
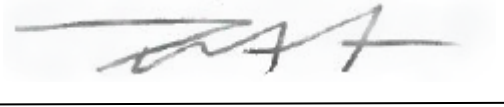


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POLICY NUMBER: 9.19 - ACC		
CHAPTER 9: SUPERVISION AND CASE MANAGEMENT		
	STATE of MAINE DEPARTMENT OF CORRECTIONS Approved by Commissioner: 	PROFESSIONAL STANDARDS See Section VIII
	EFFECTIVE DATE: June 1, 2020	LATEST REVISION:

I. AUTHORITY

The Commissioner of Corrections adopts this policy pursuant to the authority contained in 34-A M.R.S.A. section 1402.

II. APPLICABILITY

Adult Community Corrections

III. POLICY

It is the policy of the Department to conduct drug and alcohol testing of clients under supervision in the community to try to identify those individuals who are using drugs and alcohol in violation of their conditions of supervision and to facilitate appropriate supervision and the use of appropriate intervention strategies.

IV. DEFINITIONS

1. Confirmation testing - confirmation testing refers to drug or alcohol testing performed at an independent laboratory utilizing technology that is more advanced than that used in field drug or alcohol testing to assess the accuracy and validity of a drug or alcohol test performed by adult community corrections staff.
2. Drug – for purposes of this policy, drug means any scheduled drug or marijuana.
3. Illegal use of a drug or alcohol – for purposes of this policy, illegal use of a drug or alcohol means the use of a drug or alcohol in violation of the client's supervision conditions, regardless of whether it is also a violation of federal or state criminal law. It does not include the use of a drug which has been validly prescribed to the client if it is used as prescribed and there is no supervision condition specifically prohibiting its use. It does not include the use of medical marijuana in compliance with the state law governing medical marijuana use, except that even medical

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marijuana use by a client on supervised community confinement is considered an illegal use.

4. Refusal to submit to testing – refusal to submit to testing consists of refusing or failing to take a test, refusing or failing to provide an adequate specimen, refusing or failing to follow instructions for providing an adequate and uncontaminated specimen, or providing a specimen from another person. If the client has a condition of submitting to testing, any of these is considered a violation of the client's supervision conditions.
5. Tampering with a test – tampering with a test consists of tampering with a test or trying to hide drug or alcohol use through dilution. If the client has a condition of submitting to testing, either of these is considered a violation of the client's supervision conditions

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VI. ATTACHMENTS

Attachment A: Voluntary Admission Form ([paper/online](#))

VII. PROCEDURES

Procedure A: Drug and Alcohol Testing, General

1. This policy governs only drug and alcohol testing of clients by adult community corrections staff. It includes all adult clients under supervision in the community, whether on probation, supervised release for sex offenders, supervised community confinement, or parole.
2. It is intended to supplement, not replace, other traditional means by which the illegal use of drugs and alcohol by clients can be detected, including, but not limited to, searches of clients, searches of residences, searches of vehicles, client behavior, etc.
3. Refusal to submit to testing; tampering with a test; or a positive test may result in a client being subject to graduated sanctions as set out in Department Policy (ACC) 9.16, or, in the case of a client on supervised community confinement who is returned to a Department facility, being subject to discipline under Department Policy (AF) 20.1, Prisoner Discipline.

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4. Nothing in this policy prevents other criminal justice agencies from collecting and testing specimens for alcohol or drugs in accordance with their own policies, whether or not requested to do so by Department staff, or adult community corrections from using those test results in sanctioning a client, or, in the case of a client on supervised community confinement who is returned to a Department facility, nothing in this policy prevents facility staff from using those test results in disciplining the prisoner.
5. At each client's first meeting with a probation officer or probation officer assistant, the client shall be informed of the Department's sanctioning policy as it relates to the illegal use of drugs and alcohol.
6. Drug and alcohol specimen collection and testing shall be performed only by adult community corrections staff who are probation officers or probation officer assistants and only by using drug and/or alcohol testing systems approved by the Commissioner, or designee.
7. Adult community corrections staff responsible for testing specimens for drugs or alcohol shall ensure, if applicable, that testing equipment is working properly. Equipment problems that cannot be corrected immediately shall be referred to the manufacturer or authorized repair business for repair or replacement.
8. Adult community corrections staff handling biological specimens shall use Universal Precautions for the handling of infectious body materials.

Procedure B: Reasons for Drug and Alcohol Testing

1. A client with a condition of supervision that requires the client to submit to drug and/or alcohol testing may be required to submit to the testing at any time for any reason.
2. A client who does not have such a condition may be requested to voluntarily submit to drug and/or alcohol testing at any time for any reason.
3. A decision of adult community corrections staff to require or request testing, as applicable, may be based on the client's risks and needs assessment, observations of the staff, information received from other sources, and the staff's discretion.
4. When making this decision, staff may consider the following:
 - a. any prior refusal to submit to testing or tampering with a test;
 - b. any prior positive test result indicating illegal use of a drug or alcohol;
 - c. symptoms of being under the influence of alcohol or a drug, e.g., dilated pupils, pinpoint pupils, slurred speech, lethargy, being "hopped up," etc.;
 - d. discovery on the client's person of illegal drugs or drug paraphernalia or alcohol;

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- e. discovery in the client's residence or vehicle of illegal drugs or drug paraphernalia or alcohol;
 - f. canine alert on the client;
 - g. reliable confidential informant information; or
 - h. any other relevant circumstances.
5. Whenever the staff believes testing is appropriate, but the client does not have a condition of supervision that requires the client to submit to drug and/or alcohol testing and the client does not voluntarily submit to testing, sanctions shall not be imposed on the client, but a probation officer (not a probation officer assistant) shall determine whether to follow the appropriate steps to seek an amendment to the client's supervision conditions.

Procedure C: Urine Collection and Testing for Drugs and Alcohol

1. The staff responsible for urine collection shall positively identify the client.
2. If it is confirmed that the client has a condition of probation, supervised release for sex offenders, supervised community confinement, or parole that requires the client to submit to drug and/or alcohol testing, the staff shall inform the client that he or she is required to submit to urine testing.
3. If there is no condition of supervision requiring the client to submit to drug and/or alcohol testing, the staff shall confirm that the client voluntarily agrees to the testing. A client who voluntarily agrees to testing may withdraw agreement at any time, whether prior to or during the collection and/or field testing process. If the client refuses to comply with any of the below provisions, that shall be considered the equivalent of withdrawing agreement and the process shall be immediately discontinued.
4. The staff shall ask the client if he or she is taking any legal drugs and, if so, what they are. If the client has a condition of submitting to testing, the staff shall require the client to produce documentation of prescribed drugs from a medical or mental health professional within a reasonable amount of time. If necessary, the client shall be required to sign a release of information form so that the staff may receive verification from the medical or mental health professional.
5. The staff shall ensure that the specimen collection area is in a private location.
6. The client shall be required to remove all outer clothing (e.g., hat, scarf, coat, jacket, or sweater) prior to entering the collection area.
7. The staff shall, whenever practicable, have the client wash his or her hands or wear latex or similar gloves prior to producing a specimen.
8. Whenever practicable, the staff shall directly observe the client while he or she produces the specimen. The staff observing the production of the specimen shall

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be of the same gender as the client. If the client is transgender, as indicated by paperwork completed during the intake process or self-reports during the period of supervision, the transgender client shall not be directly observed while producing the specimen.

9. If the client will not be directly observed while producing the specimen (because the staff is not of the same gender as the client, the client is transgender, or for any other reason), the client shall be pat searched by a probation officer (not a probation officer assistant) immediately prior to producing the specimen to ensure that the client is not carrying a false specimen or material which may be used to contaminate the specimen. A strip search is not allowed under any circumstances.
10. If a client with a condition of submitting to testing refuses to produce a specimen, the staff shall inform the client that this shall be considered a violation of supervision conditions.
11. If a client with a condition of submitting to testing fails to produce an adequate urine specimen immediately, the staff shall inform the client that failure to produce a specimen within two (2) hours shall be considered the equivalent of a refusal to submit to testing and shall be considered a violation of supervision conditions.
12. If a client fails to produce an adequate specimen immediately, he or she shall be allowed two (2) hours to produce one. The client shall be allowed eight (8) ounces of water at the start of the two (2) hour window to help produce an adequate specimen. If a client fails to produce a urine specimen in an amount conforming to the specifications of the manufacturer of the drug testing system within two (2) hours of having been provided the water and if the client has a condition of submitting to testing, this failure shall be considered the equivalent of a refusal to submit to testing and shall be considered a violation of supervision conditions.
13. If a client with a condition of submitting to testing claims that failure to produce a specimen or an adequate specimen is due to a physical or mental condition, the staff shall require the client to produce documentation of the condition from a medical or mental health professional within a reasonable amount of time.
14. Upon receipt of documentation of the physical or mental condition, a probation officer (not a probation officer assistant) shall determine what reasonable measures, if any, will be taken to permit the collection of a urine specimen, or whether testing shall be done through some means other than urine collection. If necessary, the client shall be required to sign a release of information form so that the staff may receive verification of the physical or mental condition and/or consult with the medical or mental health professional as to reasonable measures.
15. If a client with a condition of submitting to testing does not cooperate with any instructions in relation to the testing (e.g., washing hands, removal of outer clothing, submitting to a pat search, etc.), or refuses to provide required

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documentation or sign a required release of information form, the client shall be informed that this shall be considered the equivalent of a refusal to submit to testing and shall be considered a violation of supervision conditions.

16. Once the staff collecting the urine specimen is confident that the urine specimen is adequate and uncontaminated, the staff shall direct the client where to place the specimen and the staff shall ensure the test is activated.
17. Once the test is activated, the client shall not touch the specimen.
18. The staff shall follow the testing process specified by the manufacturer of the testing system.
19. The specimen shall be in view of the client during the entire field collection and testing process, and the field testing process shall take place in the presence of the client, unless safety or other behavioral concerns, which shall be described in an entry in CORIS, dictate otherwise.
20. The staff shall read the results of the test per the instructions of the manufacturer of the testing system.
21. The staff shall as soon as possible thereafter document the results in CORIS and, if applicable, on the Voluntary Admission Form (Attachment A).
22. If the results show a positive test for a drug or alcohol that it is illegal for the client to use at all or that it is illegal for the client to use under the circumstances (e.g., while driving) or the results show that the specimen has been tampered with, the staff shall notify the client of the result, show the client the result if asked, and give the client the opportunity to respond.
23. If a client claims that the reason his or her result for a drug or alcohol test is positive is due to the retention life of an illegal drug or alcohol that he or she has previously tested positive for, the staff shall review the previous drug or alcohol test result and, if necessary, shall consult with the confirmation testing laboratory or other reliable source to confirm the detection period for the drug or alcohol.
24. The client shall not be allowed to touch the results or otherwise disrupt the drug or alcohol testing process.
25. If the client admits that a test result indicating illegal use of a drug or alcohol or tampering is accurate or otherwise admits to illegal drug or alcohol use or tampering, confirmation testing is not required, and sanctions may be imposed. In all cases, the admission shall be recorded in CORIS.
26. If criminal proceedings are likely to be brought; or if revocation of probation, supervised release for sex offenders, or parole is likely to be sought; or if return of a supervised community confinement prisoner to a Department facility is likely to be requested, the client shall be asked to sign the Voluntary Admission Form.

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27. If the client refuses to sign the form under either of the above circumstances, and there is not enough other evidence to substantiate a crime or other violation of a supervision condition, such as that the client is found to be in possession of illegal drugs or drug paraphernalia, the staff shall follow the appropriate steps to send the specimen to an independent laboratory for confirmation testing.
28. Any specimen not sent for confirmation testing shall be disposed of after field testing is complete.

Procedure D: Confirmation Testing of Urine Test Results and Other Laboratory Testing

1. There shall be confirmation testing of all field urine test results showing illegal drug or alcohol use or tampering if a prosecuting attorney will likely be bringing criminal proceedings; the client does not sign the Voluntary Admission form; and there is not enough other evidence to substantiate a crime.
2. There shall be confirmation testing of all field urine test results showing illegal drug or alcohol use or tampering if a probation officer (not a probation officer assistant) will likely be filing a motion to revoke probation or supervised release for sex offenders; the client does not sign the Voluntary Admission form; and there is not enough other evidence to substantiate a violation of conditions.
3. There shall be confirmation testing of all field urine test results showing illegal drug or alcohol use or tampering if a probation officer (not a probation officer assistant) will likely be requesting revocation of parole; the client does not sign the Voluntary Admission form; and there is not enough other evidence to substantiate a violation of conditions.
4. There shall be confirmation testing of all field urine test results showing illegal drug or alcohol use or tampering if a probation officer (not a probation officer assistant) will likely be requesting the return of a prisoner on supervised community confinement to a Department facility; the client does not sign the Voluntary Admission form; and there is not enough other evidence to substantiate a violation of conditions.
5. Unless authorized by Regional Correctional Administrator, or designee, as set out below, there shall be no other confirmation testing of urine test results and no other laboratory testing of urine specimens.
6. The Regional Correctional Administrator, or designee, may authorize confirmation testing of any other field urine test in his or her discretion. This may include, but is not limited to, when there is suspicion that a negative result is false, a specimen is contaminated, or a specimen has been tampered with.
7. In addition, the Regional Correctional Administrator, or designee, may authorize laboratory testing of any urine specimen in his or her discretion if the drug being tested for (e.g., bath salts) is not detectable through a field drug testing system approved by the Commissioner, or designee.

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8. If there is to be confirmation testing, the specimen container shall be sealed, in the presence of the client, with evidence tape or similar item as provided by the manufacturer of the testing system. All necessary chain of custody practices shall be followed, and the specimen shall be stored, handled, and transported in accordance with the instructions of the testing laboratory which will be conducting the confirmation testing.
9. The confirmation testing shall be conducted only by a certified testing facility approved by the Commissioner. The testing laboratory may handle and test specimens for alcohol or drugs in accordance with its own policies and procedures.

Procedure E: Saliva Collection and Testing

1. If, for any reason, the adult community corrections staff responsible for collecting a specimen determines that collection of a urine specimen is not appropriate, adequate, or convenient, the staff may collect a saliva specimen.
2. These reasons include, but are not limited to, inability to observe the production of a urine specimen, whether due to the requirements of this policy or otherwise; documented physical or mental condition resulting in the client's failure to produce an adequate urine specimen; staff decision to require saliva testing pending receipt of documentation of such a condition; suspicion that a urine specimen has been or would be tampered with; lack of convenient access to urine testing; etc.
3. If the staff decides to collect a saliva specimen, the staff shall follow all of the procedures for urine specimen collection and testing that are applicable to saliva specimen collection and testing, including, but not limited to, positively identifying the client; determining that testing may be required under a condition of the client's supervision or has been agreed to by the client; asking the client if he or she is taking any legal drugs and verifying the same; following the testing process specified by the manufacturer of the testing system; documenting the results and, if applicable, any admission as to illegal drug or alcohol use; requesting the client sign the Voluntary Admission Form, if applicable; and confirmation testing, if required due to the likelihood of criminal proceedings, revocation proceedings, or return of a prisoner to a Department facility.

Procedure F: Breath Collection and Testing for Alcohol

1. If, for any reason, the adult community corrections staff responsible for collecting a specimen determines that collection of a urine or saliva specimen to test for alcohol is not appropriate, adequate, or convenient, the staff may collect a breath specimen. If possible, collection of a breath specimen shall be done by using a device that shows the amount of alcohol in a client's system (e.g., a device the client blows into) rather than a device that just detects the presence of alcohol in a client's system (e.g., an alcohol wand).

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2. These reasons include, but are not limited to, inability to observe the production of a urine specimen, whether due to the requirements of this policy or otherwise; documented physical or mental condition resulting in the client's failure to produce an adequate urine specimen; staff decision to require breath testing pending receipt of documentation of such a condition; suspicion that a urine or saliva specimen has been or would be tampered with; lack of convenient access to urine or saliva testing; etc.
3. If the staff decides to collect a breath specimen, the staff shall follow all of the procedures for urine specimen collection and testing that are applicable to breath specimen collection and testing, including, but not limited to, positively identifying the client; determining that testing may be required under a condition of the client's supervision or has been agreed to by the client; asking the client if he or she is taking any legal drugs and verifying the same; following the testing process specified by the manufacturer of the testing system; documenting the results and, if applicable, any admission as to illegal drug or alcohol use; and requesting the client sign the Voluntary Admission Form, if applicable.
4. There shall be no confirmation testing of alcohol breath test results.
5. Notwithstanding the above, if a prosecuting attorney will likely be bringing criminal proceedings; the client does not sign the Voluntary Admission form; and there is not enough other evidence to substantiate a crime, other appropriate steps shall be taken, including, but not limited to, following up with a urine test or saliva test and confirmation testing of a positive result from one of these, asking another criminal justice agency to conduct its own testing, etc.
6. Also, if a probation officer (not a probation officer assistant) will likely be filing a motion to revoke probation or supervised release for sex offenders; the client does not sign the Voluntary Admission form; and there is not enough other evidence to substantiate a violation of conditions, other appropriate steps shall be taken, including, but not limited to, following up with a urine test or saliva test and confirmation testing of a positive result from one of these, asking another criminal justice agency to conduct its own testing, etc..
7. Also, if a probation officer (not a probation officer assistant) will likely be requesting revocation of parole; the client does not sign the Voluntary Admission form; and there is not enough other evidence to substantiate a violation of conditions, other appropriate steps shall be taken, including, but not limited to, following up with a urine test or saliva test and confirmation testing of a positive result from one of these, asking another criminal justice agency to conduct its own testing, etc..
8. However, if a probation officer (not a probation officer assistant) will likely be requesting the return of a prisoner on supervised community confinement to a Department facility, no other steps need be taken even if the prisoner does not sign the Voluntary Admission form and there is no other evidence of a violation of conditions.

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Procedure G: Documentation of Test Results

1. For each drug or alcohol test, regardless of the result, the probation officer or probation officer assistant shall enter into CORIS the following, as applicable:
 - a. client name and MDOC number;
 - b. whether testing is required as a condition of supervision or was requested as a matter of voluntary agreement;
 - c. reason(s) for the test, to include the specific circumstances considered;
 - d. any refusal of the client to provide a specimen;
 - e. name of adult community corrections staff collecting the specimen and conducting the test;
 - f. date and time the test was conducted;
 - g. type of test (urine, saliva, or breath and, if the latter, the type of device used);
 - h. any problems with collecting the specimen, the testing process, or testing system;
 - i. specific test results (the name of each substance tested for and the result, whether positive or negative, for each substance);
 - j. whether the client signed a Voluntary Admission Form;
 - k. any other evidence of a drug or alcohol related violation of conditions;
 - l. whether the specimen was sent out for confirmation testing; and
 - m. any other relevant information.
2. If the specimen was sent out for confirmation or other laboratory testing, the specific test results from the confirmation or other laboratory testing (the name of each substance tested for and the result, whether positive or negative, for each substance) shall be entered into CORIS as soon as the results are known.

Procedure H: Sanctions

1. Graduated sanctions shall be imposed, in accordance with Department Policy 9.16 (ACC), Attachment A, Graduated Sanctions Grid, on a client who:
 - a. refuses to submit to testing, if the client has a condition of submitting to testing;
 - b. tampers with a test, if the client has a condition of submitting to testing;
 - c. produces a specimen that tests positive and is indicative of illegal use of a drug or alcohol, after confirmation testing or other appropriate testing if required.
2. Any sanction that involves a modification of conditions of or revocation of probation or supervised release for sex offenders may not be imposed except as approved by the court.

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3. Any sanction that involves a modification of conditions of or revocation of parole may not be imposed except as approved by the parole board.
4. Any sanction that involves returning a prisoner on supervised community confinement to a Department facility shall be implemented in accordance with Department Policy 27.2 (AF), Supervised Community Confinement, and, if the prisoner is to be returned, a disciplinary report shall be completed in accordance with Department Policy 20.1 (AF), Prisoner Discipline.
5. If a sanction has been imposed as a result of a positive test, a later positive test for that drug or alcohol shall not be used to impose any further sanction unless the detection period for the drug or alcohol passed prior to the later test.

Procedure I: Training

1. All staff involved in drug and/or alcohol collection and/or testing shall:
 - a. receive training on this policy; and
 - b. complete all relevant manufacturer recommended training.
2. The Regional Correctional Administrator, or designee, shall be responsible for ensuring the staff are trained.
3. Documentation of the training shall be entered in the staff's training records.

VIII. PROFESSIONAL STANDARDS:

None

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