

ENROLLMENT(S)

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COUNCIL OF THE DISTRICT OF COLUMBIA


NOTICE

D.C. LAW 11-158

"Department of Corrections Employee Mandatory Drug and Alcohol Testing Act of 1996".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198 "the Act", the Council of the District of Columbia adopted Bill 11-463 on first and second readings, May 7, 1996 and June 4, 1996 respectively. Following the signature of the Mayor on June 19, 1996, pursuant to Section 404(e) of "the Act", and was assigned Act 11-287 and published in the July 19, 1996 edition of the D.C. Register (Vol. 43 page 3702) and transmitted to Congress on July 10, 1996 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 11-158, effective September 20, 1996.


DAVID A. CLARKE
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

July	10,11,12,16,17,18,19,22,23,24,25,26,29,30,31
Aug.	1,2
Sept.	3,4,5,6,9,10,11,12,13,16,17,18,19

AN ACT

D.C. ACT 11-287

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 19, 1996

*Codification
District of
Columbia
Code
1997 Supp.*

To establish a mandatory drug and alcohol testing policy for District of Columbia Department of Corrections employees to ensure security and a safe working environment at the District's correctional facilities.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Department of Corrections Employee Mandatory Drug and Alcohol Testing Act of 1996".

Sec. 2. Definitions.

For the purposes of this act, the term:

*New Section
24-448.1*

- (1) "Applicant" means all persons who have filed any written employment application forms to work at the Department.
- (2) "Council" means the Council of the District of Columbia.
- (3) "Department" means the District of Columbia Department of Corrections.
- (4) "Director" means the Director of the District of Columbia Department of Corrections.
- (5) "High potential risk employee" ("HPR employee") means any Department employee who has inmate care and custody responsibilities or who works within a correctional institution, including any employees and managers who are carried in a law enforcement retirement status.
- (6) "Law enforcement retirement status" means any employee who contributes to the 7.5% retirement status category.
- (7) "Post-accident employee" means any Department employee who, while on duty, is involved in a vehicular or other type of accident resulting in personal injury or property damage, or both.
- (8) "Random testing" means drug or alcohol testing taken by Department employees at an unspecified time for the purposes of determining whether any Department employees have used drugs or alcohol and, as a result, are unable to satisfactorily perform their

employment duties.

(9) "Reasonable suspicion" means a belief by a supervisor that an employee is under the influence of an illegal substance or alcohol to the extent that the employee's ability to perform his or her job is impaired. Supervisors shall be trained in substance abuse recognition and shall receive a second opinion from another supervisor prior to making a reasonable suspicion referral.

Sec. 3. Employee testing.

New Section
24-448.2

(a) The following Department employees shall be tested for drug and alcohol use:

- (1) Applicants;
- (2) Those employees who have had a reasonable suspicion referral;
- (3) Post-accident employees, as soon as reasonably possible after the accident;

and

(4) HPR employees.

(b) Only HPR employees shall be subject to random testing.

(c) Employees shall be given at least a 30-day written notice from the effective date of this act that the Department is implementing a drug and alcohol testing program and shall be given an opportunity to seek treatment. Following the effective date of this act, the Department shall procure a testing vendor and testing shall be implemented as described herein.

Sec. 4. Testing methodology.

New Section
24-448.3

(a) Testing shall be performed by an outside contractor. The contractor shall be a laboratory certified by the United States Department of Health and Human Services ("HHS") to perform job related drug and alcohol forensic testing.

(b) For random testing, the contractor shall come on-site to the Department's institutions and shall collect urine specimens and split the samples. The contractor shall perform enzyme-multiplied-immunoassay technique ("EMIT") testing on one sample and store the split sample. Any positive EMIT test shall then be confirmed by the contractor using gas chromatography/mass spectrometry ("GCMS") methodology.

(c) Any Department employee found to have a confirmed positive urinalysis shall be notified of the result. The employee may then authorize that the stored sample be sent to another HHS certified laboratory of his or her choice, at his or her expense, for secondary GCMS confirmation.

(d) Reasonable suspicion and post-accident employee testing shall follow the same procedures set forth in subsections (a) through (c) of this section. In such cases, the employee shall be escorted by a supervisor to the contractor's test site for specimen collection or a breathalyzer.

(e) Any Department employee who operates a motor vehicle in the District of Columbia shall be deemed to have given his or her consent, subject to conditions in this act, to the testing

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of the person's urine or breath for the purpose of determining drug or alcohol content whenever a supervisor has reasonable suspicion or a police officer arrests such person for a violation of the law and has reasonable grounds to believe such person was operating or in physical control of a motor vehicle within the District while that person's breath contained .10% or more, by weight, of alcohol, while under the influence of an intoxicating liquor or any drug or any combination thereof, or while the ability to operate a motor vehicle was impaired by the consumption of an intoxicating beverage.

(f) A breathalyzer shall be deemed positive by the Department's testing contractor if the contractor determines that 1 milliliter of the employee's breath (consisting of substantially alveolar air) contains .48 micrograms or more of alcohol. A positive breathalyzer test shall be grounds for termination of employment in accordance with the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code § 1-601.1 *et seq.*).

Sec. 5. Procedure and employee impact.

New Section
24-448.4

The drug testing policy shall be issued in advance to inform employees and allow them the opportunity to seek treatment. Thereafter, any confirmed positive test results or a refusal to submit to the test shall be grounds for termination of employment in accordance with the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code § 1-601.1 *et seq.*). This testing program is for all employees, including management, and shall be implemented as a single Department program. The results of a random test may not be turned over to any law enforcement agency without the employee's written consent.

Sec. 6. Fiscal impact.

(a) The Department has evaluated the fiscal impact of this act for the current fiscal year and 5 subsequent fiscal years.

(b) Based on the testing of approximately 2,300 employees annually, the Department estimates that the annual cost of a contract would be approximately \$59,000 and would include the testing of applicants, high potential risk employees, employees who have had a reasonable suspicion referral, and employees involved in a post-accident.

(c) The cost of testing during fiscal year 1996 is estimated to be \$28,750. Given the legislative process, the cost reflects a testing period from April through September 1996 at a per monthly cost of \$4,791. The approximate cost per test is \$25 per person, including initial testing and positive confirmation testing.

(d) For Fiscal Year 1996, the Department estimates there will be approximately 1,200 pre-appointment drug tests. The Department will randomly test all employees defined as high potential risk employees ("HPR employees"). For the pay period that ended November 11, 1995, there were 3,200 Department employees within the HPR employee status. The Department

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estimates that there are 3,695 employees who could be tested upon a reasonable suspicion referral. Further, there are approximately 2,000 employees who possess a valid District government license for which the Department would test in post-accident situations. The Department shall assume all costs associated with the initial drug and alcohol testing for its employees pursuant to this act. However, all subsequent costs for tests, such as positive confirmation tests, shall be assumed by the employee.

(e) Two DS-12 additional staff members will be required to monitor the drug and alcohol testing program. These will be nonunion positions. The DS-12, step 1 salary is \$39,045 per year. The cost of fringe benefits total \$15,618 per year for 2 employees. Thus, the yearly total is \$93,708 for additional staff to implement this act.

(f) For the next 5 fiscal years, the following budgets are estimated:

- (1) For fiscal year 1997, 2,300 tests administered at \$25 per test will cost \$57,500.
- (2) For fiscal year 1998, 2,323 tests administered at \$25 per test will cost \$58,075.
- (3) For fiscal year 1999, 2,346 tests administered at \$25 per test will cost \$58,650.
- (4) For fiscal year 2000, 2,369 tests administered at \$25 per test will cost \$59,225; and
- (5) For fiscal year 2001, 2,392 tests administered at \$25 per test will cost \$59,800.

(g) The total number of tests administered in the next 5 fiscal years will be approximately 12,800. Using \$25 per test as a constant cost, the testing program will total \$322,000.

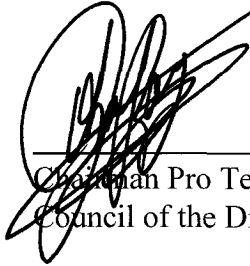
(h) To the extent that costs are incurred during Fiscal Year 1996, they shall be absorbed by the Department of Corrections.

Sec. 7. Effective date.

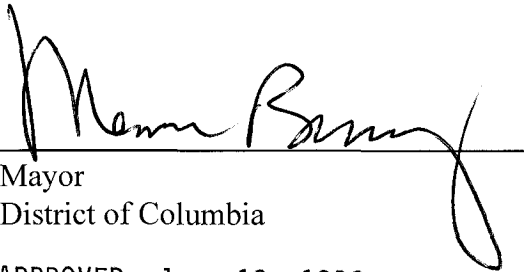
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Authority Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), and a 60-day period of Congressional review as

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provided in section 602(c)(2) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(2)), and publication in the District of Columbia Register.



Chairman Pro Tempore
Council of the District of Columbia



Mayor
District of Columbia

APPROVED: June 19, 1996



COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD ELEVEN

RECORD OF OFFICIAL COUNCIL VOTE

B11-463

Docket No. _____

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FIRST READING, 5-7-96

VOICE VOTE

APPROVED

RECORDED VOTE ON REQUEST

BRAZIL

ABSENT _____

ROLL CALL VOTE - Result _____

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

[Signature]
Secretary to the Council

June 11, 1996
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FINAL READING, 6-4-96

VOICE VOTE

APPROVED

RECORDED VOTE ON REQUEST

CHAVOUS AND EVANS

ABSENT _____

ROLL CALL VOTE - Result _____

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X indicates no

AB - Absent

NV - Present not voting

CERTIFICATION RECORD

[Signature]
Secretary to the Council

June 11, 1996
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

VOICE VOTE

RECORDED VOTE ON REQUEST

ABSENT _____

ROLL CALL VOTE - Result _____

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date