered within the 32 hour time limit, attempts to administer the drug test shall cease. The SCO shall prepare and maintain a record on file stating the reasons the drug test was not administered within the 32 hour time limit.

4. Use of Leave and Providing Employee with Transportation Home

If an employee has a positive alcohol test result or has been administered a reasonable suspicion drug test, the employee shall be removed from duty and placed in a leave status once the employee has been returned from the test site to the worksite. The employee shall be required to use the employee's accrued leave or be placed in an LWOP status in accordance with TDCJ leave policies.

The supervisor or designee shall make every effort to ensure the employee does not drive home. The supervisor or designee shall attempt to contact someone outside the TDCJ, such as the employee's relative or friend, to provide the employee with a ride home from work. After all possibilities of contacting someone have been exhausted, the supervisor shall offer to

take the employee home. If an employee refuses assistance, local law enforcement shall be immediately notified of the situation. The supervisor shall document any refusal of assistance and forward the documentation to the SCO.

C. Random Drug Testing

1. General Provisions

- a. Random drug testing shall be conducted monthly on two percent of all employees:
 - (1) With any hazardous duty pay code designation; or
 - (2) In a position eligible for longevity pay and unit pay differential.
- b. A random drug testing list (RDTL) shall be generated and distributed monthly by the Information Technology Division. The RDTL shall be generated at the request of the human resources director. RDTL recipients shall include:
 - (1) Wardens;
 - (2) Parole regional directors;
 - (3) The OIG inspector general or designee;
 - (4) Division directors or designees;
 - (5) The presiding officer (chair) of the Board of Pardons and Paroles; and
 - (6) The SCO.
- c. The dates for random drug testing shall be reasonably spread throughout a calendar year.
- d. All employees are selected for testing on a random basis in a manner ensuring each employee has a substantially equal chance of selection on a scientifically valid basis.
- e. The testing frequency and selection process is such that an employee's chance of selection continues to exist throughout employment with the TDCJ.

- f. The executive director has the authority to change the testing percentage for a unit or division at any time.

2. Employee Notification

- a. RDTL recipients shall be responsible for maintaining the integrity and intended purpose of random drug testing and shall not distribute the list. RDTL recipients may delegate the employee notification function to appropriate staff, such as a major, human resources representative, or assistant parole regional director.

An employee who willfully discloses a random drug testing date to an employee prior to the date of the test shall be subject to disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees."

- b. Drug testing shall occur within seven days of the RDTL being received by the list recipient. The list recipient or designee shall notify selected employees of the drug testing on the day of the test.

3. Employee Compliance

- a. An employee on the RDTL whose shift allows access to the testing site during normal business hours shall: (1) proceed to the testing site immediately upon notification; (2) provide an adequate specimen; and (3) return to the employee's unit of assignment or work location.

- b. An employee whose shift does not allow access to the testing site during normal business hours shall be required to report for testing at the end of the employee's assigned shift during the normal business hours of the site. Time reporting shall be in accordance with Section III.B. of this directive.

- c. The only acceptable reasons for employee non-compliance with random drug testing shall be:

- (1) An emergency verifiable with documentation; or
- (2) Approved leave granted prior to receipt of the RDTL by the list recipient.

V. Substance Abuse Treatment Agreement and Related Alcohol and Drug Testing

A. Employee Voluntary Disclosure of Substance Abuse

The TDCJ encourages an employee who is in need of substance abuse counseling or rehabilitation to inform the employee's supervisor of such a need before the employee's job performance is affected. Rehabilitation is the responsibility of the employee.

1. A supervisor shall immediately notify the SCO upon being informed by an employee of the employee's need for substance abuse counseling or rehabilitation. In addition, the supervisor shall immediately relieve the employee from duty.
2. The SCO shall mandatorily refer the employee to the EAP and notify the employee's supervisor of such referral. (See PD-20, "Employee Assistance Program" for more information.)
3. The employee shall not be subject to any disciplinary action based exclusively on the employee's admission of a need or based exclusively on using leave to receive treatment. However, the TDCJ may still subject the employee to:
 - a. A reasonable suspicion alcohol or drug test if one of the incidents listed in Section IV.B.1 of this directive or in Part B, Section II.D.1 of PD-37, "Employee Commercial Drivers' Physical Examination and Alcohol/Drug Testing Programs" has occurred; or
 - b. Disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees," if the employee has allegedly committed a rule violation.

B. Agreement Eligibility Criteria

As part of an employee's treatment for a substance abuse problem, an employee shall complete and sign a copy of the PERS 377, Substance Abuse Treatment Agreement (Attachment B). An employee shall meet the following eligibility criteria prior to signing the agreement:

1. A decision to require the employee to take an alcohol or drug test in accordance with this directive or in accordance with PD-37, "Employee Commercial Drivers' Physical Examination and Alcohol/Drug Testing Programs" shall not be pending.
2. The employee shall not be waiting on the results of an alcohol or drug test.

3. The employee shall not be under investigation for or currently charged with felony driving while intoxicated (DWI) or the unauthorized manufacture, distribution, dispensing, possession, sale, purchase, or use of illicit drugs or drug paraphernalia.
4. The employee shall not be currently charged with violation of the provisions of this directive or charged with an infraction of one or more of the following rules as specified in PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees":
 - a. Rule #19, Use of Alcohol or Illicit Drugs on the Job;
 - b. Rule #40, Possession, Use, Sale, or Delivery of Illicit Drugs/Drug Paraphernalia;
 - c. Rule #47, Refusal to Submit to Alcohol or Drug Tests; or
 - d. Rule #48, Failure to Have a Negative Alcohol/Drug Test Result or Failure to Comply with Conditions of a Treatment Agreement.
5. The employee shall not have previously entered into a Substance Abuse Treatment Agreement with the TDCJ.

C. Request for Leave to Seek Treatment

An employee who admits to the employee's supervisor that the employee has a substance abuse problem and who is seeking treatment for the problem may request leave in accordance with TDCJ leave policies in order to receive such treatment.

D. Release of Information

An employee shall agree to sign a release of information form to allow the substance abuse facility to inform the EAP of the employee's progress.

E. Return to Duty Letter

Upon an employee's completion of a substance abuse treatment program, the EAP counselor shall verbally notify the SCO that a return to duty letter, based on the recommendations from the employee's health care provider, is being prepared. The return to duty letter shall state the employee has completed the substance abuse treatment program, is eligible to return to duty, and is fit to perform the employee's assigned duties for the TDCJ.

The EAP counselor shall provide the return to duty letter via fax to the SCO. A return to duty letter may be provided prior to the completion of any recommended outpatient treatment that is to follow the successful completion of the initial treatment program.

F. Return to Duty Alcohol and Drug Testing

The employee shall take a return to duty alcohol or drug test at the employee's own expense as a condition of returning to duty. If the employee is required to take a return to duty alcohol test, the employee shall have a negative alcohol test result. If the employee is required to take a return to duty drug test, the employee shall have a negative drug test result.

1. Upon being notified that the EAP counselor is preparing the return to duty letter, the SCO shall contact the employee and schedule the return to duty alcohol or drug test for the employee.

2. Time Reporting

The time required for travel to and from the collection site and the testing duration shall not be reported as time worked.

3. If the employee has a negative return to duty alcohol or drug test result, the SCO shall notify the employee's human resources representative that the employee is now eligible to return to work and shall fax the return to duty letter to the employee's human resources representative.

The human resources representative shall:

a. Provide the employee with the faxed return to duty letter when the employee returns to duty.

b. Maintain a copy of the return to duty letter only if the employee is required to successfully complete recommended outpatient or aftercare treatment after returning to duty. Upon notification by the SCO that the employee has successfully completed the substance abuse treatment program, the human resources representative shall shred the copy of the return to duty letter.

G. Follow-Up Alcohol and Drug Testing

1. Testing Intervals

a. If applicable and as directed by the EAP substance abuse counselor, an employee who has been mandatorily referred to the EAP shall be subject to unannounced follow-up alcohol or drug

testing. Such tests shall be conducted at the employee's own expense, for a period of up to 60 months following the employee's return to duty. At a minimum, six follow-up tests shall be conducted in the first 12 months following the employee's return to duty.

- b. Supervisors who disclose follow-up alcohol or drug testing dates to an employee prior to the day of the test shall be subject to disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees."

2. Time Reporting

The time required for travel to and from the collection site and the testing duration shall not be reported as time worked.

VI. Alcohol and Drug Testing Processes

A. Alcohol Test

All breath tests are conducted by a certified BAT and shall be conducted in a location allowing visual and auditory privacy sufficient to prevent unauthorized persons from seeing or hearing test results.

1. The employee shall be required to provide photo identification or be identified by a TDCJ representative. The employee may request the BAT to provide positive identification to the employee.
2. Prior to an alcohol test, the applicant or employee shall sign the certification on the Breath Alcohol Testing Form provided by the BAT.
3. If the quantified test result of a reasonable suspicion, return to duty, or follow-up alcohol test is an alcohol concentration of 0.02 or greater, the BAT will conduct an alcohol confirmation test not less than 15 and not more than 30 minutes after the completion of the screening test. The results of the alcohol confirmation test are final.
4. The BAT will transmit the alcohol test result directly to the SCO in a manner that:
 - a. Ensures the result is immediately received by the SCO; and
 - b. Is confidential.

B. Drug Test

Drug tests shall screen for marijuana, cocaine, opiates, PCP, amphetamines, methadone, propoxyphene, barbiturates, benzodiazepines, and methaqualone.

1. The applicant or employee shall be required to provide photo identification or be identified by a TDCJ representative. The employee may request the collector to provide positive identification to the applicant or employee.
2. The applicant or employee shall receive a securely wrapped specimen bottle that subdivides into a primary specimen and a split specimen. The bottle shall be identified with a unique identification number identical to the number on the Chain of Custody Form provided by the collector. The applicant or employee shall be asked to sign or initial the Chain of Custody Form indicating it is the applicant's or employee's specimen.
3. An applicant or employee shall be allowed to produce the urine specimen in private, unless the specimen shall be collected under direct observation of a same gender observer because one of the following occurs.
 - a. The employee is being required to submit to a reasonable suspicion test.
 - b. A second specimen is required because:
 - (1) The collector determined that the first provided urine specimen was outside the normal temperature range (32-38C/90-100F); or
 - (2) It was apparent the applicant or employee had tampered with the specimen upon the collector's inspection of the first provided specimen for unusual color, presence of foreign objects or material, or other signs of tampering, such as an unusual odor.
 - c. The collector observed materials brought to the collection site or the conduct of the applicant or employee clearly indicated an attempt to tamper with the specimen.
4. The collector shall immediately notify the SCO of any evidence of specimen tampering.

C. Refusal to Test for Alcohol or Drugs

The BAT or collector shall immediately notify the SCO if an applicant or employee refuses to test. The SCO shall instruct the employee's supervisor to immediately remove the employee from duty.

An applicant or employee shall be considered as refusing to test if the applicant or employee:

1. Fails to arrive at the collection site on time, unless documentation is provided regarding a verifiable reason for a delay in pre-employment testing, such as a health care provider's statement, jury summons, or death notice for family member;
2. Fails to remain at the test facility until the testing process is complete;
3. Refuses to sign the certification on the Breath Alcohol Testing Form for alcohol tests or sign the Chain of Custody Form for drug tests;
4. Fails to provide adequate breath or adequate urine for reasonable suspicion, return to duty, or follow-up alcohol or drug testing, regardless of whether there is a valid medical explanation for such failure; (See Section VI.D.)
5. Fails to provide adequate urine for drug testing and does not provide a valid medical explanation after receiving notice of the requirement for such valid medical explanation; (See Section VI.D.)
6. Fails to cooperate with the collector such that the behavior prevents the completion of the test; or
7. Fails to remain readily available for alcohol or drug testing for a maximum period of 32 hours after a work related accident.

D. Inability to Provide an Adequate Specimen

1. Drug Tests

If an applicant, trainee, or employee is unable to provide an adequate urine specimen, the applicant, trainee, or employee may remain at the collection site for up to three hours or until the time limit for testing expires, whichever is less, and drink up to 40 ounces of fluid and then attempt to provide an adequate urine specimen. If the applicant, trainee, or employee is still unable to provide an adequate urine specimen, testing shall be discontinued. If the applicant or employee refuses to make the attempt or

attempts but fails to provide an adequate amount of urine, the collector shall immediately inform the SCO.

The SCO shall inform an applicant, trainee, or employee who is unable to provide an adequate urine specimen for a drug test that the applicant, trainee, or employee shall furnish a signed and dated written statement from a personal physician, at the individual's own expense. The statement shall include a valid medical explanation for the inability to provide an adequate urine specimen. A trainee or an employee shall take accrued leave or be placed in an LWOP status in accordance with TDCJ leave policies for the visit to the personal physician.

- a. If such a statement is provided within five workdays from the date of the attempted drug test, the SCO shall immediately reschedule a drug test.
 - (1) An outside final applicant shall be required to have a negative pre-employment drug test result before being hired by the TDCJ.
 - (2) A trainee shall be required to have a negative pre-assignment drug test result before graduating from the PSTA.
 - (3) An employee shall be required to have a negative drug test result to maintain employment.
- b. If such a statement is not provided to the SCO within five workdays from the date of an attempted drug test, such inaction shall be considered a refusal to test.

2. Alcohol Tests

If an employee does not provide an adequate amount of breath for an alcohol test, the BAT shall instruct the employee to make another attempt to provide an adequate amount of breath. If the employee refuses to make the attempt or attempts but fails to provide an adequate amount of breath, the BAT shall immediately inform the SCO.

3. Reasonable Suspicion, Return to Duty, and Follow-Up Alcohol and Drug Tests

If an applicant or employee does not provide an adequate amount of breath or an adequate urine specimen for a reasonable suspicion, return to duty, or follow-up alcohol or drug test, the applicant or employee shall not

have the option to provide a medical explanation. Not providing an adequate amount of breath or adequate urine specimen for such an alcohol or drug test shall be considered a refusal to test.

E. MRO Review of Drug Test Results

Prior to notifying the SCO that a test has been verified as positive or as a refusal to test because of adulteration or substitution, the MRO shall attempt to contact the applicant or employee. The applicant or employee may provide information or records to the MRO to assist the MRO in reviewing the test.

1. If the MRO is unable to reach the applicant or employee directly, the MRO shall contact the SCO and instruct the SCO to contact the applicant or employee. The SCO shall not inform any other employee of the MRO's request to contact the applicant or employee on behalf of the MRO. The SCO shall immediately attempt to contact the applicant or employee through use of procedures that protect, as much as possible, the confidentiality of the MRO's request that the applicant or employee contact the MRO.
 - a. If an attempt to contact the applicant or employee is successful, such as the SCO actually talks to the applicant or employee, the SCO shall:
 - (1) Document the date and time of the contact;
 - (2) Inform the applicant or employee to contact the MRO immediately;
 - (3) Inform the applicant or employee of the consequences of failing to contact the MRO within the next 72 hours; and
 - (4) Inform the MRO of the date and time of the contact.
 - b. If the initial attempt to contact the applicant or employee is unsuccessful, the SCO shall:
 - (1) Make a minimum of three calls, spaced reasonably over a 24 hour period, to reach the applicant or employee at the day and evening telephone numbers on record or listed on the Chain of Custody Form; and
 - (2) Document the dates and times of the attempted efforts to contact the applicant or employee.

- c. If the SCO is unable to contact the applicant or employee within 24 hours after the MRO's request, the SCO shall:
 - (1) Leave a message for the applicant or employee by any practicable means, such as voicemail, e-mail, or letter, stating the applicant or employee shall contact the MRO within 72 hours;
 - (2) Inform the MRO of the date and time of this attempted contact; and
 - (3) Continue attempts to contact the applicant or employee for five workdays after the date the MRO receives the confirmed test from the laboratory.
2. In the following circumstances, the MRO may advise the SCO of a verified confirmed positive drug test result without communicating directly with the applicant or employee regarding the test results:
 - a. The applicant or employee expressly declines the opportunity to discuss the test results with the MRO;
 - b. The SCO has successfully made and documented a contact with the applicant or employee, such as the SCO actually talked to the applicant or employee, and more than 72 hours have passed since the time the SCO contacted the applicant or employee; or
 - c. After making and documenting all reasonable efforts, the SCO has not been able to contact the applicant or employee within five workdays of the date the MRO received the confirmed test result from the laboratory.
3. If the MRO has verified a drug test as positive without communicating directly with the applicant or employee, the applicant or employee has 60 days to present information to the MRO documenting that serious illness, injury, or other circumstances unavoidably prevented the applicant or employee from contacting the MRO in a timely manner.

On the basis of such information, the MRO may reopen the verification, and allow the applicant or employee to present information concerning a legitimate explanation for the verified confirmed positive drug test result. If the MRO determines there is a legitimate medical explanation for the presence of drugs, the MRO shall report the test result to the SCO as negative.

F. Retesting the Urine Specimen

Within 24 hours of notification from the MRO of a verified confirmed positive drug test result, the applicant or employee may advise the SCO that the applicant or employee wants the laboratory to retest the specimen. If the applicant or employee has not requested a test of the split specimen within 24 hours of such notification, the applicant or employee may present information to the SCO documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO, such as there was no one in the MRO's office and the answering machine was not working, or other circumstances unavoidably prevented the applicant or employee from making a timely request.

All costs related to the retest shall be at the expense of the applicant or employee. The SCO shall request the applicant or employee to remit a certified check or money order within 24 hours of contact by the MRO. The laboratory shall retest the original specimen in a timely manner.

VII. Activities Subjecting an Employee to Disciplinary Action

A. Employee

An employee shall be subject to disciplinary action up to and including dismissal from employment in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees" if the employee commits any one of the following:

1. Fails to report the possible side effects of a prescription drug, such as drowsiness or hallucinatory effects, that may interfere with the employee's assigned job duties prior to commencing work while taking such medication;
2. Admits to having a substance abuse problem and: (a) rejects treatment; or (b) leaves a substance abuse treatment program prior to being properly discharged from that program;
3. Abuses inhalants on- or off-duty;
4. Uses or possesses alcohol or a drug, other than a drug for which a legitimate medical explanation exists, while conducting TDCJ business;
5. Uses alcohol within eight hours following a work related accident;
6. Participates in the unlawful manufacture, distribution, dispensing, possession, sale, purchase, or use of a controlled substance on- or off-duty;

7. Refuses to submit to a required alcohol or drug test (See Section VI.C.);
8. Tampers with the urine specimen (See Section VI.B.2.); and
9. Has a positive alcohol test result or a verified confirmed positive drug test result.

B. Supervisors

A supervisor who has factual knowledge an employee has participated in a prohibited activity identified within this section shall immediately:

1. Remove the employee from duty; and
2. Notify the SCO of the alleged prohibited activity.

A supervisor who allows such an employee to remain on duty shall be subject to disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees."

VIII. Impact on Future Employment Eligibility

A. Failure to Have a Negative Alcohol or Drug Test Result

The TDCJ has zero tolerance for substance abuse by applicants for employment or current employees. An applicant for employment or current employee who fails to have a negative alcohol or drug test result through a refusal to test, specimen tampering, or a positive alcohol or a verified confirmed positive drug test result shall be ineligible for future employment consideration with the TDCJ.

B. Rejection of Treatment

An employee who admits a substance abuse problem to the employee's supervisor shall be ineligible for future employment with the TDCJ if the employee:

1. Rejects treatment; or
2. Leaves a substance abuse treatment program prior to being properly discharged from that program.

Brad Livingston
Executive Director

Texas Department of Criminal Justice
Reasonable Suspicion Determination Checklist
(Confidential)

Date/Time of Incident or Work Related Accident: _____

Employee's Name: _____
Please Print: Last First MI

Employee's Month/Date of Birth: _____
(mm/dd)

Unit/Department: _____

Work Phone #: (_____) _____
(Area Code)

Observing Supervisor's Name: _____
Please Print: Last First MI

Observing Supervisor's Month/Date of Birth: _____
(mm/dd)

Second Observing Supervisor's Name: _____
(if applicable) Please Print: Last First MI

Second Observing Supervisor's Month/Date of Birth: _____
(if applicable) (mm/dd)

This checklist shall be completed whenever an incident or a work related accident has occurred and there is reasonable suspicion that an employee is under the influence of alcohol or a prohibited drug substance. The employee's supervisor shall note all pertinent behavior and physical signs or symptoms that led the supervisor to reasonably believe the employee has recently used or is under the influence of alcohol or a prohibited drug substance. The supervisor shall mark each applicable item on this form and describe any additional facts or circumstances that the supervisor has noted.

	Questions	Yes	No
1.	Does the employee have a history of documented performance problems? If yes, attach copy of documentation.	<input type="checkbox"/>	<input type="checkbox"/>
2.	Has the employee exhibited behavior that indicated the employee was under the influence of alcohol or drugs? If yes, mark applicable items in Sections A, B, and C and describe behavior in Section D.	<input type="checkbox"/>	<input type="checkbox"/>
3.	Was the employee the subject of a positive reading from electronic drug detection equipment?	<input type="checkbox"/>	<input type="checkbox"/>
4.	Was there a positive reaction from a narcotic detection canine to the employee's property?	<input type="checkbox"/>	<input type="checkbox"/>
5.	Has the employee notified you that the employee has been arrested for a drug related offense? If yes, attach a copy of the PERS 420, Notification of an Employee Arrest or Criminal Charge.	<input type="checkbox"/>	<input type="checkbox"/>

Time Limits: Alcohol or drug tests shall be administered as soon as practicable following the accident or incident.

- a. Alcohol Tests: If an alcohol test is not administered within eight hours following the accident or incident, attempts to administer an alcohol test shall cease and the SCO shall document the reasons the test was not administered.
- b. Drug Tests: If a drug test is not administered within 32 hours following the accident or incident, attempts to administer a drug test shall cease, and the SCO shall document the reasons the test was not administered.

REASONABLE SUSPICION OBSERVATIONS

A. NATURE OF THE ACCIDENT OR INCIDENT OR CAUSE FOR SUSPICION

- | | |
|--|--|
| <input type="checkbox"/> 1. Observed/reported possession or use of a controlled substance | <input type="checkbox"/> 5. Arrest for a drug related offense |
| <input type="checkbox"/> 2. Observed/reported possession or consumption of alcohol while on the job | <input type="checkbox"/> 6. Other* (flagrant violation of safety regulations, serious fighting, argumentative or abusive language, refusal of supervisor instruction, unauthorized absence on the job) |
| <input type="checkbox"/> 3. Observed/reported to work under the influence of alcohol as outlined in the policy | <input type="checkbox"/> 7. A positive reading from electronic drug detection equipment |
| <input type="checkbox"/> 4. Observed abnormal or erratic behavior | <input type="checkbox"/> 8. A positive reaction from a narcotic detection canine to an employee's property |

*Specify exact other behavior:

B. UNUSUAL BEHAVIOR

- | | |
|---|--|
| <input type="checkbox"/> 1. Verbal abusiveness | <input type="checkbox"/> 4. Withdrawal, depression, mood changes, or unresponsiveness |
| <input type="checkbox"/> 2. Physical abusiveness | <input type="checkbox"/> 5. Inappropriate verbal response to questioning or instructions |
| <input type="checkbox"/> 3. Extreme aggressiveness or agitation | <input type="checkbox"/> 6. Other erratic or inappropriate behavior* (hallucinations, disorientation, excessive euphoria, confusion) |

*Specify exact other behavior:

C. PHYSICAL SIGNS OR SYMPTOMS

- | | |
|--|--|
| <input type="checkbox"/> 1. Possessing, dispensing, or using controlled substance | <input type="checkbox"/> 11. Odor of alcohol |
| <input type="checkbox"/> 2. Slurred or incoherent speech | <input type="checkbox"/> 12. Odor of marijuana |
| <input type="checkbox"/> 3. Unsteady gait or other loss of physical control; poor coordination | <input type="checkbox"/> 13. Dry mouth (frequent swallowing/lip wetting) |
| <input type="checkbox"/> 4. Dilated or constricted pupils or unusual eye movement | <input type="checkbox"/> 14. Dizziness or fainting |
| <input type="checkbox"/> 5. Bloodshot or watery eyes | <input type="checkbox"/> 15. Shaking hands or body tremors/twitching |
| <input type="checkbox"/> 6. Extreme fatigue or sleeping on the job | <input type="checkbox"/> 16. Irregular or difficult breathing |
| <input type="checkbox"/> 7. Excessive sweating or clamminess to the skin | <input type="checkbox"/> 17. Runny nose or sores around nostrils |
| <input type="checkbox"/> 8. Flushed or very pale face | <input type="checkbox"/> 18. Inappropriate wearing of sunglasses |
| <input type="checkbox"/> 9. Highly excited or nervous | <input type="checkbox"/> 19. Puncture marks or "tracks" |
| <input type="checkbox"/> 10. Nausea or vomiting | <input type="checkbox"/> 20. Other* |

*Specify other physical signs or symptoms:

D. WRITTEN SUMMARY

Summarize the facts and circumstances of the accident or incident, employee response, supervisor actions, and any other pertinent information not previously noted on this form. Attach additional sheets as needed.

Signature of Observing Supervisor: _____ Date: _____
(MM/DD/YYYY)

Signature of Second Observing Supervisor: _____ Date: _____
(if applicable) (MM/DD/YYYY)

Title	Date	Initials	Statement	Yes	No
Observing Supervisor			Based upon my observations as noted on this checklist, I recommend that an alcohol or drug test be administered in accordance with PD-17, "Drug Free Workplace."	<input type="checkbox"/>	<input type="checkbox"/>
Second Observing Supervisor (if applicable)			Based upon my observations as noted on this checklist, I recommend that an alcohol or drug test be administered in accordance with PD-17, "Drug Free Workplace."	<input type="checkbox"/>	<input type="checkbox"/>
SCO			Based upon the observations as noted on this checklist and upon my discussion with the observing supervisor(s), I recommend that an alcohol or drug test be administered in accordance with PD-17, "Drug Free Workplace."	<input type="checkbox"/>	<input type="checkbox"/>
Manager			Based upon my discussion with the SCO, on _____ I verbally authorized an alcohol/drug test be administered in accordance with PD-17, "Drug Free Workplace." (MM/DD/YYYY)	<input type="checkbox"/>	<input type="checkbox"/>

Supervisor Instructions:

1. After contacting the SCO via telephone or in person, immediately fax, or hand carry a copy of this checklist to the SCO.
2. Mail the original checklist with all applicable documentation to the SCO within 48 hours after the incident or accident. Do not retain a copy.

TO BE COMPLETED BY THE SCO	
Employee underwent <input type="checkbox"/> alcohol test <input type="checkbox"/> drug test at _____	<input type="checkbox"/> a.m. <input type="checkbox"/> p.m. ON _____ (MM/DD/YYYY)
Test was conducted at the following location: _____	
Employee refused to test: <input type="checkbox"/> Yes <input type="checkbox"/> No	

Texas Department of Criminal Justice Substance Abuse Treatment Agreement

EMPLOYEE NAME: _____ MONTH/DATE OF BIRTH: _____
Please Print: Last First MI (mm/dd)

PAYROLL TITLE: _____ UNIT/DEPARTMENT: _____

In accordance with PD-17, "Drug Free Workplace," I, _____,
Please Print: First Name MI Last Name

have admitted to my supervisor, _____,
Please Print: First Name MI Last Name
that I have a substance abuse problem.

As a condition of continued employment, I agree to the following:

1. I shall admit myself into a substance abuse rehabilitation program as directed by a licensed physician or health care provider and continue to actively participate in that program.
2. I shall successfully complete the substance abuse rehabilitation program as directed by a licensed physician or health care provider.
3. I shall undergo a return to duty alcohol or drug test, at my own expense, in accordance with PD-17 prior to being returned to active status.
4. If required, I shall submit to unannounced follow-up alcohol or drug testing, at my own expense, for a period of up to 60 months following my return to duty, in accordance with PD-17.
5. I shall continue treatment on an outpatient basis, including aftercare treatment, as recommended by the substance abuse rehabilitation program, and, if required, provide attendance reports to my human resources representative.
6. I shall sign a release of information form at the substance abuse rehabilitation facility in order that the Employee Assistance Program (EAP) may be notified of my progress.
7. If applicable, as a commercial driver I understand I shall also comply with the provisions of PD-37, "Employee Commercial Drivers' Physical Examination and Alcohol/Drug Testing Programs."
8. I shall abstain from all alcohol use and substance abuse.
9. I shall be allowed only one opportunity to participate in, and complete, the Substance Abuse Treatment Agreement.

I fully understand that non-compliance with any of the above conditions may result in disciplinary action up to and including separation from employment in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees." Although adherence to this agreement is considered a condition of continued employment, nothing in this agreement alters an employee's employment at will status and shall not constitute nor be deemed a contract or guarantee of continued employment.

SUPERVISOR: _____ EMPLOYEE: _____
Supervisor Signature Date (MM/DD/YYYY) Employee Signature Date (MM/DD/YYYY)

Note to Employee: With few exceptions, you are entitled upon request: (1) to be informed about the information the TDCJ collects about you; and (2) under Texas Government Code §§ 552.021 and 552.023, to receive and review the collected information. Under Texas Government Code § 559.004, you are also entitled to request, in accordance with TDCJ procedures, that incorrect information the TDCJ has collected about you be corrected.

Distribution:
Original: SCO, Labor Relations Section, Human Resources Division
Copy: Employee
Copy: Employee unit or department medical file