



**Preemployment Drug Testing  
For State-paid District Attorney's Personnel  
And Personnel of The Prosecuting Attorneys' Council**

- b.d If the General Assembly authorizes additional types of state-paid positions within District Attorney's offices, the Council will conduct an analysis of those positions to determine if the provisions of this Rule apply to such positions not later than six (6) weeks after such position or positions are authorized.

**TABLE 1**

	Position	Criteria
1	<b>Assistant District Attorney</b>	Assistant district attorneys are responsible to their respective district attorney for the prosecution of all classes of criminal cases within the judicial circuit, including violations of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20, et seq. As such they have the discretion to determine what criminal charges will be brought against persons arrested for violations of the criminal laws of this state, including driving under the influence (DUI) and the Controlled Substances Act; to enter into plea discussion with persons charged with violations of the criminal laws of this state, including DUI and the Controlled Substances Act; to make recommendations to a judge concerning sentencing of defendants, including drug offenders. In addition, assistant district attorneys are authorized by law to carry firearms, O.C.G.A. §§ 16-11-127.1(c)(5)(C), 16-11-130(a)(5) and, in many circuits, are required to operate motor vehicles in order to perform their duties. Assistant district attorneys have access to highly sensitive and privileged law enforcement material including the identities of informants, the location of protected witnesses, and on-going criminal investigations.
2.	<b>District Attorney Investigators</b>	District attorney investigators are required to be certified by the Peace Officers Standards and Training Council (POST), O.C.G.A. § 15-18-21(c), and may be authorized to carry firearms, <i>Id.</i> , O.C.G.A. §§ 16-11-127.1(c)((5)(A), 16-11-130(a)(5), and to exercise the powers of arrest, O.C.G.A. § 15-18-14.1(c). In many circuits, district attorney investigators are required to operate motor vehicles in order to perform their duties. District attorney investigators have access to highly sensitive and privileged law enforcement material including the identities of informants, the location of protected witnesses, and on-going criminal investigations.
3.	<b>Secretaries</b>	Secretaries within district attorneys offices may have access to highly sensitive and privileged law enforcement material including the identities of informants, the location of protected witnesses, and on-going criminal investigations. In some multi-county circuits, secretaries may be required to operate motor vehicles in order to travel within the circuit in the performance of their official duties.

**5.3. Definitions. For purposes of this rule:**

- c.a "Applicant" means an individual who has been offered state employment as an assistant district attorney, district attorney investigator, district attorney's secretary, or employment in designated positions of the Council or who has commenced such initial state employment on or after July 1, 1995 but has not submitted to an established test for illegal drugs.
- c.b "Break in service" means a separation from service as on a full-time basis as an employee of the State of Georgia for a period of six months or more.
- c.c "Commissioner" means the Commissioner of the State Merit System of Personnel Administration.
- c.d "Council" means the Prosecuting Attorneys' Council of Georgia.
- c.e "Department" means the Department of Administrative Services.
- c.f "Established drug test", "drug screening" or "drug test" mean the collection and testing of urine administered by the State Merit System of Personnel Administration in a manner equivalent to that required by the Mandatory Guidelines for Federal Workplace Drug Testing Programs (HHS Regulations, 53 Fed. Reg. 11979, et seq., as amended).
- c.g "Illegal drug" means marijuana/cannabinoids (THC), cocaine, amphetamines/methamphetamines, opiates or phencyclidine (PCP). The term illegal drug shall not include any drug when used pursuant to a valid prescription or when used as otherwise authorized by state or federal law.
- c.h "Initial state employment" means the employment of an individual who was not employed by an agency of state government immediately prior to the day the individual actually reported for duty. The term shall not include an employee who is moving, without a break in service, from one state position to another state position.
- c.i "Medical Review Officer" means a properly licensed physician designated by the State Merit System of Personnel Administration who reviews and interprets the results of drug tests and evaluates those results together with medical history or any other relevant biomedical information to confirm positive results.
- c.j "Merit System" means the State Personnel Board and the State Merit System of Personnel Administration.
- c.k "State agency" means any state agency, department, commission, bureau, board, college, university, institution or authority of the executive, legislative or judicial branches of state government including local departments of Public Health, County Departments of Family and Children Services, and Community Service

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Boards whose personnel are compensated by state funds.

**5.4. Administration.**

- d.a Each District Attorney is responsible for insuring that the procedures in these Rules are complied with.
  - 11 The District Attorney may assign a member of his or her staff to conduct the administrative duties imposed by these Rules.
  - 12 Only the District Attorney will be notified about the results of any preemployment drug test unless the District Attorney specifically designates in writing another member of his or her staff to receive test results (see form on page [9](#)).
- d.b For personnel employed by the Prosecuting Attorneys' Council:
  - 21 The Director shall be responsible for insuring that the procedures in these Rules are complied with and receiving all reports for all positions except those in the Drug Prosecutions Division.
  - 22 The Coordinator of the Drug Prosecutions Division shall be responsible for insuring that the procedures in these Rules are complied with and receiving all reports for all positions in the Drug Prosecutions Division.
- d.c Except as otherwise specifically provided for in these rules, preemployment drug testing for district attorneys personnel and council employees shall be conducted in accordance with the procedures established by the Commissioner.
- d.d The Commissioner is responsible for entering into such contracts for all branches of state government as may be necessary to provide for testing and verification services. Such drug testing program is required to give due consideration to security of sample collection, chain of custody requirements, accuracy of testing and confidentiality of results of tests of individuals deemed disqualified from employment.

**5.5. Expense of Drug Testing.**

The expense of preemployment drug testing for state-paid positions in District Attorney's offices shall be paid by the [Department] [Council] out of such funds as may be available

for the operation of the District Attorney's offices. The [Department] [Council] cannot pay for preemployment drug tests for non-state paid personnel or positions.

## **Part 2 Drug Testing**

### **5.6. Procedures.**

- f.a Applicants shall be required to complete a preemployment drug test for the presence of illegal drugs prior to commencing employment or within ten (10) working days of commencing employment.
  - f.b Once the decision has been made to make an offer of employment has been made, the applicant shall be informed that the offer is condition on passing a state drug screening test. A sample form for this appears on page [11](#).
  - f.c If the applicant accepts the conditional offer.
    - 31 The applicant will be given a drug testing voucher (all 7 parts). (Sample on p. 13)
    - 32 Applicants shall be required to report to a designated (Annex 1) sample collection facility.
      - AA The District Attorney shall specify a date and time by which each applicant shall report for testing. Such date and time shall be as soon as possible, but not later than two (2) business days following the date the applicant receives notification to report.
      - AA The applicant will be instructed that they must have positive (picture) identification with them when they report to the collection site.
      - AA Failure to appear within two business days constitutes a refusal.
- Note:* It is recommended that the applicant be given the form on a Monday, Tuesday or Wednesday, if possible. The collection facilities are not open at night or weekends
- 33 Once an applicant has been given the drug testing voucher, the District Attorney will send a completed "Notification of Requirement for Drug Testing of Prospective State-Paid Employees" to the Superior Courts Payroll office (see p. [1](#)). Failure to send in this form can result in the county having to pay the cost of the test.

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- f.d If the applicant declines an offer of employment for reasons not related to drug testing it shall not be deemed to be a refusal to submit to drug testing. No report is required.
- f.e Once the applicant has reported to the collection site, responsibility for administration of the test lies with the Merit System and no further action by the District Attorney is required until such time as the results of the test are reported to the District Attorney. Any questions concerning test procedures will be directed to the Merit System.
- f.f The testing laboratory forwards the results of all preemployment drug tests to the Medical Review Officer in accordance with Merit System R. 478-1-.28.301. The duties of the Medical Review Officer concerning test results are set forth in Merit System R. 478-1-.28.300.

**5.7. Refusal to Submit to Drug Testing, Obstruction or Adulteration of Tests.**

- g.a What constitutes refusal.
  - 11 Any applicant who expressly declines drug testing or engages in conduct that clearly obstructs the testing process shall be deemed to have refused drug testing.
  - 12 Any applicant who fails to appear for drug testing after proper notification in accordance with Para. [5.6c2](#) shall be deemed to have refused drug testing.
  - 13 Any applicant who fails to provide adequate urine for testing without a valid medical reason shall be deemed to have refused testing.
  - 14 If the testing laboratory and the Medical Review Officer determine that the sample of an applicant has been adulterated, the applicant shall be deemed to have refused drug testing.
- g.b Any applicant who expressly refuses a preemployment drug test or who fails to appear for such test is disqualified from holding any position with a state employer for a period of two (2) years from the date of refusal. O.C.G.A. § 45-20-111.
  - 21 The District Attorney shall notify the [Department] [Council] of any applicant who has refused or failed to appear for drug screening. See p.

- 12.
- 22 Such notice shall include the name and address of the applicant, the date of refusal or failure to appear, and a brief statement of the circumstances.
- 23 The [Department] [Council] will forward a report of refusal or failure to appear for drug screening to the Merit System for further action as the Merit System determines to be appropriate.

## **5.8. Screening Results.**

- h.a The Merit System will notify the [Department] [Council] of the test results for each applicant who will in turn notify the District Attorney by telephone as follows:
- 11 Rejected Sample. An applicant whose sample is rejected by the testing laboratory may, in the discretion of the District Attorney, be directed to appear for retesting.
  - 12 Unsuitable Sample. If the testing laboratory and the Medical Review Officer determine that the sample of an applicant is unsuitable for testing without legitimate medical explanation, the applicant may, in the discretion of the District Attorney, be directed to appear for retesting. Such retesting will be conducted as an observed sample.
  - 13 Negative Results. An applicant whose results of drug testing do not indicate illegal drug usage may be considered as eligible for employment. Such negative results may be utilized by any other state employer for a period of thirty (30) calendar days after the date the test was administered.
  - 14 Positive Results.
    - AA If the results of the drug test are positive, the Medical Review Officer will proceed in accordance with the rules of the Merit System.
    - AA If the Medical Review Officer is, within two (2) business days of the initial attempt, unable to directly contact the applicant, the Medical Review Officer will contact the Merit System who will in turn shall contact the [Department] [Council]. The [Department] [Council] will contact the District Attorney. The District Attorney shall attempt to contact the applicant and shall inform the applicant that the applicant must contact the Medical Review Officer by the end of the next business day, or the applicant shall be considered to have tested positive for the use of illegal drugs, and as specified

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by O.C.G.A. § 45-20-111(b), State Merit rules and these Rules, to have been disqualified from holding any position with a state employer for a period of two (2) years from the date the test was administered.

AA If the District Attorney is unable to contact the applicant within two (2) business days of the initial attempt, the appointing authority shall so notify the [Department] [Council] who will so advise the Medical Review Officer. The Medical Review Officer shall then deem the applicant to have tested positive.

AA If an applicant is unable to provide an alternative medical explanation for the presence of an illegal drug(s), the Medical Review Officer, after appropriate review, shall notify the Merit System that the test result is positive. The Merit System shall notify the [Department] [Council] that the applicant is disqualified from state employment.

AA An applicant whose results of drug testing indicate that the applicant has used an illegal drug(s) shall be disqualified from employment as specified in O.C.G.A. § 45-20-111(b), Merit System rules and Section 3-2.05.(e) of these Rules.

h.b Non-Disclosure. The results of preemployment drug testing shall remain confidential and shall not be a public record unless necessary for the administration of this rule or otherwise mandated by other state or federal law.

**5.9. Disqualification/Separation from State Employment.**

i.a Disqualification.

11 Any applicant whose drug test results are reported as positive by the Medical Review Officer shall be disqualified from holding any position with a state employer for a period of two (2) years from the date the test was administered. The District Attorney shall, in writing, notify the applicant that the applicant has been deemed to have used an illegal drug and is therefore disqualified from state employment for a period of two (2) years.

12 Any applicant who expressly refuses a preemployment drug test or who fails to appear for such test shall be disqualified from holding any position

with a state employer for a period of two (2) years from the date of refusal.

- 13 The Merit System will also notify any applicant reported to have refused or failed to appear for a drug test that the applicant has been disqualified from state employment for a period of two (2) years.
- 14 The District Attorney will direct any inquiries concerning removal of disqualification to the State Merit System as provided in Rule 3-2.05.

i.b Separations.

- 21 Any applicant whose drug test results are reported as positive and who commenced employment prior to being required to report for drug testing, or who commenced employment before the results of drug testing were received by the District Attorney, shall be immediately separated.
- 22 The District Attorney shall notify the employee of the separation and the reasons therefor, but the separation cannot be appealed except as provided Rule 3-2.04(a)(4).

**5.10. Reviews.**

- j.a The decision of the Medical Review Officer regarding the confirmation of a positive drug test result shall be final. No appeal as to the test results shall be permitted the applicant.
- j.b An applicant who fails to cooperate with a review of a positive drug test result by the Medical Review Officer shall not be entitled to an appeal.
- j.c Any request by applicant who is disqualified from state employment pursuant to O.C.G.A. § 45-20-111 that the disqualification be removed must be filed with the Commissioner in accordance with Merit System rules. The decision concerning disqualification of the Commissioner shall be based on a review of the written record and shall be final.
- j.d A decision by the Commissioner to remove a disqualification from state employment shall not bind or otherwise obligate any District Attorney to appoint or employ a person to a position within the District Attorney's office.
- j.e Under O.C.G.A. §§ 15-18-14, 15-18-14.1, 15-18-17, 15-18-18, 15-18-20 and 15-18-21, the District Attorney has the sole authority to appoint qualified personnel to positions within his or her office and
- j.f

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j.g      such decision is not subject to review by or appeal to the Council nor to any officer, official or agency of the Executive Branch of State Government.

Approved this 15th day of August, 1995.

Chairman

ATTEST:

Secretary

[District Attorney Letterhead]

TO: Department of Administrative Services  
Superior Courts Payroll Department

FROM: \_\_\_\_\_, District Attorney, \_\_\_\_\_ Judicial Circuit

DATE: \_\_\_\_\_

SUBJECT: Delegation of Authority to Receive Preemployment Drug Test Results

The following named individual are authorized to receive written or oral reports of the results of preemployment drug tests performed on applicants for state-paid positions in my office and are responsible to me for such preemployment drug testing.

PRINTED NAME

SIGNATURE

\_\_\_\_\_

This authorization supersedes any prior authorization granted by the undersigned or my predecessor in office.

\_\_\_\_\_  
*Typed Name*  
District Attorney  
\_\_\_\_\_ Judicial Circuit