

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 410.21	PAGE 1 of 9
		ADULT PAROLE ADMINISTRATION: DRUG TESTING PROGRAM	

This Administrative Regulation is to be made available in law libraries or other inmate resource centers.

EFFECTIVE: March 1, 1998
 REVIEWED: March 31, 2006
 REVISED: June 1, 2007
 REVISED: May 14, 2008
 REVISED: May 17, 2009
 REVISED: May 19, 2010
 REVISED: May 25, 2011
 REVISED: June 9, 2012
 REVISED: May 24, 2013
 REVISED: March 10, 2014
 REVISED: August 27, 2014

SUMMARY of REVISION/REVIEW

Page 2, Section II., Paragraph A. – Removed terminology to reflect that all parolees are being drug tested with equal consideration. Page 7, Section IV., Paragraph B. – Made reference to COS and residential treatment for positive drug tests. Page 8, Section IV., Paragraph B., Subparagraph 2. – Minor grammatical change.

APPROVED:



 MICHAEL L. KENNEY, Director
 Nebraska Department of Correctional Services

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 410.21	PAGE 2 of 9
		ADULT PAROLE ADMINISTRATION: DRUG TESTING PROGRAM	

PURPOSE

To provide a policy for the administration of a drug and alcohol testing program for the purpose of reducing illicit drug and alcohol usage by parolees and lifetime supervised sex offenders (LSO) thereby reducing drug related criminal behavior in the community.

GENERAL

The Director shall appoint a Drug Testing Coordinator who shall be responsible for the Nebraska Department of Correctional Services (NDCS) Drug Testing Program. The Coordinator shall be responsible for monitoring and ensuring program implementation is in accordance with NDCS policy and American Correctional Association (ACA) Standards. The Coordinator shall coordinate all statistical data. All drug testing will be documented in the Parole Information Management System (PIMS) by the assigned parole officer.

By the authority granted under the Narcotics and Intoxicants Conditions of the Nebraska Certificate of Parole and special conditions of drug testing for certain lifetime supervision sex offenders, Adult Parole Administration shall maintain a drug and alcohol testing program which shall include testing for reasons of targeted and random selection. For the purposes of this Administrative Regulation, illicit drugs shall include alcohol. All positive drug tests shall result in graduated sanctions and treatment programming, as appropriate, and when available. Individuals who will be tested are parolees whose names appear on the computer-generated random test lists and those who come under the targeted testing as defined later in this document. Lifetime supervision sex offenders shall be tested using the same procedures as those for parolees except where stated otherwise. Lifetime supervision sex offenders will only be drug tested if they have a special condition for alcohol/drug testing on their LSO Certificate and then, only with supervisory approval. Re-entry Furlough Participants (RFP's) are not normally tested by parole officers, but by their assigned institutional staff. When it is necessary for APA staff to test a RFP participant, the assigned community center will direct parole staff on how to respond to positive tests.

For purposes of clarity, sex offenders on parole who will be subject to lifetime supervision after parole will be treated as a parolee for drug testing purposes while on parole and tested according to LSO procedures when discharged from parole.

PROCEDURE

I. TRAINING

All field parole personnel are required to receive approved training on the proper use of all field drug testing devices. This training must be received during pre-service training or in-service training as soon as possible and prior to being allowed to use said devices.

II. DRUG TESTING OF PAROLEES

A. Random Testing

All parolees will be randomly tested at 7 ½ percent of the parole population. Parolees may be tested any time during the month in which they are randomly selected; however, testing dates should vary from month to month in order to effectively provide deterrence and detection.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 410.21	PAGE 3 of 9
		ADULT PAROLE ADMINISTRATION: DRUG TESTING PROGRAM	

B. Targeted Testing

The following shall be considered as reasons for targeted testing parolees and lifetime supervised sex offenders (LSO):

1. Special conditions of drug testing imposed by the Board of Parole or the Adult Parole Administrator for LSO;
2. Previous UA(s) indicated low specific gravity;
3. Previous drug or alcohol violation in last thirty (30) days, and/or
4. For reasons of cause whenever
 - a. Information is received regarding a parolee or LSO with a special condition of drug testing is using or dealing drugs or associating with persons involved with illicit drugs or alcohol;
 - b. Physical signs or behavior exhibited by a parolee or LSO with a special condition of drug testing, which indicate possible drug/alcohol usage; and/or

The following shall be considered as reasons for targeted testing for parolees only:

1. Whenever the parole officer is aware of an accident which resulted in an injury to parolee or another person;
2. Parolees with a history of drug/alcohol abuse and/or drug related arrests;
3. Disposition of Administrative Hearing or Review of Parole Hearing; and/or
4. The parolee is listed on the Intensive Testing list.
5. The parolee is participating in the Special Services Substance Abuse Service (SSAS) program.

C. Only parolees who test positive for a/methamphetamines and cocaine will be placed on the intensive testing list after their first positive UA. Offenders testing positive for other drugs will only go onto the intensive list after 2 positive tests while in the community. This applies to alcohol positive tests as well as drug tests.

D. Program Testing

Parolees and LSO's in community treatment programs may be subjected to drug and alcohol testing by the treatment program, in addition to the aforementioned testing. For parolees, this may include those participating in SSAS.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 410.21	PAGE 4 of 9
		ADULT PAROLE ADMINISTRATION: DRUG TESTING PROGRAM	

E. Variable Testing

To the extent possible, testing days, dates and times should be varied to effectively provide deterrence and detection.

III. **DRUG/ALCOHOL TESTING PROCEDURES**
(Attachment A - Checklist Statement of Testing Urine for Drugs/Alcohol)

- A. Testing procedures shall be conducted in private areas/enclosures. Same gender staff will observe parolee's/LSO's urine samples.
- B. The parolee/LSO shall be asked if he/she has been taking any medications recently, and the parolee's/LSO's response shall be noted on the appropriate attachment. Staff should take steps to ensure that all prescriptions are valid and that the prescription medications are not being abused by the parolee/LSO. Indications of abuse include numerous medications prescribed by different doctors, numerous prescriptions for pain medications and prescriptions from pharmacies from different counties.

The NDCS Medical Director can be helpful in addressing these concerns, as can the internet.

- C. The parolee/LSO will be pat searched prior to submitting a urine sample and all objects which may adulterate the sample will be removed from his/her person.
- D. Staff shall wear protective gloves when collecting and testing urine samples and performing breath tests. Staff will instruct the parolee/LSO to wash his/her hands thoroughly and will issue and ensure that protective gloves are worn by the parolee/LSO being tested. Urine samples will be collected in an on-site drug testing device or regular specimen cups. After on-site testing is complete on negative samples, staff shall dispose of urine samples in a toilet and place cups and protective gloves in a biohazard disposal container.
- E. To the extent possible, staff shall witness the parolee's/LSO's urine flow from the parolee's/LSO's body to the container. Staff shall maintain observation, watching for attempts to adulterate the urine sample. A minimum of 30 ml (approximately the width of two fingers) of the specimen is required by the lab. If a parolee/LSO is unable to provide a sufficient sample, the contents of the cup will be dumped in a toilet and flushed and the cup will be disposed of in a biohazard disposal container. Staff shall immediately obtain the specimen cup upon completion denying the parolee/LSO the opportunity to adulterate the specimen with water or other substance.

The urine sample will be immediately tested for low specific gravity using the refractometer.

F. Testing for Low Specific Gravity

In an effort to battle the high number of low-specific gravity UA's the following procedure will be implemented. All UA's will be tested for Low Specific Gravity prior to submitting the samples to the lab for evaluation. Testing will occur using the refractometer.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 410.21	PAGE 5 of 9
		ADULT PAROLE ADMINISTRATION: DRUG TESTING PROGRAM	

1. Omaha/Lincoln District Offices

- a. In both Omaha and Lincoln District Offices, parolees/LSO's who have ever submitted a low specific gravity UA will be told to report to the offices early in the day in order to submit a UA. Failure to be at the office by the time directed will be considered a violation.
- b. Should a UA test low specific gravity, the parolee/LSO will be instructed to remain at the office until he/she submits a UA that is of acceptable specific gravity. Staff should monitor the amount of water that a parolee/LSO receives when possible. Parolees/LSO's who fail to immediately produce a suitable specimen may be given only up to eight ounces of water during any two-hour time period. Each time a new sample is ordered, their 2-hour time limit to submit begins again. If they should fail to submit a UA during the last 2 business hours of the day, it will be considered a failure to submit a specimen in the time allotted (refusal) and appropriate disciplinary actions will be initiated. This is the case even if they have submitted a low specific gravity UA earlier in the day. If they submit another UA during the last 2 business hours that is also low specific gravity, this last UA will be sent to the lab for testing and the parolee/LSO will be directed to report back to the office the next morning at 8:00 a.m. to submit a UA. Failure to be at the office by 8:00 a.m., as directed, will be considered a violation.

2. Regional Offices

The procedure in the Regional Offices is the same as the District Offices, except for those UA's that are gathered in the field. When urine samples are gathered in the regional office, for parolees/LSO's who have submitted low specific gravity UA's prior, must report in before 10:00 a.m. and remain until a suitable UA has been submitted. If a UA is submitted during the last 2 business hours of the day that is low specific gravity, this UA will be sent to the lab for testing and the parolee/LSO will be given a directive to report back to the regional office on a designated date (preferably the next business day) at 8:00 a.m. to resubmit. The assigned Parole Officer may also direct the parolee to report to the District Office to the local law enforcement office, Day Reporting Center or elsewhere to submit the UA if the assigned parole officer is unavailable.

3. UA's Taken In The Field

UA's that are gathered in the field will be immediately tested for low specific gravity using a refractometer. Should the UA test low specific gravity, the parolee/LSO will be given a directive to submit another UA, which is suitable, at a designated place and time. The Parole Officer may instruct the parolee/LSO to give the UA at the regional office, the District Office or at another designated collector's location (such as a state trooper office, probation office, etc.). The parolee/LSO will be directed to submit this UA as soon as possible, preferably no later than the next business day. If the Parole Officer is unavailable the next business day, the parolee may be instructed to report to the District Office at 8:00 a.m. to resubmit.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 410.21	PAGE 6 of 9
		ADULT PAROLE ADMINISTRATION: DRUG TESTING PROGRAM	

Once a parolee/LSO submits a low specific gravity UA in the field, all subsequent UA's may be submitted at the Regional/District office until 2 consecutive UA's are gathered that are of acceptable specific gravity and test negative for drugs/alcohol.

- G. If the parolee/LSO cannot provide a urine sample immediately, he/she will be allowed two (2) hours to comply.
1. The parolee/LSO may consume up to eight (8) ounces of water every two (2) hours, to assist in giving a urine sample.
 2. Staff may delegate collection of a urine sample to law enforcement personnel, probation staff or other DCS personnel during the two (2) hour waiting period as long as Parole Administration procedures.
 3. If a parolee cannot immediately provide a urine specimen under observation in the presence of the parole officer and in a dry room with staff in the area available, the officer will escort the parolee to that dry room. All procedures of the facility where the dry room is located regarding the taking of urine specimens will be followed. LSO's will be given the options of either providing a urine sample or being considered as refusing to give a sample.
 4. At the end of two (2) hours, if a urine sample is not obtained, the parolee/LSO will be charged with failure to submit to test.
- H. If a parolee/LSO fails to submit an adequate urine sample or breath test, adulterates a urine specimen or fails to follow staff or law enforcement instructions for collecting a urine specimen, his/her case will be treated as a failure to submit a valid test. Additionally, if a parolee/LSO avoids submitting a urine sample or breath test by failing to report in as directed, his/her case will be treated as a failure to submit to test. Both situations are considered violations of the Narcotics condition of the Parole/Supervision agreement.
- I. Drug testing will be accomplished in one of the following manners:
1. Lab testing – staff (or other criminal justice agent if necessary) will use a regular specimen cup to collect the urine sample from the parolee/LSO according to established procedures, and will complete Attachment A entitled, "Checklist Statement of Testing Urine for Drugs/Alcohol." After collection, the sample will be forwarded to the appropriate facility for laboratory testing;
 2. Alcohol testing may be conducted via a portable breath testing device and in accordance to the checklist technique prescribed by 177 NAC 1 of the Nebraska Health and Human Services System, Department of Regulation and Licensure, Credentialing Division. Parole Officers conducting tests with the ALCO-SENSOR III and LION ALCOMETER S-D2 will use HHSSR&L form. (Attachment B); or
 3. Other methods approved by NDCS when performed according to manufacturer's specification.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 410.21	PAGE 7 of 9
		ADULT PAROLE ADMINISTRATION: DRUG TESTING PROGRAM	

J. Processing the Urine Specimen

1. A specimen cup will be labeled with parolee's/LSO's name, number, date and time taken. An "evidence" seal will be placed over the joint of the cup and its lid and placed in an evidence bag. An evidence tag (DCS-A-adm-092), Attachment C, will be properly filled out and attached to the evidence bag.
2. All specimens shall be refrigerated after collection. The limit on refrigeration is TWO days. After that time, the specimens must be frozen. All specimens will be locked in a refrigerator or freezer with limited access until being transported to the appropriate laboratory or storage site.
3. The specimen shall be forwarded to a NDCS designated laboratory within SEVEN days of collection for testing in accordance with established procedures. A chain of possession shall be maintained and the number of persons handling the specimen shall be kept to a minimum.
4. When samples are forwarded via United States Postal Service or approved parcel/courier service, an appropriate sealed and packaged mailer must be utilized. The mailer/package must be approved by the designated parcel/courier service and laboratory or storage facility. There is no need to establish any postal links in the chain of evidence. All other procedures will apply.
5. Specimens shall be tested at a NDCS-designated laboratory, if a laboratory test is the technology utilized. All specimens shall be tested according to vendor protocol.
6. Laboratory or storage site staff shall indicate receipt of the specimen on the chain of custody. Negative urine samples shall be disposed of immediately after testing. All positive urine samples shall be frozen and retained for a period determined by NDCS.
7. Confirmatory testing shall be performed following laboratory procedures. Confirmatory testing may be performed by a NDCS qualified laboratory or by an independent laboratory selected by NDCS, certified by the U.S. Department of Health and Human Services and Clinical American Pathologists (C.A.P.). Parolee-requested confirmatory tests, for returned positive results, shall be paid for by the parolee. If the confirmatory test reveals negative, any pending disciplinary action based on the tested specimen shall be dismissed and NDCS will pay for the cost of the drug test. (Refer to Operational Memorandum 410.21.8.01 for procedure on Independent Confirmation Drug Testing.) (Attachment D-Request/Waiver for Independent Confirmation Drug Test)

IV. POSITIVE TESTS

- A. In keeping with the Department's goal of zero tolerance, all positive tests rendered by parolees shall result in disciplinary action, in accordance to the Adult Parole Administration (APA) Violation Matrix. Positive tests rendered by LSO's shall be reported to the Adult Parole Administrator for review and appropriate action.
- B. Positive Drug Tests that result in a Review of Parole Hearing may result in loss of good time, a referral to treatment programming, WEC, Community Outpatient Services Parole

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 410.21	PAGE 8 of 9
		ADULT PAROLE ADMINISTRATION: DRUG TESTING PROGRAM	

Violator Program, SSAS and/or revocation of parole. Positive drug tests that result in an administrative resolution may result in a referral to treatment programming or SSAS, among other sanction options, in accordance to the Violation Matrix. The sanction must target the criminogenic need related to the violation. To the extent possible, interstate parolees will be treated the same as Nebraska parolees.

1. The Board of Parole must review all sanctions and losses of good time.
2. The Adult Parole Administrator may assess loss of good time from parolees for drug/alcohol violations, with the understanding that it may be restored upon compliance with directives related to the drug use. A request for restoration by the parolee may occur once the parolee has complied with directives related to the drug use.
3. The Board of Parole shall be responsible for revoking parole, or continuing on parole, offenders who appear at Review of Parole Hearings for violations of the Intoxicants and/or Narcotics Condition.
4. All parolees who are the subject of a positive urine drug test are entitled to a confirmation test by an independent laboratory prior to any disciplinary action, if they so request.

C. Treatment Programming

Upon the approval of the Board of Parole, when parolees are continued on the parole status with a Directive or Special Condition to participate in treatment, the Parolee will be responsible for arranging a substance abuse evaluation with the assistance of the assigned parole officer and the NDCS substance abuse provider in the parole office, if available to determine the appropriate level of treatment. Eligible parolees should be screened for appropriateness for participation in the SSAS. Should the Adult Parole Administrator so order, LSO's shall submit to a drug evaluation and or treatment at the offenders' own expense.

1. If the parolee/LSO is already in treatment, he/she will be responsible for reporting the positive UA to and meeting any additional requirements of the treatment program as a result of the latest positive drug/alcohol test. Parole officers must verify that this has occurred and document same in PIMS.
2. If an evaluation is performed, the parolee/LSO will be responsible for meeting any additional requirements as a result of the evaluation recommendations. In all cases, substance abuse evaluations shall be conducted by registered providers.
3. Adult Parole Administration will maintain a state wide resource summary of registered treatment evaluators and providers and will consult this source when making referrals for evaluations and treatment.
4. Treatment evaluators may refer parolees to treatment centers, which are appropriate to their needs, but they must be registered providers.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 410.21	PAGE 9 of 9
		ADULT PAROLE ADMINISTRATION: DRUG TESTING PROGRAM	

REFERENCE

- I. Nebraska Revised Statute 83-4, 114.02
- II. ATTACHMENTS
 - A. Checklist Statement of Testing Urine for Drugs/Alcohol (DCS-G-adm-030)
 - B. Health and Human Services System Attachment 4 - Checklist Technique to be Used by Class C Permit Holders for the Preliminary Breath Test (ALCO-SENSOR III and LION ALCOMETER S-D2))
 - C. NDCS Specimen Record for Drugs of Abuse, (DCS-A-adm-092)
 - D. NDCS Request/Waiver for Independent Confirmation Drug Testing
- III. American Correctional Association (ACA), Performance-Based Standards for Adult Probation and Parole Field Services (APPFS) (4th Edition): 4-APPFS-2D-04