

Chapter: Conditions of Employment	<b>Effective Date: 9/1/13</b>
<b>Title: Drug-Free Workplace</b>	Page: 1 of 8
ACA: 4-JCF-6D-03	Replaces: PRS.02.17, 12/1/11
Statute(s): <a href="#">Drug-Free Workplace Requirements for Federal Grant Recipients, 41 U.S.C. § 8103</a>	PRS.02.18, 12/1/11

(a) **Policy.**

The Texas Juvenile Justice Department (TJJD) makes a good-faith effort to maintain a drug-free workplace. The maintenance of a drug-free workplace is essential for:

- reducing the potential for delivery of contraband to youth in the agency's custody;
- creating a safe residential environment for youth and a safe work environment for staff; and
- preventing substance abuse from impairing the operation of youth residential facilities, the delivery of juvenile justice services and programs, and the performance of related administrative processes.

To achieve a drug-free workplace, TJJD:

- implements an alcohol/drug testing program in accordance with the provisions of this policy; and
- prohibits the unlawful manufacture, distribution, dispensation, solicitation for, possession, or use of alcoholic beverages, inhalants, controlled substances, or narcotics paraphernalia on TJJD premises or while conducting TJJD business off agency premises. This prohibition includes prescription drugs unless taken as prescribed by the employee's physician.

Compliance with this policy is a condition for employment. Non-compliance will subject an employee to disciplinary action, including termination of employment.

(b) **Applicability.**

- (1) This policy applies to all TJJD employees and applicants for employment, including employees in positions funded by federal grants and employees subject to the alcohol and drug testing requirements for commercial drivers in [PRS.43.45](#).
- (2) The provisions in this policy relating to reasonable suspicion testing apply to volunteers while they operate or prepare to operate a motor vehicle to transport TJJD youth. Transporting youth presents a risk of serious injury to the youth beyond that of other volunteer activities and presents a need to protect the youth from the hazards of a driver impaired by drug or alcohol use.
- (3) The prohibition regarding alcoholic beverages on TJJD premises does not include state-owned staff residences.
- (4) The prohibition regarding the possession of alcoholic beverages while conducting TJJD business excludes the lawful possession of alcoholic beverages in an employee's personal vehicle, but only if the vehicle is not parked at a facility operated by or under contract with TJJD or a county juvenile probation department.

(c) **Resources.**

The following resources contain additional information regarding the agency's efforts to maintain a drug-free workplace.

- (1) [TJJD Employee Handbook](#). The handbook is an appendix to the Personnel Policy and Procedure Manual. The handbook answers questions regarding the agency's efforts to maintain a drug-free

workplace and advises employees of the availability of the agency's employee assistance program, through which an employee may access drug counseling or rehabilitation programs. The handbook also establishes specific rules of conduct for employees relating to the drug-free work environment. Violations of these rules will subject an employee to disciplinary action in accordance with [PRS.35.01](#).

- (2) [PRS.02.08](#) (Criminal History Standards, Background Checks, and Self-Reporting Requirements). This policy:

- establishes the criminal history standards that applicants and employees must meet;
- requires an employee to notify the agency within two workdays after he/she is arrested, charged, indicted, or convicted of any criminal offense, including drug or alcohol-related offenses; and
- establishes the actions management will take in response to these notifications, including specific requirements when employees in positions funded by federal grants are convicted of drug crimes.

- (3) [PRS.43.45](#) (Alcohol/Drug Testing Program for Commercial Drivers). This policy establishes specific alcohol/drug testing procedures and limits on alcohol consumption for employees who drive commercial vehicles.

(d) **Definitions.**

See the [PRS Glossary](#) for definitions of certain terms used in this policy.

(e) **Program Manager and Designated Employer Representatives.**

- (1) The human resources director or designee oversees the TJJD alcohol and drug testing program and is the primary designated employer representative (DER). The DER is authorized to:
- (A) take immediate action(s) to have employees removed from duty;
  - (B) make required decisions in the alcohol/drug testing and evaluation processes;
  - (C) receive test results and other communications, consistent with the requirements of this policy; and
  - (D) answer questions about the agency's alcohol and drug testing program.
- (2) To ensure adequate coverage on all shifts and at all locations, local human resources administrators (HRAs) are designated as secondary DERs and have the same authority as the primary DER.

(f) **Drug-Free Awareness Program.**

The agency's drug-free awareness program is part of the agency's new employee orientation (NEO) session. During NEO, copies of the TJJD Employee Handbook and this policy are provided and discussed with newly hired employees. Providing this information ensures that employees are informed about:

- (1) the dangers of drug abuse in the workplace;
- (2) the agency's policy of maintaining a drug-free workplace;
- (3) the availability of drug counseling and rehabilitation through the agency's employee assistance program; and
- (4) the employee rules of conduct relating to drug abuse and potential disciplinary action for violations.

(g) **Availability of Substance Abuse Counseling and Treatment.**

TJJD encourages employees who need professional help due to substance abuse to voluntarily notify their supervisors of the need for help before their job performance is adversely affected.

- (1) A supervisor must notify the DER as soon as practicable upon receipt of notification from an employee needing substance abuse counseling or treatment.
- (2) TJJD will assist the employee with contacting the employee assistance program (EAP) for the purpose of evaluation and identification of appropriate education, counseling, treatment, or aftercare by a substance abuse professional.
- (3) TJJD does not discipline employees solely on the basis of admitting a need for professional help or using leave to receive counseling or treatment. However, TJJD may still subject the employee to:
  - (A) a random drug test the employee had already been made aware of prior to notifying the supervisor of the need for professional help;
  - (B) a reasonable suspicion alcohol and/or drug test, but only if one of the incidents described in this policy or in [PRS.43.45](#) justifying such a test has occurred;
  - (C) random drug testing after completion of any program recommended by the EAP; and/or
  - (D) disciplinary action in accordance with [PRS.35.01](#) if the employee:
    - (i) is charged with a rule violation;
    - (ii) rejects treatment; or
    - (iii) leaves a substance abuse treatment program prior to being properly discharged from the program.

(h) **General Provisions for Alcohol and Drug Testing Program.**

(1) **Testing Standards and Procedures.**

TJJD uses a contract vendor to conduct the alcohol and drug tests required by this policy. The vendor is responsible for complying with the collection and analysis procedures and standards for alcohol and controlled substance testing set forth in 49 CFR, [Parts 40](#) and [382](#).

(2) **Time Reporting for Alcohol and Drug Testing.**

- (A) An employee reports time required for travel to and from the collection site and the testing duration as time worked. This includes employees required to transport another employee to a testing site for a reasonable suspicion alcohol or drug test.
- (B) Overtime accrual by an employee required to report for alcohol/drug testing before or after a regularly scheduled shift is governed by [PRS.27.23](#).

(3) **Confidentiality of Test Results.**

Alcohol and drug test results are confidential and may not be released outside the agency without the employee's specific, written consent, except in connection with legal or administrative proceedings relating to the information (e.g., lawsuit or unemployment compensation hearing). The DER maintains a copy of all test results, and the local HRA places all information relating to alcohol and drug test results in the employee's confidential personnel file.

(i) **Pre-Employment Drug Test.**

(1) **Testing Requirements.**

(A) **Selected External Applicants.**

[External applicants](#) selected for the following positions must pass a pre-employment drug test:

- (i) all [hazardous duty positions](#); and
- (ii) all positions located at a residential facility, regardless of whether the position is a hazardous duty position.

(B) **Current Employees.**

A current employee is required to pass pre-employment drug testing only when the employee is moving from a position that does not require pre-employment drug testing into a position described in (A) above. This means that pre-employment drug testing is not required for:

- (i) a current employee who is moving from a position described in (A) above;
- (ii) an employee returning to work from an unpaid leave status;
- (iii) an employee whose termination is reversed through independent dismissal mediation; or
- (iv) an employee whose employment is reinstated through a settlement agreement or similar action.

(2) **Scheduling.**

The local human resources administrator (HRA) should schedule the pre-employment drug test to occur within 48 hours after the conditional offer is made.

(j) **Random Drug Testing.**

(1) **General Provisions.**

- (A) An employee in a non-hazardous duty position located at a residential facility or in a hazardous duty position is subject to random drug testing.
- (B) TJJD requires its contracted vendor to use a random selection process that results in each employee subject to random testing having an equal chance to be selected.
- (C) Recipients of the random drug testing list (RDTL) include the primary DER and applicable secondary DERs and [chief local administrators](#) (CLAs). Recipients of the RDTL are responsible for maintaining the confidentiality of the list.
- (D) Random drug testing must occur within seven days after receipt of the RDTL.

(2) **Employee Notification.**

- (A) Employees selected for random drug testing are notified of the selection on the day of the test and not beforehand.
- (B) A CLA may delegate responsibility for notifying the employees to appropriate supervisory staff reporting to the CLA and in the employees' chain of supervision, such as the assistant superintendent, assistant principal, or a local Human Resources representative.
- (C) An employee who willfully discloses a random drug testing date to an employee selected for random testing prior to the date of the test will be subject to disciplinary action.

**(3) Employee Compliance.**

- (A) An employee whose shift allows access to the collection site during normal business hours must:
  - (i) go to the testing site as instructed upon notification; and
  - (ii) return to work upon completion of the test.
- (B) An employee whose shift does not allow access to the testing site during normal business hours must report for testing as instructed by the CLA or designee.
- (C) The only acceptable reasons for employee non-compliance with random drug testing are:
  - (i) an emergency that is verified with documentation (e.g., email from supervisor relating to work-related emergency); or
  - (ii) leave approved in writing prior to the employee's notification.

**(4) Travel to Collection Site.**

- (A) The CLA or designee is responsible for attempting to ensure that a state vehicle is available for employees to travel to the collection site. If more than one employee from the same location is being tested, the employees should travel as a group when possible to do so.
- (B) An employee may use his/her personal vehicle to travel to the collection site only when a state vehicle is not available. The employee will receive reimbursement in accordance with the standard rules governing mileage.

**(k) Reasonable Suspicion Alcohol and Drug Testing.**

An employee who is reasonably suspected of using alcohol or drugs in the workplace or conducting TJJJ business while under the influence of alcohol or drugs is required to submit to a reasonable suspicion alcohol or drug test. Reasonable suspicion testing must correspond to the specific nature of the suspicion. For example, reasonable suspicion of alcohol misuse does not justify drug testing. However, in some instances, an employee's appearance, behavior, speech, or body odor may result in reasonable suspicion of both alcohol and drugs, in which case both types of testing may be required.

**(1) Required Conditions for Reasonable Suspicion Testing.**

Reasonable suspicion testing must not be based on hunches, guesses, complaints from other persons, or phone tips. Reasonable suspicion testing may be conducted only when:

- (A) a supervisor who has completed the agency's required reasonable suspicion training:
  - (i) observes an employee's specific, contemporaneous (it's happening now), and articulable (it can be described) appearance, behavior, speech, or body odors usually associated with alcohol or drug use, which may include indications of the chronic or withdrawal effects of controlled substances;
  - (ii) directly observes an employee using alcohol or drugs during the performance of duties; or
  - (iii) has reason to believe that alcohol or drugs may be a contributing factor in a work-related vehicular or industrial accident (e.g., flagrant violation of safety regulations or procedures, refusal of supervisor's instructions ); and
- (B) the DER approves the testing in advance.

**(2) Employee's Responsibility to Remain Readily Available for Testing.**

- (A) An employee involved in a work-related accident must remain readily available for reasonable suspicion testing for a maximum period of 32 hours after the accident, which means the employee must remain available by land line or cell phone and be prepared to arrive at the collection site within two hours after being notified to do so.
- (B) Failure to remain readily available or to arrive at the collection site as instructed for testing is considered a refusal to test. These requirements 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.

**(3) Timeframes for Conducting Reasonable Suspicion Testing.**

- (A) Alcohol testing should be administered as soon as practicable following the observable incident. The test must be administered no later than eight hours after the observable incident.
- (B) Drug testing should be administered as soon as practicable following the observable incident. The test must be administered no later than 32 hours after the observable incident.

**(4) Supervisor's Responsibilities for Reasonable Suspicion Testing.**

- (A) When a trained supervisor concludes there is reasonable suspicion of alcohol and/or drug use, the supervisor must immediately:
  - (i) confront the employee and remove the employee from duties;
  - (ii) keep the employee under direct observation, except in instances of off-site vehicular accidents when direct observation is not possible;
  - (iii) obtain a Reasonable Suspicion Alcohol/Drug Testing Decision Form, [HR-550](#);
  - (iv) immediately contact the DER by phone to discuss the observations upon which the conclusion is based and obtain the DER's verbal or written approval for reasonable suspicion testing; and
  - (v) document the observations on the HR-550.
- (B) As soon as possible, the observing supervisor must submit the original HR-550 form to the DER with a copy to the local HRA to be included in the employee's confidential personnel file (even if testing is not performed).
- (C) If the DER approves the request for reasonable suspicion testing, the observing supervisor or designee and another employee of the same gender as the employee being tested must take the employee to the collection site. The employee to be tested may not drive to or from the collection site.
- (D) If an alcohol test and/or drug test is not administered with the time limits, the observing supervisor must notify the DER in writing of the reasons why a test was not administered.
- (E) If an employee has a positive alcohol test result or has been administered a reasonable suspicion drug test, the observing supervisor or the employee's supervisor must remove the employee from duty and place the employee in a leave status once the employee has returned to the worksite. The employee is required to use the employee's available leave in accordance with TJJJ leave policies or use unpaid leave if no paid leave is available for use.

- (F) The observing supervisor or designee must:
- (i) make every effort to ensure the employee does not drive home;
  - (ii) attempt to contact someone outside of TJJD, such as a relative or friend of the employee, to provide the employee with a ride home;
  - (iii) offer to take the employee home after all possibilities of contacting relatives or friends have been exhausted;
  - (iv) immediately notify local law enforcement of the situation if the employee refuses to be driven home; and
  - (v) document any refusal and forward the documentation to the DER.

(5) **Supervisory Training Program.**

- (A) Designated supervisors must complete training on alcohol misuse and controlled substances use before making determinations of reasonable suspicion of drug or alcohol impairment. Completion of this training is required every two years thereafter.
- (B) The primary DER determines the appropriate training for supervisors.

(I) **Failure to Have a Negative Test Result.**

Refusing to test, tampering with a specimen, and having a verified, confirmed positive alcohol or drug test result are considered failure to have a negative test result.

(1) **Refusal to Test.**

A refusal to test means that an applicant or employee:

- (A) fails to arrive at the collection site on time unless a reason for the delay exists and is supported by verifiable documentation (e.g., health care provider's statement, jury summons, or death notice for family member);
- (B) fails to remain at the test facility until the testing process is complete;
- (C) fails to provide a urine specimen;
- (D) fails to cooperate with any part of the collection process (e.g., refuses to empty pockets when directed or behaves in a confrontational way that disrupts the collection process) or fails to follow instructions provided by the DER, collector, observer, or medical review officer (MRO);
- (E) possesses or wears a prosthetic or other device that could be used to interfere with the collection process;
- (F) admits to the collector or MRO of having adulterated or substituted the urine specimen; or
- (G) is reported by the MRO as having a verified adulterated or substituted test result.

(2) **Specimen Tampering.**

The DER will be notified by the collector when the collector determines there is evidence of specimen tampering (e.g., specimen temperature is outside the acceptable range, specimen has an unusual color, or there is a presence of foreign objects or materials such as the smell of bleach).

(m) **Impact on Employment for Failure to Have a Negative Test Result.**

- (1) If an external applicant accepts a conditional offer of employment and fails to have a negative drug test result, the applicant must not be considered for any TJJJ position for one year following the test date.
  - (2) An employee, including a selected [internal applicant](#) required to pass a pre-employment drug test, will be subject to [disciplinary termination](#) for failure to have a negative alcohol or drug test result.
- 
-