



Substance Testing

Substance Testing

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Custodial Operations Practice Directive

Process Owner: Custodial Operations	Security Classification: Official/Public
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Scope
<ol style="list-style-type: none"> 1. Human Rights 2. Limitation of Human Rights 3. Substance Testing a Prisoner 4. Testing Regimes 5. [REDACTED] 6. Conducting a Targeted Substance Test 7. Presumptive Positive Result 8. Confirmatory Results Received 9. Risk Management Strategies (Substance Testing)

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1. Human Rights

It is unlawful for corrective services officers and QCS staff to act or make decisions in a way that is not compatible with human rights, or in deciding, fail to consider a human right relevant to the decision.

Considering human rights entails identifying human rights which may be relevant to a decision and considering whether the decision would be compatible with human rights.

A decision will be compatible with human rights when it does not limit a human right, or only limits a right to the extent that is reasonable and demonstrably justifiable.

Human rights which may be relevant, include but are not limited to:

- a) the prisoner's right to equal and effective protection against discrimination;
- b) the prisoner's right not to be treated or punished in a cruel, inhuman or degrading way;
- c) the prisoner's right to privacy and reputation;
- d) the prisoner's cultural rights – generally and for Aboriginal and Torres Strait Islander peoples; and
- e) the prisoner's right to humane treatment when deprived of liberty.

2. Limitation of Human Rights

In determining whether a limitation may be reasonable and demonstrably justified, a number of factors are relevant, including but not limited to:

- a) The nature of the human right – this involves looking at the purpose and underlying value of the human right. For example, humane treatment when deprived of liberty provides that all persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.
- b) The nature and purpose of the limitation – this involves considering the actual purpose or legitimate aim/reason for limiting the human right. For example, the practice of substance testing a prisoner limits the prisoner's right to privacy for the purpose of detecting and managing unauthorised substance use, which is prohibited in a corrective services facility.
- c) The relationship between the limitation and its purpose – this involves considering the rational connection between the limitation of the right, and whether this will actually help to achieve said purpose or legitimate aim. For example, does the practice of substance testing a prisoner assist with the detection and management of unauthorised substances in a corrective services facility?
- d) Whether there are any less restrictive and reasonable ways to achieve the purpose – this involves a 'necessity analysis' where it is necessary to consider the purpose of the limitation and if it can be achieved in any other way. For example, is there a less restrictive way to determine any unauthorised use of substances, other than a substance test?
- e) The importance between the purpose of the limitation and preserving the human right – this involves a balancing exercise of the benefits obtained by the limitation vs the harm caused to the human right. The greater the limitation of the right, the more important the purpose will need to be, to justify the limitation. For example, does the safety and security of the corrective services facility, which is enhanced by the management and detection of unauthorised substances, outweigh the limitation to the right to privacy of the prisoner which is impacted by a substance test?

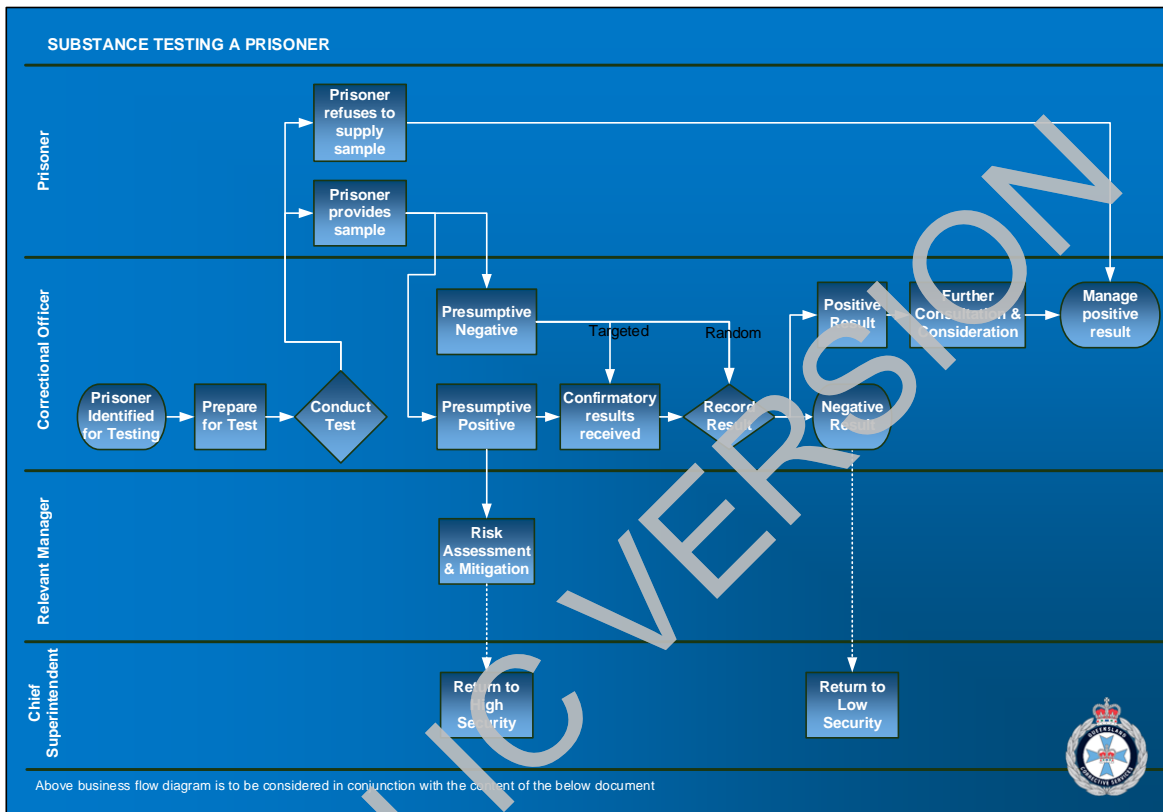




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A person's human rights should only be limited to the extent that is reasonably and demonstrably justified.

3. Substance Testing a Prisoner



Above business flow diagram is to be considered in conjunction with the content of the below document

Unauthorised substance use is prohibited in any corrective services facility. This is integral to the safety of the centre and rehabilitation of prisoners.

A Chief Superintendent of a corrective services facility is responsible for ensuring that activities are undertaken in the centre to detect and manage unauthorised substance use. Staff must undertake and perform activities to detect and manage unauthorised substance use in accordance with legislation, policy and procedure. A prisoner must be treated with due regard for their human rights and inherent dignity during the substance testing process.

QCS staff must treat all prisoners with respect. Prisoners must not be discriminated against or harassed on the grounds of their medical condition, sexual identity, gender identity, intersex status or related issues.

Considerations relevant to the Lesbian, Gay, Bisexual, Trans/transgender, Intersex, Queer/questioning and Asexual (LGBTIQA+) cohort of prisoners (where this is known) must be taken into account during any decision making. Decisions are to be made on a case by case basis following an individualised assessment of relevant factors, including the reasonableness of the actions being considered.





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Facilities must roster adequate staff to collect the test samples for substance testing programs. Testing must use split sample test cups. Any presumptive positive must be confirmed using gas chromatographic/mass spectrometry (GC/MS) technology (i.e. sent to laboratory for a confirmatory test).

Substance testing of prisoners is provided for in sections 41-43 of the *Corrective Services Act 2006* (CSA) and Part 2, Division 5: Test Samples of the *Corrective Services Regulation 2017* (CSR).

4. Testing Regimes

The Chief Superintendent of a corrective services facility must ensure appropriate resources are available to undertake substance testing.

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6.1 Prisoner identified for testing

A prisoner may be required to undergo testing to determine unauthorised substance use (refer to sections 41-43 of the CSA) – this is inclusive of persons serving a detention order under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSOA) or other court order.





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A prisoner will be subject to testing for the following reasons:

- identified on the Random Testing program (refer to section 4 Testing Regimes of this COPD);
- identified for a targeted test (refer to section 4 Testing [REDACTED] of this COPD); or
- the managing corrective services facility must develop a drug strategy for work camps (refer to section 4 Testing Regimes of this COPD).

6.2 Prepare for test

Only prisoners identified for the random testing program or targeted testing in accordance with previously identified means should be tested.

At least two officers must be present during the sample taking and testing process. Officers involved in sample taking must have demonstrated competency in substance testing procedures as part of the Custodial Officer Entry Program or training assessed as equivalent by the Chief Superintendent, QCS Academy.

The collecting officer must have the relevant delegation of the chief executive powers. Refer to the Queensland Corrective Services Instrument of Delegation of Chief Executive Powers.

The safety of officers collecting and testing urine is paramount. Officers, when collecting or testing urine, particularly those with cuts/abrasions, must exercise due care and take all necessary precautions.

Officers must be provided with all relevant associated personal protection equipment as outlined in the Appendix ST1 Collecting a Urinalysis Sample and the Appendix ST2 Collecting a Breath Sample. Refer to the Administrative Form 68 Drug Test (Custodial), the Administrative Form 69 Chain of Custody and the Appendix ST3 Direction on Ordering Consumables for Substance Testing.

If a prisoner is known to display aggressive or inappropriate behaviour, officers should discuss and determine appropriate arrangements in advance of the sample being taken with the Chief Superintendent of the corrective services facility.

6.3 Conduct the urine and/or breath test

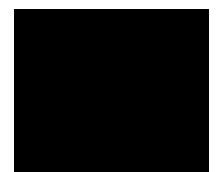
Substance testing must be conducted by trained officers and in accordance with the Appendices ST1 Collecting a Urinalysis Sample and ST2 Collecting a Breath Sample.

Breath and urinalysis testing must be recorded accurately using the Administrative Form 68 Drug Test (Custodial).

Additional consideration must be given to managing spills throughout the process of the test.

6.4 Enter presumptive results

The laboratory certificate of the presumptive results and, if relevant, certificate of confirmation test results must be placed on file. In addition, all test results must be recorded in IOMS (including failure to provide a sample).





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If a prisoner has relocated (to another corrective services facility or Community Corrections office), it is the responsibility of the facility where the sample was obtained to record the results in IOMS and forward the results.

7. Presumptive Positive Result

All samples which test positive via the test cup must be sent to the laboratory for confirmation. A breach process must not be commenced prior to confirmation of the result being received. Refer to the Appendix ST4 Freight of Urine Samples.

Should a prisoner test presumptively positive to an illicit substance, appropriate risk mitigation strategies must be considered and actioned with regard to the prisoner's risk profile, including but not limited to the prisoner's:

- a) presentation;
- b) breach and incident history;
- c) substance abuse history;
- d) offending profile;
- e) employment;
- f) escape risk;
- g) health;
- h) propensity for violence;
- i) presumptive positive test (substance type); and
- j) any potential risks to the prisoner, other prisoners, staff and the community.

The consideration points and any decision and/or risk mitigation strategies must be added as a case note in IOMS.

A presumptive positive test result for a prisoner located at a low custody corrective services facility must be reviewed to establish if there are any potential risks to the safety and security of the centre. The Chief Superintendent is responsible for considering and approving the return of a prisoner to secure custody when a presumptive positive result is returned.

8. Confirmatory Results Received

Positive results for targeted testing will be returned to the sending centre. These must then be recorded in IOMS.

The prisoner must be notified of the final result of the test. This may include providing a copy of the laboratory result.

8.1 Positive test results

On receiving a confirmatory test result, the corrective services facility must consult (with appropriate authorisation) with local centre-based health services staff to determine if the prisoner may have received authorised medication that may result in a positive indication for the drug type prior to providing the sample. If the prisoner was provided authorised medication, Queensland Health staff must sign and date a copy of the confirmatory test results to be retained by the facility and the IOMS record updated.

If a prisoner has received authorised medication, a copy of the result must be placed on the prisoner's file noting the test is void due to the prisoner being on medication, and no action is to be taken against the prisoner. Furthermore, the positive result must not be included in the results for the facility.





If the prisoner was not on authorised medication, consideration should be given to the prisoner's time in custody and the average retention period of the detected substance(s). If the prisoner has been in custody less than the average retention period, a copy of the result must be placed on their file and no further action is to occur. Refer to the Appendix ST5 Drug Test Cut-off Levels and the Appendix ST6 Average Drug Retention Periods.

If the prisoner has been in custody longer than the retention period and they were not on authorised medication, an incident report must be generated under the category of Drugs – Fail Test/Under the Influence. Where a drug test confirms a 'positive' result for drug use by a prisoner, a referral to the Commissioner of the Police Service (CoP) is not required, as a positive drug test in itself is not an offence in Queensland. A positive drug test, in the absence of any other alleged criminal conduct, should be dealt with as a breach of discipline only.

Refer to sections 43 and 114 of the CSA, COPD Incident Management: Incident Management Process and COPD Breaches of Discipline.

9. Risk Management Strategies (Substance Testing)

Queensland Corrective Services (QCS) intends to remain tough on drugs in prison. Regular random and targeted drug testing is conducted in low custody and secure corrective services facilities to identify drug users. QCS will also be tough on identified drug suppliers and prisoners found in possession of drugs and drug related contraband.

All information related to a breach of discipline and drug test results are to be recorded on a prisoner's file in IOMS.

A risk assessment must be undertaken in circumstances where a prisoner has:

- returned a result that will be dealt with as a positive test result;
- without reasonable excuse, as defined in section 43(4)(b) of the CSA, i.e. a medical condition confirmed by Queensland Health, failed to provide a sample for the purposes of substance testing;
- provided a sample where there are reasonable grounds to believe the sample has been adulterated;
- been found in the possession of medication (not prescribed by centre health staff);
- been identified as a drug supplier; or
- been found in the possession of drug related utensils.

The risk assessment must consider:

- the circumstances surrounding the positive test, failure to provide a sample or the provision of an adulterated sample;
- the institutional conduct of the prisoner;
- the drug test history of the prisoner, in particular where the prisoner may have previously returned a positive test, failed to provide a sample or provided an adulterated sample;
- where the prisoner is currently accommodated;
- the risk the prisoner poses to the security or good order of the corrective services facility; and
- any other factor the Chief Superintendent or delegate considers reasonable in the circumstances.





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The risk assessment must then inform the Chief Superintendent's or delegate's decision to implement an Intensive Management Plan (IMP) or other intervention (as determined by the delegate) to address the nature of the prisoner's conduct.

The conditions of the IMP/intervention must focus on mitigating risk to the prisoner, other prisoners, staff and the security and good order of the corrective services facility.

9.1 Management considerations following a positive result, fail to supply, refuse to comply or adulterated sample

In addition to the general considerations for inclusion in the development of the Intensive Management Plan (IMP) as detailed in COPD Safety Orders and Intensive Management Plans: Intensive Management Plans, the Chief Superintendent or delegate may also consider:

- a) imposing conditions on any visitor (other than a legal visitor) to the prisoner;
- b) the nature and frequency of further drug testing of the prisoner;
- c) the nature and type of any work or work programs undertaken by the prisoner;
- d) commencing a breach of discipline process. Where a breach of discipline has been proven to the requisite standard – the decision maker must take into consideration other management actions that the prisoner has been placed on when determining any penalty; and
- e) where practicable, referral to a drug intervention strategy.

9.2 Intervention referral

Where practicable, prisoners are to be referred to a drug intervention program or to a counselling session with a drug/alcohol counsellor. If there is a drug unit at the centre, the prisoner is to be referred to this unit for treatment where assessed as suitable.

9.3 Placement of male prisoners following a drug related incident

The risk management strategies that apply to male prisoners following a positive drug test, fail to supply, adulterated sample, possession of medication (not prescribed by centre health staff), identified drug supplier, and possession of drug related utensils are:

- a) the prisoner may be ineligible for transfer to low custody for three months;
- b) if located in low custody, consideration for return to high security for three months. Following this three month period the delegate is able to reconsider low custody placement taking into account:
 - i. the type of drug used or consumed;
 - ii. any submissions by the prisoner;
 - iii. custodial behaviour prior to the incident including any mitigating factors;
 - iv. custodial behaviour following the incident;
 - v. the prisoner's willingness to engage in a substance intervention program and their motivation to remain drug free;
 - vi. any known intelligence; and
 - vii. input from the Chief Superintendent of the corrective services facility prior to returning the prisoner to low custody.





9.4 Response to drug related incidents for female prisoners

To meet the unique risks and needs of female prisoners, any response to a drug related incident made by the delegate, needs to take into consideration the individualised risks/needs of the prisoner.

9.5 Transfer of prisoners from low custody to secure custody after a drug related incident (male and female)

Upon a prisoner returning from low custody to secure custody, the delegate is to ensure that either an incident report or case note is entered within IOMS outlining:

- who made the decision for the prisoner to be returned to secure custody;
- the reason/s the decision was made;
- information provided to the prisoner as to what action was being taken and the reason/s for their return to secure custody; and
- identification of any outstanding investigations or breach actions that would impede an Event Based Review (EBR) of the prisoner's security classification and/or placement.

Sentence Management Services are also to be notified upon the return of a prisoner from low custody to secure custody.

If a breach of discipline process is to commence in relation to a positive drug test, the referring officer and deciding officer should consider the capacity of the prisoner to effectively participate in the process, given the results of the drug test. This includes identifying an appropriate hearing date, which takes into account the likelihood that substances may remain in a prisoner's system for a period of time.

Refer to the Appendix ST6 Average Drug Retention Periods.

The Chief Superintendent is responsible for considering and approving the return of a prisoner to secure custody when a presumptive positive result is returned.





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If the prisoner has been returned to secure custody, an EBR is to be conducted by Sentence Management Staff to review the prisoner's security classification and/or placement. Refer to the COPD Sentence Management: Classification and Placement.

Further, if the delegate is considering returning the prisoner to a low custody facility at this review they are to ensure they have considered input from the Chief Superintendent of the corrective services facility prior to returning the prisoner to low custody.

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