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 All Adult Correctional Facilities and Adult Community Correctional Programs.

III. POLICY

The Department of Corrections is committed to zero tolerance practices that combat the use of illegal drugs and alcohol by the adult client population to ensure a more secure, safe, and healthy living environment. The purposes of the Department’s Drug and Alcohol Testing Program are:

1. To aid in the control of illegal drugs (any Scheduled Drug as defined in Title 17-A M.R.S.A. sections 1101 and 1102, to include prescription drugs) and alcohol (any alcoholic, spirituous vinous, fermented, or other liquid that contains alcohol);

2. To determine the level of drug and alcohol use by those adults in custody or under supervision in the community;

3. To identify individuals who are illegally using drugs and alcohol and take appropriate action to curtail usage;

4. To monitor compliance with institutional rules, treatment programs, furlough regulations, and conditions of supervision in the community.

For the purposes of this policy and procedures, persons or agencies under contract with the Department of Corrections to provide community supervision of adults may collect and test specimens for alcohol and drugs, if personnel receive approved training, use a drug or alcohol detection system approved by the Commissioner of Corrections, and otherwise comply with all requirements of this
policy and procedures. In addition, law enforcement agencies or independent certified testing facilities may collect and test specimens for alcohol and drugs in accordance with their own policies and procedures.

IV. CONTENTS

Procedure A: Drug and Alcohol Testing Procedures, General
Procedure B: Urine Collection and Testing Procedures
Procedure C: Alcohol Breath or Saliva Testing Procedures
Procedure D: Action Taken Against a Client as a Result of a Positive Test Result

V. ATTACHMENTS

A. Request for Urinalysis Test
B. Request for Alcohol Breath or Saliva Test
C. Chain of Custody form

VI. PROCEDURES

Procedure A. Drug and Alcohol Testing Procedures, General

1. The Department’s Drug and Alcohol Testing Program is intended to supplement, not replace, other traditional means by which the illegal use of drugs and alcohol can be detected. Adult clients may be required to submit to drug and alcohol testing in the following instances:

   a. Community Rehabilitation Programs: As a condition of participation in community programs, such as furloughs, work release, community service, education release, and supervised community confinement or as a condition of probation, parole, or Intensive Supervision.

   b. Therapeutic Community and Intensive Substance Abuse Treatment Programs: All prisoners participating in these types of programs shall be tested prior to entry into the program, and on a monthly basis thereafter, as a condition of participation in the program.

   c. Suspected Drug Use: Any prisoner may be ordered to submit to drug or alcohol testing when there is reasonable suspicion, i.e., facts within an employee’s knowledge and derived from reasonably reliable information that are sufficient to warrant a prudent person to suspect that the individual has been illegally using drugs or
alcohol. This is less than probable cause but more than an unsubstantiated hunch.

d. Prisoner Random Drug or Alcohol Testing: The names of prisoners to be tested on a random basis, a selection process that ensures each person has a chance of being selected for testing and the person has no prior knowledge of when a drug or alcohol test will be administered, shall be chosen from the housing list for the entire facility or the population census of the entire facility and shall be varied for each testing period by choosing every other prisoner’s name, every third name, every fourth name, and so forth. A computer program that chooses names randomly from the housing list or population census may also be used. A minimum of 10% of the total prisoner population shall be drug tested on a random basis quarterly. Every random drug test shall test for at least cannabis, cocaine, opiates, amphetamines, and methamphetamines. Specimens will be collected on different days of the week (including weekends) and, if possible, at different times of the day or night, to avoid setting any type of predictable testing schedule.

2. At facility reception, all new prisoners shall be informed of the Department of Corrections policy that every positive drug or alcohol test obtained within the Department of Corrections will result in the imposition of graduated sanctions (measures, whether or not punitive in nature, which are designed to combat the use of illegal drugs or alcohol by the Department’s adult client population by providing that for each subsequent positive drug or alcohol test the sanctions administered are more restrictive than for the previous positive test). All adult correctional facilities will post this zero tolerance policy in areas used for visitation.

3. At the first probation officer contact, all new adult community correctional clients shall be informed of the Department of Corrections zero tolerance policy on drugs and alcohol.

4. Alcohol and drug specimen collection and testing shall be performed only by those Department employees who have received training and have been found to have the knowledge and skills in the proper procedures for collection and/or testing of these specimens. Such training is to be documented in the employee’s training file.

5. The correctional facility Chief Administrative Officer or Regional Correctional Administrator shall provide the Commissioner of Corrections with an up-to-date written list of each employee trained in the proper collection and testing of specimens.
6. Drug and alcohol specimen testing shall be performed only by using a drug or alcohol testing system approved by the Commissioner of Corrections. Employees responsible for testing specimens for drugs or alcohol shall ensure that all testing equipment is working properly. Equipment problems, which cannot be corrected by departmental employees, shall be immediately referred to authorized persons for repair or replacement.

7. All employees collecting specimens, or otherwise handling specimens, shall ensure that chain of custody, i.e., documentation of the process of collection, storage, transportation, and testing of a specimen to assure that it is not contaminated from the point of collection to the point of testing, is maintained.

8. The correctional facility Chief Administrative Officer or Regional Correctional Administrator shall monitor drug and alcohol testing of adult clients conducted by his/her staff to ensure compliance with departmental policy and procedures.

9. The Department of Corrections policy requires all employees handling biological specimens to practice UNIVERSAL PRECAUTIONS. (For details and procedures refer to Department of Corrections' Policy and Procedures, Bloodborne Pathogens, Employee)

10. The Regional Correctional Administrator or correctional facility Chief Administrative Officer may authorize testing of a specimen by an independent certified testing facility which is approved by the Commissioner of Corrections.

Procedure B. Urine Collection and Testing Procedures

1. Urine Specimen Collection Procedures: All urine specimen collection within the adult correctional facilities shall be performed by employees who are the same sex as the prisoner being tested. In a community corrections situation that does not allow direct observation by the employee collecting the urine specimen because of the same sex requirement, the urine collection procedures may be modified. Community corrections urine collection procedures shall follow the correctional facility urine collection procedures as closely as the community corrections situation allows. However, there shall be no strip searches of community corrections clients by probation officers without court authorization. All reasonable precautions shall be taken in the collection procedures to ensure the collection of a non-contaminated specimen.
The following steps are to be taken in performing a urine specimen collection within the adult correctional facilities, maintaining an appropriate chain of custody to maintain specimen integrity:

a. Request for Urinalysis Test Form (Attachment A) must be filled out for every adult client selected for urine testing, including any legal medication the client claims to be currently taking and any medically documented physical or mental condition the client claims interferes with the ability to provide an adequate specimen. Any client making a false claim shall be subject to disciplinary action. The form shall be filled out completely in ink.

b. The Department of Corrections employee shall positively identify the client who has been selected to be tested. This shall be done by matching the picture, the name, and the Request for Urinalysis Form.

c. The Department of Corrections employee shall inform the client that he/she has been selected for testing. The Department of Corrections employee shall give the client a direct order that he/she will be required to produce a urine specimen in an amount conforming to the specifications of the manufacturer of the drug or alcohol testing system. If the client refuses to submit a specimen, he/she shall be informed that refusal will result in the same consequences as a positive test result. If the client fails to produce an adequate specimen, he/she shall be informed that failure will result in the same consequences as a positive test result.

d. The client shall remain under the direct observation or control of a Department of Corrections employee until the urine specimen has been collected, identified, and sealed.

e. The specimen collection area shall provide secure, private, and sanitary conditions.

f. The client shall be required to wash his/her hands prior to collection of the specimen. In the alternative, the employee may provide the client with latex or similar gloves and may require the client to wear them while providing the specimen.

g. The employee collecting the specimen shall search the client before collecting the specimen to ensure the client is not carrying a false specimen or material which may be used
to contaminate the specimen. If it is deemed necessary, the employee may conduct a strip search of a prisoner. Strip searches shall be conducted by staff of the same sex as the prisoner in an area free of persons of the opposite sex.

h. If the client fails to provide a urine specimen immediately, he/she is to be kept under observation and separated from other clients until he/she provides a specimen. If the client fails to produce a specimen immediately, he/she shall be allowed a small (6 oz.) cup of water every 30 minutes up to a maximum of 24 oz. to help produce an adequate specimen. If the client fails to provide a urine specimen in an amount conforming to the specifications of the manufacturer of the drug or alcohol testing system within two (2) hours of being ordered to do so, this failure will be considered the equivalent of refusing to provide a specimen.

If the client claims that his/her failure to provide an adequate specimen is due to a medically documented physical or mental condition, the employee shall determine whether acceptable documentation exists in the client’s medical record that the client has the claimed condition. To be acceptable, the documentation must show that departmental staff has verified the existence of the condition. Departmental medical staff shall not verify the existence of a physical condition interfering with the production of an adequate specimen unless the departmental medical staff has personally confirmed that the condition actually exists and that the condition makes it highly unlikely that the client will be physically able to produce an adequate specimen in two hours. Departmental medical staff shall document any special accommodations for urinalysis testing required by the condition. Departmental medical staff shall also document how long any such condition is expected to last and when the condition no longer exists. Departmental mental health staff shall not verify the existence of a mental condition interfering with the production of an adequate specimen unless departmental mental health staff has personally confirmed that the client has a psychiatric or psychological disorder focused on genito-urinary matters that makes it highly unlikely that the client will be able to produce an adequate specimen in the presence of another person. Situational anxiety does not qualify.
If no such documentation exists, the regular procedures for specimen collection shall be followed. If the documentation exists regarding a physical condition, the employee shall follow the special accommodations that have been documented if possible or, if not possible, shall terminate the attempt to collect a urine specimen. If the attempt is terminated, the client shall not be sanctioned for failure to produce an adequate specimen. If the documentation exists regarding a mental condition, the employee shall strip search and place the client without any clothing alone in a dry room (a room with no water and no items that could be used to contaminate a specimen). The employee shall not observe the client urinating or attempting to urinate. Regular procedures for specimen collection shall otherwise be followed.

i. The employee shall witness the passage of the urine into the specimen container. After the specimen is collected in the container, the employee shall give the client a lid for the specimen container. The client shall put the lid on the specimen container and hand it to the employee. The employee shall check the container to make sure that the lid is secured.

j. For test purposes, the specimen container must contain a minimum amount conforming to the specifications of the manufacturer of the drug or alcohol testing system.

k. The employee shall use an indelible marker to label the specimen container with the date and appropriate sample number. This number, which incorporates the date the specimen was taken, is assigned to identify a specimen and test results. This may be done before or after the specimen is collected, provided it is done in the presence of the client. The employee shall also enter, in a drug and alcohol testing logbook (a bound written record maintained by each correctional facility documenting the drug or alcohol tests administered to prisoners) or community Corrections road notes, the client’s name, the date and time the specimen was collected, and the sample number.

l. After the specimen is collected and if it is not to be tested immediately, the employee shall seal the specimen container with evidence tape, or similar item as provided by the manufacturer, in the presence of the client and shall
place, as soon as possible, the specimen in a refrigerator located in an area not accessible to clients or other unauthorized personnel. If the refrigerator is located outside a secure area, the refrigerator must be locked. This refrigerator shall be used to refrigerate urine specimens only.

m. Any person handling or removing a specimen shall record, on the Chain of Custody Form (Attachment C) his/her name, date, time, sample number, and the reason for handling or removing the specimen.

n. Urine specimens that are to be transported shall be stored in a secure location.

2. The specimen shall be tested as soon as possible. The employee collecting the specimen shall not test the specimen unless the testing is done immediately and in the presence of the client.

3. Testers shall follow the procedures recommended by the manufacturer of the drug or alcohol testing system unless specifically directed otherwise by this policy and procedures.

4. Specimens shall be tested within 48 hours of collection, unless the specimen is frozen, in which case, the specimen shall be tested within 60 days of being collected.

5. If a positive test result is produced, an independent test of the specimen is not required for disciplinary or revocation proceedings and shall not be done except as set out below.

6. If criminal proceedings are to be brought, an independent test is required. The confirmatory test specimen container shall be sealed, in the presence of the client, with evidence tape or similar item as provided by the manufacturer. The specimen shall be stored, handled and transported in accordance with instructions by the approved independent certified testing facility.

7. If revocation proceedings are to be brought and if the positive test result is the only evidence of the violation, an independent test is required. The confirmatory test specimen container shall be sealed, in the presence of the client, with evidence tape or similar item as provided by the manufacturer. The specimen shall be stored, handled and transported in accordance with instructions by the approved independent certified testing facility.
8. If disciplinary proceedings are to be brought against a client taking a legal medication, which could have produced the positive test result according to the manufacturer of the drug or alcohol testing system and if the positive test result is the only evidence of the violation, an independent test is required. The confirmatory test specimen container shall be sealed, in the presence of the client, with evidence tape or similar item as provided by the manufacturer. The specimen shall be stored, handled and transported in accordance with instructions by the approved independent certified testing facility.

9. If a specimen tests positive for cannabis and if disciplinary, revocation, or criminal proceedings result, no specimen collected within 30 days of the collection of the positive test specimen may be used for further disciplinary, revocation, or criminal proceedings for that substance.

10. If a specimen tests positive for phencyclidine and if disciplinary, revocation, or criminal proceedings result, no specimen collected within 10 days of the collection of the positive test specimen may be used for further disciplinary, revocation, or criminal proceedings for that substance.

11. If a specimen tests positive for a barbiturate and if disciplinary, revocation, or criminal proceedings result, no specimen collected within 7 days of the collection of the positive test specimen may be used for further disciplinary, revocation, or criminal proceedings for that substance.

12. If a specimen tests positive for any other drug and if disciplinary, revocation, or criminal proceedings result, no specimen collected within 3 days of the collection of the positive test specimen may be used for further disciplinary, revocation, or criminal proceedings for that substance.

13. If a specimen tests positive for alcohol and if disciplinary, revocation, or criminal proceedings result, no specimen collected within 24 hours of the collection of the positive test specimen may be used.

14. All evidence of a test that has a positive result shall be kept until any disciplinary, revocation, or criminal proceedings have been completed including all documentation related to collection and testing, and, in the case of revocation proceedings with no other evidence or criminal proceedings, the specimen itself. A test strip showing a positive test result that degrades over time shall not be kept, but a clear photocopy or photograph of the test strip shall be taken and kept. Specimens that test negative shall be disposed of immediately after the test documentation has been completed.
15. Documentation and Reporting of Test Results:

a. The results of all urine tests shall be documented on the Request For Urinalysis Test form by the employee conducting the testing. This form shall accompany the specimen at all times.

b. A copy of the Request For Urinalysis Test form shall be returned to the employee requesting the test.

c. The testing employee shall enter in a drug and alcohol testing logbook or community corrections road notes the following:

   * date and time the test was conducted;
   * the sample number;
   * specific test results (If positive, name of the substance);
   * any specific problems with the specimen, testing procedures, or testing equipment.

d. If the testing employee is the same person who collected the specimen, the same logbook or community corrections road notes may be used for documenting the collection and the testing.

   In an adult correctional facility, if the testing employee is a different person from the collecting employee, a different logbook shall be used and a third person shall match the sample number with the prisoner’s name, in order to ensure that testing done outside the prisoner’s presence is done anonymously.

e. In adult community corrections, the monthly total of urine tests conducted and the number of positive results shall be entered on each probation officer’s Monthly Stat Report.

f. Before sanctions may be imposed for a positive urine test result, any claim that the test was affected by the use of a legal medication reported at the time of collection of the specimen shall be investigated.

Procedure C. Alcohol Breath or Saliva Testing Procedures

1. The following steps are to be taken in performing an alcohol breath or saliva test.

   a. Request for Alcohol Breath or Saliva Test Form (Attachment B) must be filled out for every adult client selected for breath or saliva testing. It shall be filled out completely in ink.
b. The Department of Corrections employee shall positively identify the client who has been selected to be tested. This shall be done by matching the picture, the name, and the Request for Alcohol Breath or Saliva Test Form.

c. The Department of Corrections employee shall inform the client that he/she has been selected for testing. The Department of Corrections employee will give the client a direct order that he/she will be required to produce a breath or saliva specimen. If the client refuses to submit a specimen, he/she will be informed that a refusal will result in the same consequences as a positive test result.

d. From this point forward, the client shall remain under the direct observation of a Department of Corrections employee until the specimen has been collected.

e. Testers shall follow the procedures recommended by the manufacturer of the alcohol testing system unless specifically directed otherwise by this policy and procedures.

f. If a positive test result is produced, an independent test is not required for disciplinary or revocation proceedings and shall not be done. If criminal proceedings are to be brought, an independent test is required.

g. If a specimen tests positive for alcohol and if disciplinary, revocation, or criminal proceedings result, no specimen collected within 24 hours of the collection of the positive test specimen may be used for further disciplinary, revocation, or criminal proceedings for that substance.

h. All evidence of a test that has a positive result shall be kept until any disciplinary, revocation, or criminal proceedings have been completed including all documentation related to collection and testing. Saliva specimens shall be disposed of immediately after the test documentation has been documented.

2. Documentation and Reporting of Test Results:

a. The results of all tests shall be documented on the Request For Alcohol Breath or Saliva Test form by the employee conducting the testing.
b. A copy of the Request For Alcohol Breath or Saliva Test form shall be returned to the employee requesting the test.

c. The employee shall enter in a drug and alcohol testing logbook or community corrections road notes the following:

* date and time the test was conducted and the type of test;
* specific alcohol test results;
* any specific problems with the specimen, testing procedures, or testing equipment.

d. In adult community corrections, the monthly total of alcohol tests conducted and the number of positive results shall be entered on each probation officer’s Monthly Stat Report.

**Procedure D. Action Taken Against a Client as a Result Of a Positive Test Result**

1. An adult client who: (a) refuses to provide a urine, breath, or saliva specimen; (b) fails to provide a urine specimen in an amount conforming to the specification of the manufacturer of the drug or alcohol testing system within two (2) hours of being ordered to do so or fails to provide a sufficient breath or saliva specimen; (c) produces a urine, breath, or saliva specimen that tests positive; (d) attempts to tamper with a specimen; or (e) refuses to follow instructions for providing an uncontaminated specimen will be subject to graduated sanctions.

2. The sanctions that a probation officer may use for probation, parole, or intensive supervision clients include, but are not limited to, the following:

   a. Counseling and written warning by the probation officer.
   b. Mandatory AA/NA attendance.
   c. Increased frequency of drug or alcohol testing.
   e. Increase in level of supervision.
   f. Voluntary participation in a residential graduated sanctions program.
   g. Electronic monitoring.
   h. Revocation proceedings.

Those sanctions that require a modification of probation, parole, or Intensive Supervision Program conditions may not be imposed until the conditions have actually been modified.
3. Prisoners in correctional facilities or participating in supervised community confinement programs who provide positive drug or alcohol test results will be sanctioned according to Department of Corrections policy and procedures, including, but not limited to, the punitive sanctions set out in Department of Corrections' Policy and Procedures, #20.1 Client Disciplinary Procedures.

4. A client who provides a positive drug or alcohol test result may also be subject to criminal proceedings.

5. Substance Abuse Intervention Programs:
   a. Substance abuse education may be provided in the form of literature, individual counseling, or group counseling depending on the services that may be available within the specific correctional facility or local community.
   b. Alcoholics Anonymous / Narcotics Anonymous are available in most of the correctional facilities and communities, with participation being mostly voluntary. Prisoners may be required to attend these meetings as a condition of participation in certain programs. Community corrections clients may be required to attend these meetings as a condition of probation, parole, or Intensive Supervision.
   c. A system of substance abuse treatment programs will be in place for treatment purposes in the correctional facilities and in the communities. These programs are delivered to selected prisoners while incarcerated within the correctional facilities of the Department of Corrections and to community corrections clients under the supervision of the Department of Corrections. Upon a prisoner's release from the correctional facility and transfer to the control of community corrections every effort will be made to provide a continuum of substance abuse treatment services within the local community.
MAINE DEPARTMENT OF CORRECTIONS
REQUEST FOR URINALYSIS TEST

This form must be completed for each test. The form must be made out by those individuals performing the indicated procedures and must be kept with the specimen.

Facility/Region________________________________________________________

Request made by_________________________ Date____________________

Sample Number______________________________________________________________

Client name____________________________________ DOB__________________

NOTE: Client name and DOB are only to be completed if the specimen will be tested immediately and in the presence of the client.

Substance(s) to be tested for ____________________________________________

Current medications client claims to be taking _____________________________

Reason for request (if suspicion-describe)_________________________________

_____________________________________________________________________

Client refused to submit specimen:  Yes______   No______

Were there any other problems with obtaining a specimen?  Yes_____ No_____  

If Yes, Explain _________________________________________________________

Specimen witnessed and collected by_____________________________________

Date___________________________ Time__________________________________

Specimen tested by ____________________________________________________

Date______________________________Time_______________________________

Test results: Negative______ Positive______ Positive Drug Type(s)_____________

I voluntarily admit that this test is correct in indicating a positive result.

Signature:____________________________Date:_________________Witnessed by:________________________ Date:_________________
MAINE DEPARTMENT OF CORRECTIONS
REQUEST FOR ALCOHOL BREATH OR SALIVA TEST

This form must be completed for each test. The form must be made out by the individual performing the indicated procedures.

Facility / Region_____________________________________________________________

Request made by__________________________________________Date____________________

Type of test  Breath______ Saliva______

Client name___________________________________________DOB__________________

Current medications client claims to be taking ________________________________
_____________________________________________________________________

Reason for request (if suspicion-describe) _________________________________
____________________________________________________________________________________

____________________________________________________________________________________

Client refused to submit specimen:  Yes______   No______

Were there any other problems with obtaining a specimen?  Yes_____ No______

If Yes, Explain:________________________________________________________

Alcohol test specimen witnessed, collected, and tested by____________________

Date___________________________ Time__________________________________

Test results:  Negative______ Positive______

I voluntarily admit that this test is correct in indicating a positive result.
Signature: ____________________________ Date:_________________

Witnessed by:__________________________ Date:_________________
CHAIN OF CUSTODY
(Starting with staff collecting specimen)

SAMPLE NUMBER: ________________________________
From: ____________________________ To: ____________________________
Date: ____________________________ Time: ____________________________ AM / PM (Circle one)
Reason for handling or removing: ____________________________________________________________
Secured Location: ____________________________________________________________

SAMPLE NUMBER: ________________________________
From: ____________________________ To: ____________________________
Date: ____________________________ Time: ____________________________ AM / PM (Circle one)
Reason for handling or removing: ____________________________________________________________
Secured Location: ____________________________________________________________

SAMPLE NUMBER: ________________________________
From: ____________________________ To: ____________________________
Date: ____________________________ Time: ____________________________ AM / PM (Circle one)
Reason for handling or removing: ____________________________________________________________
Secured Location: ____________________________________________________________

THIS FORM MUST BE KEPT CURRENT AT ALL TIMES