

	<b>DEPARTMENT OF CORRECTIONS AND REHABILITATION</b> <b>DEPARTMENT ADMINISTRATION POLICY AND PROCEDURES</b>	<b>EFFECTIVE DATE:</b> January 01, 2024	<b>POLICY NO.:</b> ADM.03.14
		<b>SUPERSEDES (Policy No. &amp; Date):</b> ADM.03.14 of December 23, 1999	
	<b>SUBJECT:</b> <b>ALCOHOL AND CONTROLLED SUBSTANCE TESTING OF EXCLUDED PERSONNEL</b>		Page 1 of 6

## 1.0 PURPOSE

To establish authority and procedures which will govern conformance with Section 65 of the BU 10 Agreement, Alcohol and Controlled Substance testing for excluded personnel in the chain of command, and those assigned to manage and carry out the program.

## 2.0 SCOPE

This policy applies to all applicable excluded personnel.

## 3.0 REFERENCES, DEFINITIONS & FORMS

### .1 References

- a. Hawaii Revised Statutes (HRS), Chapter 26-38, Powers and Duties of Heads of Department.
- b. HRS, Chapter 353-A, Director of Corrections and Rehabilitation; Powers and Duties
- c. HRS, Chapter 353C-5, Criminal History Records Checks
- d. HRS, Chapter 3298, Substance Abuse Testing
- e. Title 11, Administrative Rules, Department of Health, Chapter 113, Substance Abuse Testing.
- f. Section 65. of the Unit 10 Agreement.

### .2 Definitions

- a. Excluded Personnel – including but not limited to Captains, Chiefs of Security, Deputy Wardens, Wardens, Institutions Division Administrator (IDA), Department Personnel Officer (DPO), and the DPO's designated coordinator.
- b. Altercation – An incident in connection with an investigation including, but not limited to the following: vehicular accident involving personal

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injury or damage to property; use of force; inhumane or abusive treatment of an inmate, staff, or public.

- c. Alcohol – The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl alcohol and isopropyl alcohol.
- d. Alcohol Concentration – The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath.
- e. Alcohol Use – The consumption of any beverage, mixture, or preparation, including any medication containing alcohol.
- f. Controlled Substance – Substance other than alcohol, to include: Marijuana, Cocaine, Amphetamines, Opiates, Phencyclidine, Barbiturates, Methaqualone, Benzodiazepines, Propoxyphine, and Methadone under the Controlled Substance Act (21 U.S.C. 802) as may be revised.
- g. Random – Grouping and selecting employees periodically for random testing by means of a computerized random selection program.
- h. Reasonable Suspicion – Includes, but is not limited to: (a) observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug; (b) arrest or conviction for drug-related offense, or the identification of an employee as the focus of an investigation into illegal use, possession, sale, offer of sale, trading or distribution of drugs or drug paraphernalia. Although reasonable suspicion does not require certainty, mere "hunches" are not sufficient to meet this standard.
- i. Refusal – Includes, but is not limited to: (a) refusal to take test by statement or action; (b) refusal to sign appropriate forms as required; (c) failure to report to collection site within two hours; (d) tampering with or attempting to adulterate the specimen or collection procedure; (e) failure to cooperate or comply with the collection site person; (f) failure to provide adequate specimen without valid medical explanation; (g) engaging in conduct that clearly obstructs the testing process; (h) leaving the scene of an incident without approval if ordered to be tested; (i) refusal to complete recommended rehabilitation program.

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#### 4.0 POLICY

To strengthen the credibility of the Alcohol and Controlled Substance Testing in accordance with Section 65. of the Unit 10 Agreement, by requiring the testing of excluded personnel.

#### 5.0 PROCEDURES

##### .1 Responsibilities

###### a. Director

Insures full compliance of these Policy and Procedures

###### b. Deputy Directors and Division Administrators

1. Assist the Director with ensuring the compliance of these Policy and Procedures.
2. Comply with these Policy and Procedures.

###### c. Department Personnel Officer

1. Coordinate, control, and maintain the alcohol and controlled substance testing program to ensure that it is administered in a fair and equitable manner.
2. Ensure that all elements comply with the alcohol and controlled substance testing program.
3. Maintain a file of all reports and correspondence relating to the alcohol and controlled substance testing program.
4. Ensure that all affected by this Policy and Procedure are informed of the Alcohol and Controlled Substance test requirement and the actions that will be taken.
5. Ensure that appropriate action is initiated for any refusal to test; confirmed positive tests; and violations of this policy.

##### .2 Testing Requirements and Procedures

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- a. The department shall pay for the cost of testing and required Substance Abuse Professional (SAP) services. The employee is responsible for the cost of any resulting rehabilitation/ treatment services.
- b. Random Testing
  1. A separate test pool will be established for excluded personnel, and a random list will be generated every other week.
  2. Not less than 50% of the average number of excluded employee positions will be tested annually for controlled substances.
  3. Not less than 25% of the average number of excluded employee positions will be tested annually for alcohol.
  4. Random controlled substance testing will be conducted at least once while on an initial or new probationary period.
  5. The excluded employee shall report for testing immediately, but not later than two hours after being notified of being selected for random testing.
- c. Required Testing
  1. Post-altercation testing shall be required if directed by a higher authority.
  2. Reasonable suspicion testing shall be required if observed and directed by a higher authority.
  3. Return to work test shall be required after a positive test and/or treatment and rehabilitation.
  4. Follow-up tests (up to six per year) shall be required if recommended by the SAP.
- d. Confirmed Positive Tests

The following shall apply for confirmed positive Controlled Substance tests:

1. First Positive – The excluded employee shall be removed from work (allowed to use paid leave credits), and referred to a SAP. The

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employee shall comply with the SAP's recommendations including treatment and/or rehabilitation. Upon completion of treatment / rehabilitation, must test negative and provide medical clearance prior to returning to work.

2. Second Positive – The excluded employee shall be discharged unless he/she agrees to sign a last chance agreement. If the employee signs a last chance agreement, he/she will receive a twenty (20) working day suspension. The employee will be referred to a SAP and must comply with the SAP's recommendations including treatment and/or rehabilitation. Upon completion of treatment / rehabilitation, must test negative and provide medical clearance prior to returning to work.
3. Third Positive – The excluded employee shall be deemed to have resigned effective the date of the positive test, as provided in the last chance agreement.

The following shall apply for confirmed positive alcohol tests:

1. First Positive – The excluded employee shall be removed from work (allowed to use paid leave credits), and referred to a SAP. The employee shall comply with the SAP's recommendations including treatment and/or rehabilitation. Upon completion of treatment/ rehabilitation, must test negative and provide medical clearance prior to returning to work.
2. Second Positive – The excluded employee shall be suspended for ten (10) working days. The employee will be referred to a SAP and must comply with the SAP's recommendations including treatment and/or rehabilitation. Upon completion of treatment / rehabilitation, must test negative and provide medical clearance prior to returning to work.
3. Third Positive – The excluded employee shall be discharged unless he/she agrees to sign a last chance agreement. If the employee signs a last chance agreement, he/she will receive a thirty (30) working day suspension. The employee will be referred to a SAP and must comply with the SAP's recommendations including treatment and or rehabilitation; Upon completion of treatment / rehabilitation, must test negative and provide medical clearance prior to returning to work.

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4. Fourth Positive – The excluded employee shall be deemed to have resigned effective the date of the positive test, as provided in the last chance agreement.

APPROVAL RECOMMENDED:

  
\_\_\_\_\_  
Deputy Director for Administration                      JAN 0 1 2024  
Date

APPROVAL RECOMMENDED:

  
\_\_\_\_\_  
Deputy Director for Corrections                      JAN 0 1 2024  
Date

APPROVED:

  
\_\_\_\_\_  
DIRECTOR    JAN 0 1 2024  
Date

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