

Australian Capital Territory

Corrections Management (Drug and Alcohol Testing in Correctional Centres) Policy 2022

Notifiable instrument NI2022–116

made under the

Corrections Management Act 2007, s14 (Corrections policies and operating procedures)

1 Name of instrument

This instrument is the *Corrections Management (Drug and Alcohol Testing in Correctional Centres) Policy 2022*.

2 Commencement

This instrument commences on the day after its notification day.

3 Policy

I make this policy to facilitate the effective and efficient management of correctional services.

4 Revocation

This policy revokes the previously notified *Corrections Management (Drug Testing (No 2)) Policy 2015* [NI2015-684].

Ray Johnson APM
Commissioner
ACT Corrective Services
07 March 2022

DRUG AND ALCOHOL TESTING IN CORRECTIONAL CENTRES

ACT CORRECTIVE SERVICES



ACT
Government

Justice and Community Safety

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1 PURPOSE

ACT Corrective Services (ACTCS) is committed to reducing reoffending by minimising the harm associated with drug and alcohol misuse in correctional centres.

Drug and alcohol testing allows ACTCS to obtain accurate and objective information on the misuse of drugs and alcohol within correctional centres, to identify detainees requiring support to manage substance misuse, and to inform risk assessment and security classification of detainees.

2 SCOPE

This policy applies to all correctional centres in the ACT.

Where required, the Deputy Commissioner Custodial Operations may establish operational procedures under this policy.

3 DEFINITIONS

Drug A controlled drug under section 600 of the *Criminal Code 2002 (ACT)* and section 132 of the *Corrections Management Act 2007 (ACT)* that has not been lawfully supplied and/or not taken as prescribed or directed by a health practitioner.

Positive result When a detainee is directed under section 134 of the *Corrections Management Act 2007 (ACT)* to provide a test sample and:

- a. the detainee fails or refuses to provide a test sample in accordance with a direction
- b. the detainee provides an invalid test sample and:
 - i. the detainee does not have a medical condition that prevents the detainee from providing a valid test sample, or
 - ii. the detainee has not taken prescribed medication that prevents the detainee from providing a valid test sample.
- c. for a detainee, the detainee provides a test sample that shows the detainee has taken alcohol or a drug and:
 - i. the drug is not a prescribed medication for the detainee, or
 - ii. for a prescribed medication, the drug exceeds the prescribed quantity, or

- iii. the detainee has not received communion according to the Detainee Religion Policy within three (3) hours of a positive result for alcohol.

Test sample A sample of breath, saliva, urine, hair, blood, or anything else prescribed by regulation, as defined in section 132 of the Corrections Management Act 2007 (ACT).

Valid test sample A test sample obtained in accordance with the directions specified by the manufacturer of the test, which has not been tampered with, or changed by a person (or attempted to be tampered with or changed) as outlined under s 133(5) of the Corrections Management Act 2007 (ACT). A positive sample must be confirmed by a third-party pathology service before Disciplinary Action takes place.

4 PRINCIPLES

- 4.1 ACTCS follows a model of harm minimisation in its approach to managing the misuse of drugs and alcohol in ACT correctional centres.
- 4.2 Drug and alcohol misuse is primarily a health issue and should be dealt with through appropriate professional health approaches, which are equivalent to services available in the general community.
- 4.3 Testing must not be directed on a punitive, harassing, or coercive basis.
- 4.4 Testing is not considered to be medical treatment.
- 4.5 Detainees in a correctional centre are considered fit to take a drug and / or alcohol test unless they have a reasonable excuse.
- 4.6 A reasonable excuse for a detainee failing to provide a test sample in accordance with a direction includes the detainee having:
 - a. a medical condition that prevents the detainee from providing a test sample as directed, as evidenced by a medical practitioner
 - b. a valid medical reason for not providing the test sample (such as taking another prescription medication that may influence the results of the test) which is confirmed by the detainee's health provider with the consent of the detainee.
- 4.7 The General Manager of a correctional centre must ensure drug and alcohol testing complies with part 9.6 of the Corrections Management Act 2007 (ACT).

- 4.8 The General Manager must establish a drug and alcohol testing strategy that includes:
- a. mandatory testing on admission
 - b. randomised testing
 - c. program testing
 - d. targeted testing where a correctional officer suspects on reasonable grounds that the detainee may be misusing drugs
 - e. assessment and compliance testing.
- 4.9 Detainees are also required to undertake drug and alcohol testing as directed by the Court or the Sentence Administration Board.
- 4.10 The General Manager must ensure that:
- a. drug and alcohol testing is conducted by officers with the appropriate training
 - b. drug and alcohol testing in a correctional centre is proportionate to the objectives of minimising the misuse of drugs in custody
 - c. detainees who return a positive result are managed in accordance with section 6 of this policy
 - d. detainees who return a positive result, or who voluntarily seek treatment, have access to assistance and supports to enable them to address their substance misuse.
- 4.11 The General Manager must authorise locations for drug and alcohol testing and related observations.
- 4.12 The Senior Director Operations must ensure that a detainee receives the results of any test under this policy as soon as practicable after delivery, in accordance with section 134(5) of the *Corrections Management Act 2007 (ACT)*.
- 4.13 All metrics and reports relating to the testing strategy under this policy must be de-identified, including showing only a detainee's PID and not their name.

5 GENERAL REQUIREMENTS

Methods of drug and alcohol testing

- 5.1 Urinalysis is the primary method of drug and alcohol testing in ACT correctional centres.
- 5.2 Mobile breath analysers may be used to detect the consumption of alcohol by detainees.

- 5.3 Oral screening may be used to provide an indicator of the presence of drugs. A positive indication must be confirmed by a subsequent urinalysis test prior to any related disciplinary actions under the *Discipline Policy*.
- 5.4 Blood test samples will be used as a last resort and must only be taken by a nurse or medical practitioner in accordance with s 134(3)(b) of the *Corrections Management Act 2007 (ACT)*.

Ensuring integrity of the test

- 5.5 To minimise tampering of drug and alcohol tests, the Senior Director Operations must ensure that no warning is provided to detainees until they are required to undertake the test, and that testing is not conducted at regular times as far as practicable.
- 5.6 Detainees must be informed that it is a disciplinary breach to refuse a test or to tamper with or change a drug and alcohol test sample (*D12.F1: Drug and alcohol testing authorisation form*).
- 5.7 The Senior Director Operations must establish arrangements to ensure that chain of custody is maintained for drug and alcohol tests under this policy (*D12.F2: Chain of Custody form*).

Gender-based consideration

- 5.8 The privacy and dignity of the detainees must be considered and maintained as far as practicable when administering and managing test samples.
- 5.9 Correctional Officers administering a urinalysis test should be of the same gender as the detainee to ensure privacy and dignity.
- 5.10 Additional considerations for drug testing transgender detainees and detainees born with variations in sex characteristics are outlined in *Management of Transgender Detainees and Detainees Born with Variations in Sex Characteristics Policy*.

Religious and cultural considerations

- 5.11 Detainees must not be excluded from providing a test sample on the basis of religious or cultural beliefs or practice, but where possible reasonable adjustments may be made to accommodate the religious or cultural beliefs of practices of detainees.
- 5.12 Muslim detainees required to undertake a drug and alcohol test during the period of Ramadan will be tested in the morning or after the evening meal as far as practicable, so they are best able to provide a valid test sample.

6 MANAGEMENT OF DETAINEES AFTER A POSITIVE RESULT

- 6.1 The General Manager must establish arrangements to ensure that reports of any positive results under this policy are provided to the detainee's Sentence Management Officer and the detainee's health provider.
- 6.2 Detainees who return a positive result to any drug or alcohol test may have a disciplinary breach recorded and processed in accordance with the Detainee Discipline Policy. The disciplinary process must include the following measures:
 - a. confirmation by the Presiding Officer that the positive result is not due to prescribed medication – by contacting the detainee's health provider with the detainee's consent
 - b. an opportunity for the detainee to explain the positive result.
- 6.3 Concurrent to any disciplinary process, the detainee must be referred to the Alcohol and Other Drug (AOD) Treatment team for evaluation, and access to supports/treatments.
- 6.4 Detainees who implicitly admit to using drugs when voluntarily seeking interventions may be exempted from disciplinary processes.
- 6.5 Detainees who return a positive result to a drug and alcohol test on admission will not have a disciplinary breach recorded.

7 ALCOHOL BREATH TESTING

- 7.1 The General Manager may authorise mobile analysers for use to detect for the consumption of alcohol by detainees.
- 7.2 The General Manager may establish arrangements for the use of mobile analysers in a correctional centre.
- 7.3 A detainee who returns a positive result will be managed in accordance with section 6 of this policy.

8 URINALYSIS TESTING

- 8.1 Prior to a detainee administering a urinalysis test, officers must ensure that:
 - a. the identity of the detainee is correct
 - b. the D12.F1: Drug and alcohol testing authorisation form has been completed and the detainee has understood the contents
 - c. the equipment and location for testing is clean and free of potential contaminants

- d. the testing can be conducted in privacy and away from the view of other detainees or ACTCS officers.
- 8.2 Detainees must be searched according to the Searching Policy prior to providing a test sample. The type of search conducted must be proportionate to the risk of the detainee tampering with the test.
- 8.3 All test samples must be conducted in the presence of two (2) correctional officers of the same gender as the detainee to ensure safety and security.
- 8.4 Conduct of testing must respect the privacy and dignity of the detainee as far as possible.
- 8.5 Correctional officers must not directly observe genitalia when a detainee is providing a test sample, but may maintain indirect observation of a detainee to ensure a sample suitable is obtained and to detect any tampering.
- 8.6 Immediately after a test sample has been provided, officers must secure the sample in the presence of the detainee.
- 8.7 Where a detainee does not provide a test sample immediately, the detainee will be secured in the testing location, provided with no more than 800mL of water, and required to produce a test sample within two (2) hours.
- 8.8 Where the detainee does not provide a valid test sample after two (2) hours without a reasonable excuse, the test sample will be recorded as a positive result in accordance with section 133(1)(b) of the Corrections Management Act 2007 (ACT).
- 8.9 Staff must ensure that the D12.F1: Drug and alcohol testing authorisation form and D12.F2: Chain of Custody form are completed, and copies stored on the detainee's electronic record.

9 TESTING ON ADMISSION

- 9.1 All detainees are required to undertake drug and alcohol testing within 72 hours of admission to a correctional centre in accordance with section 69 of the Corrections Management Act 2007 (ACT).
- 9.2 The results of testing will be used to inform:
 - a. suitable programs and support options for the detainee
 - b. healthcare requirements, and
 - c. the detainee's security classification in accordance with the Detainee Classification Policy.

10 RANDOMISED TESTING

- 10.1 The General Manager must establish a randomised drug and alcohol testing programme for five percent (5%) of the total detainee population to occur each month.
- 10.2 The results of randomised drug and alcohol testing will be used to:
 - a. determine the prevalence of drug use in a correctional centre, and
 - b. develop strategies to reduce supply and deter against the use of drugs.
- 10.3 Detainees are selected on a strictly randomly selected basis in accordance with section 134(1)(b) of the Corrections Management Act 2007 (ACT).

11 PROGRAM TESTING

- 11.1 The General Manager may direct that a detainee undertakes a drug and alcohol test to support specialist program applications.
- 11.2 Detainees participating in the Transitional Release Program may be tested to ensure compliance with external leave conditions.

12 TARGETED TESTING

- 12.1 The Senior Director Operations must establish mechanisms for the targeted testing of detainees where there are reasonable grounds to suspect misuse or involvement with drugs.
- 12.2 Having previously returned a positive result to a drug or alcohol test does not constitute reasonable grounds for the targeted testing of a detainee.
- 12.3 Reasonable grounds for targeted testing of a detainees include, but are not limited to:
 - a. recent evidence of unexplained or violent behaviour
 - b. intelligence that associates a detainee with drug use or possession
 - c. the seizure of drugs or drug related implements on the detainee's detainee, cell, or in an area to which the detainee has access.
- 12.4 Requests for targeted testing must be sent to the Admissions team and the Discipline Investigating Officer. The request must detail the reasonable grounds for targeted testing (see section 12.3). This must also be documented as a case note on the detainee's electronic file.
- 12.5 The Operations Area Manager must review and authorise all requests for targeted testing and record their approval on the D12.F1: Drug and alcohol

testing authorisation form. In making a decision, the Operations Area Manager will give consideration to:

- a. the safety, security, and good order of the correctional centre
- b. information provided by the Intelligence Unit, and
- c. that reasonable grounds exist to justify the test.

12.6 As far as practicable, targeted testing must be conducted within 24 hours of a direction from the Operations Area Manager.

13 ASSESSMENT AND COMPLIANCE TESTING

13.1 Detainees are required to undertake drug and alcohol testing for the purpose of assessments.

Community Corrections (CC)

13.2 A Community Corrections Officer may request for a detainee to undertake drug and alcohol testing to inform the detainee's pre-release report or pre-sentence report.

13.3 All requests must be made to the Senior Director Sentence Management by sending an email to amcadmissions@act.gov.au and include grounds or evidence supporting the request.

13.4 A copy of all documentation related to the request must be stored on the detainee's electronic record.

Court orders

13.5 Where the Court has ordered a detainee to undertake drug and alcohol testing, the General Manager must ensure compliance with any conditions.

Sentence Administration Board

13.6 The Sentence Administration Board may request that a detainee undertakes drug and alcohol testing related to their application for parole.

13.7 If a drug and alcohol test is required by the Sentence Administration Board, they must arrange this through a Community Corrections Officer.

13.8 The General Manager must ensure that test results are made available to the Sentence Administration Board as soon as practicable once received.

14 REFUSAL OR TAMPERING WITH TEST

14.1 Where a detainee refuses to undertake a test under this policy:

- a. they are considered to have returned a positive result in accordance with section 133(1)(a) of the Corrections Management Act 2007 (ACT) and
- b. disciplinary proceedings must be commenced under the Discipline Policy.

14.2 A detainee must be charged with a disciplinary breach under the Discipline Policy where:

- a. evidence that a test sample has been tampered is recorded in the laboratory certificate
- b. there are reasonable grounds to suspect that a detainee has tampered or changed or attempted to tamper with or change their test sample.

Examples: a sample that is substantially water, extreme acidity, or contains substances that could not have occurred naturally.

15 REPORTING

15.1 Officers must ensure that:

- a. full and accurate documentation of drug and alcohol testing is completed
- b. all documentation under this policy is stored on a detainee's electronic record.

15.2 The following reports must be completed by the responsible officer:

Report	Responsible officer	Purpose	Timeframe
D12.F1: Drug and alcohol testing authorisation form	Correctional officers	To inform the detainee of the type of drug and alcohol test and the lawful authority.	Immediately prior to the drug and alcohol test.
D12.F2: Chain of Custody Form	Correctional officers	To document the process of urinalysis testing and chain of custody.	During the drug and alcohol test.
Drug and alcohol testing Register	Senior Director Operations	A register of drug and alcohol tests in a correctional centre.	Ongoing.

16 RELATED DOCUMENTS

- A – D12.F1 Drug and alcohol testing authorisation form
- B – D12.F2 Chain of Custody Form
- C – Discipline Policy
- D – Detainee Religion Policy
- E – Searching Policy
- F – Management of Transgender Detainees and Detainees Born with Variations in Sex Characteristics Policy
- G - Detainee Classification Policy
- H - Drug and alcohol testing Operating Procedure
- I – Drug and Alcohol Testing Strategy

Ray Johnson, APM
Commissioner
ACT Corrective Services
07 March 2022

Document details

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