

Chapter DOC 392

DRUG TESTING OF YOUTH ON COUNTY SUPERVISION, TYPE 2 STATUS OR AFTERCARE

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Note: This chapter applies to the Department of Corrections and the Department of Children and Families according to their respective responsibilities as designated in ch. 938, Stats., until such time as each of the departments can adopt separate rules.

DOC 392.01 Authority and purpose. This chapter is promulgated under the authority of ss. 227.11 (2) and 938.34 (6s), Stats., to provide rules for the regulation of drug testing programs operated by the department, or a county department which is providing supervision of delinquent youth who have been determined by the court to be in need of treatment for the use or abuse of controlled substances or controlled substance analogs.

History: Cr. Register, June, 2000, No. 534, eff. 7–1–00.

DOC 392.02 Applicability. This chapter applies to the department, county departments and private provider agencies conducting drug tests under contract with the department or a county department and youth under their supervision.

History: Cr. Register, June, 2000, No. 534, eff. 7–1–00.

DOC 392.03 Definitions. In this chapter:

(1) “Body contents search” means a search in which a youth is required to provide a sample of urine, breath, saliva, blood, or stool for testing for the presence of intoxicating substances, as defined in s. DOC 373.46 (1), in accordance with department or county department procedures and with methods approved by the state laboratory of hygiene, or to submit to non–surgical physical examination by medical personnel which may include, but is not limited to, x–rays for detecting the use of intoxicating substances or the possession of contraband. A body contents search does not include an examination or test required by medical personnel for medical reasons.

(2) “County department” has the meaning given in s. 938.02 (2g), Stats.

(3) “Department” means the department of corrections.

(4) “Drug” means any controlled substance, as defined in s. 961.01 (4), Stats., or controlled substance analog, as defined in s. 961.01 (4m), Stats., that is illegal to possess or use, or alcohol, as defined in s. 125.02 (1), Stats., but does not mean a drug prescribed and used in accordance with law.

(5) “Drug test” means a chemical or other analysis of a body contents specimen collected from a youth for the purpose of determining if the youth has ingested or used any drug.

(6) “For cause test” means a drug test administered because staff has a reasonable suspicion that a youth has used or ingested drugs other than a prescription drug which is lawfully possessed and used.

(7) “Aftercare” means the aftercare supervision status of a youth, as used in s. 938.34 (4n), Stats., who is released from a Type 1 or Type 2 secured correctional facility by the office of juvenile offender review, or by action of a court, and is supervised by the department or a county department until the expiration or termination of the youth’s court ordered supervision.

(8) “Physician” means a person licensed as a physician under ch. 448, Stats.

(9) “Physician’s assistant” means a person certified by the medical examining board under ch. 448, Stats., to perform patient services under the supervision and direction of a licensed physician.

(10) “Provider” means the department, a county department or a private agency under contract with the department or a county department that is authorized by the contract to administer drug tests.

(11) “Random test” means the collection of a specimen in a manner that does not follow a predetermined pattern and is not predicated on any particular fact or situation which creates a reasonable suspicion that a youth has used or ingested drugs.

(12) “Registered nurse” means a person licensed as a registered nurse under s. 441.06, Stats.

(13) “Scheduled test” means a test given to a youth on a regular, pre–planned basis and administered at a time when the youth knows the test will occur.

(14) “Staff” means provider staff with the responsibility of supervising a youth’s placement and behavior.

(15) “Supervision” means the rights and duties of the department or a county department under ss. 938.34 and 938.505 (1), Stats., or other requirements of law with respect to a youth placed by a court or the department in a type 2 secured correctional facility, a type 2 child caring institution, or on aftercare.

(16) “Supervisor” means a provider employee responsible for the supervision of aftercare, a type 2 secured correctional facility or a type 2 child caring institution, or that person’s designee.

(17) “Type 2 child caring institution” has the meaning given in s. 938.02 (19r), Stats.

(18) “Type 2 secured correctional facility” has the meaning given in s. 938.02 (20), Stats.

(19) “Youth” means a person under the supervision of the department or a county department within the meaning of s. 938.505 (1), Stats., pursuant to s. 48.366, Stats., or other requirements of law or a person subject to a criminal penalty, regardless of age.

History: Cr. Register, June, 2000, No. 534, eff. 7–1–00; **correction in (7) made under s. 13.92 (4) (b) 7., Stats., Register February 2019 No. 758.**

DOC 392.04 Drug testing. (1) **DIGNITY OF YOUTH.** A provider shall make a reasonable effort to preserve the dignity of a youth in all searches and tests conducted under this chapter.

(2) **TESTS REQUIRED BY COURT ORDER.** (a) A provider shall require a youth under its supervision, who has been ordered to submit to drug testing under s. 938.34 (6s), Stats., to receive scheduled, random and for cause drug tests when appropriate, whether that youth is in a type 1 or type 2 secured correctional facility, a type 2 child caring institution, another out of home placement in the community or in the youth’s own home. Drug tests shall be administered consistent with s. DOC 392.05 (1).

(b) Scheduled tests under this section may be administered to a youth at regular intervals, which may be varied from time to time, consistent with the prior pattern of drug or alcohol use by the youth and with the progress of the youth in treatment.

(3) **OTHER DRUG TESTS.** A supervisor or staff of the provider may, consistent with the policy and procedure of the provider,

implement scheduled testing, random testing, or for cause testing for a youth on aftercare or other form of community supervision as a part of the youth's written case plan, whether or not the youth is subject to any court ordered testing under this chapter.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

DOC 392.05 Body contents search. (1) Staff who are appropriately licensed or certified, as provided in s. DOC 376.13 (1) (d), may conduct or authorize a body contents search to collect a specimen required to conduct a court ordered, scheduled, random or for cause drug test. A search shall be conducted by qualified staff in accordance with s. DOC 376.13 (1) (d), except that cause is not required if a court has ordered a body contents search.

(2) A supervisor may require that collection of a urine specimen be observed by staff. Staff of the same gender as a youth shall observe and collect the urine specimen.

(3) Blood and stool samples may only be collected by a licensed physician, physician's assistant, registered nurse or other person authorized by law.

(4) X-rays shall only be conducted by licensed radiology personnel.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

DOC 392.06 Test results. (1) A provider may, consis-

tent with state and federal law, give drug test results to staff of the provider working with a youth to assist in and promote the youth's treatment program.

(2) Drug test results shall not be provided to staff without a need to know the drug test results to perform their duties.

(3) A provider shall require that staff administer discipline of a youth resulting from drug test results in a reasonable and equitable manner.

(4) Contracts between the department or a county department and a private agency which is authorized by the contract to administer drug tests shall include the requirements of subs. (2) and (3).

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

DOC 392.07 Payment for drug testing. (1) A provider shall pay for each drug test it administers or authorizes for a youth under its supervision, whether the test is court ordered, scheduled, random or administered for cause.

(2) (a) A provider may, as part of the conduct rules of aftercare or other community supervision, require a youth to reimburse the provider for the cost of any for cause drug test which results in a positive drug use finding.

(b) The department or county department may bill the youth's parent(s) for the cost of drug testing.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.