S T A T E O F N E W Y O R K

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I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. KOLB, ERRIGO -- Multi-Sponsored by -- M. of A. DUPREY, McDONOUGH, SAYWARD, WALKER -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the civil service law, the labor law and the criminal procedure law, in relation to drug-free workplaces

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Article 5 of the civil service law is amended by adding a new title F to read as follows:

TITLE F

DRUG-FREE WORKPLACES

SECTION 84. SHORT TITLE.
84-A. PURPOSE.
84-B. FINDINGS.
84-C. NO LEGAL DUTY TO TEST.
84-D. DEFINITIONS.
84-E. NOTICE TO EMPLOYEES.
84-F. TYPES OF TESTING.
84-G. PROCEDURES AND EMPLOYEE PROTECTION.
84-H. CONFIRMATION TESTING.
84-I. EMPLOYEE PROTECTION.
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84-K. DRUG TESTING STANDARDS; LABORATORIES.
84-L. RULES.
84-M. DISCIPLINE REMEDIES.
84-N. NONDISCIPLINE REMEDIES.
84-O. FEDERAL COMPLIANCE.
84-P. LICENSE FEE.

S 84. SHORT TITLE. THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS THE "DRUG-FREE WORKPLACE ACT."

S 84-A. PURPOSE. THIS TITLE IS INTENDED TO:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD05414-01-9

(A) PROMOTE THE GOAL OF DRUG-FREE WORKPLACES WITHIN GOVERNMENT THROUGH FAIR AND REASONABLE DRUG TESTING METHODS FOR THE PROTECTION OF PUBLIC EMPLOYEES AND EMPLOYERS.

(B) ENCOURAGE EMPLOYERS TO PROVIDE EMPLOYEES WHO HAVE DRUG USE PROBLEMS WITH AN OPPORTUNITY TO PARTICIPATE IN AN EMPLOYEE ASSISTANCE PROGRAM OR AN ALCOHOL AND DRUG REHABILITATION PROGRAM.

(C) PROVIDE FOR CONFIDENTIALITY OF TESTING RESULTS.

S 84-B. FINDINGS. THE LEGISLATURE FINDS THAT:

(A) DRUG USE HAS SERIOUS ADVERSE EFFECTS UPON A SIGNIFICANT PORTION OF THE WORK FORCE, RESULTING IN BILLIONS OF DOLLARS WORTH OF LOST PRODUCTIVITY EACH YEAR AND POSING A THREAT TO THE WORKPLACE AND TO PUBLIC SAFETY AND SECURITY.

(B) MAINTAINING A HEALTHY AND PRODUCTIVE WORK FORCE, SAFE WORKING CONDITIONS FREE FROM THE EFFECTS OF DRUGS, AND QUALITY PRODUCTS AND SERVICES IS IMPORTANT TO EMPLOYERS, EMPLOYEES, AND THE GENERAL PUBLIC IN THIS STATE. THE LEGISLATURE FURTHER FINDS THAT DRUG USE CREATES A VARIETY OF WORKPLACE PROBLEMS, INCLUDING INCREASED INJURY ON THE JOB, INCREASED ABSENTEEISM, INCREASED FINANCIAL BURDEN ON HEALTH AND BENEFIT PROGRAMS, INCREASED WORKPLACE THEFT, DECREASED EMPLOYEE MORALE, DECREASED PRODUCTIVITY, AND A DECLINE IN THE QUALITY OF PRODUCTS AND SERVICES.

(C) CERTAIN DRUG TESTING STANDARDS ARE NECESSARY TO PROTECT PERSONS PARTICIPATING IN WORKPLACE DRUG TESTING PROGRAMS.

(D) IN BALANCING THE INTERESTS OF EMPLOYERS, EMPLOYEES, AND THE WELFARE OF THE GENERAL PUBLIC, THE ESTABLISHMENT OF STANDARDS TO ASSURE FAIR AND ACCURATE TESTING FOR DRUGS IN THE WORKPLACE IS IN THE BEST INTERESTS OF ALL.

S 84-C. NO LEGAL DUTY TO TEST. ALL DRUG TESTING CONDUCTED BY EMPLOYERS SHALL BE IN CONFORMITY WITH THE STANDARDS ESTABLISHED IN THIS TITLE AND ALL APPLICABLE RULES PROMULGATED PURSUANT TO THIS TITLE. HOWEVER, EMPLOYERS SHALL NOT HAVE A LEGAL DUTY UNDER THIS TITLE TO REQUEST AN EMPLOYEE OR JOB APPLICANT TO UNDERGO DRUG TESTING. NO TESTING OF EMPLOYEES SHALL TAKE EFFECT UNTIL LOCAL DRUG ABUSE ASSISTANCE PROGRAMS HAVE BEEN IDENTIFIED.

S 84-D. DEFINITIONS. EXCEPT WHERE THE CONTEXT OTHERWISE REQUIRES, AS USED IN THIS TITLE:

(A) "DRUG" MEANS ALCOHOL, INCLUDING DISTILLED SPIRITS, WINE, MALT BEVERAGES, AND INTOXICATING LIQUORS; AMPHETAMINES; CANNABINOIDS; COCAINE; PHENCYCLIDINE (PCP); HALLUCINOGENS; METHAQUALONE; OPIATES; BARBITURATES; BENZODIAZEPINES; SYNTHETIC NARCOTICS; DESIGNER DRUGS; OR A METABOLITE OF ANY OF THE SUBSTANCES LISTED HEREIN.

(B) "DRUG TEST" OR "TEST" MEANS ANY CHEMICAL, BIOLOGICAL, OR PHYSICAL INSTRUMENTAL ANALYSIS ADMINISTERED FOR THE PURPOSE OF DETERMINING THE PRESENCE OR ABSENCE OF A DRUG OR ITS METABOLITES.

(C) "INITIAL DRUG TEST" MEANS A SENSITIVE, RAPID, AND RELIABLE PROCEDURE TO IDENTIFY NEGATIVE AND PRESUMPTIVE POSITIVE SPECIMENS. ALL INITIAL TESTS SHALL USE AN IMMUNOASSAY PROCEDURE OR AN EQUIVALENT, OR SHALL USE A MORE ACCURATE SCIENTIFICALLY ACCEPTED METHOD APPROVED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES AS SUCH MORE ACCURATE TECHNOLOGY BECOMES AVAILABLE IN A COST-EFFECTIVE FORM.

(D) "CONFIRMATION TEST", "CONFIRMED TEST", OR "CONFIRMED DRUG TEST" MEANS A SECOND ANALYTICAL PROCEDURE USED TO IDENTIFY THE PRESENCE OF A SPECIFIC DRUG OR METABOLITE IN A SPECIMEN. THE CONFIRMATION TEST MUST BE DIFFERENT IN SCIENTIFIC PRINCIPLE FROM THAT OF THE INITIAL TEST PROCEDURE. THIS CONFIRMATION METHOD MUST BE CAPABLE OF PROVIDING REQUIRED SPECIFICITY, SENSITIVITY, AND QUANTITATIVE ACCURACY.

(E) "CHAIN OF CUSTODY" REFERS TO THE METHODOLOGY OF TRACKING SPECIFIED MATERIALS OR SUBSTANCES FOR THE PURPOSE OF MAINTAINING CONTROL AND ACCOUNTABILITY FROM INITIAL COLLECTION TO FINAL DISPOSITION FOR ALL SUCH MATERIALS OR SUBSTANCES AND PROVIDING FOR ACCOUNTABILITY AT EACH STAGE IN HANDLING, TESTING, STORING SPECIMENS, AND REPORTING OF TEST RESULTS.

(F) "JOB APPLICANT" MEANS A PERSON WHO HAS APPLIED FOR A SPECIAL RISK OR SAFETY-SENSITIVE POSITION WITH AN EMPLOYER AND HAS BEEN OFFERED EMPLOYMENT CONDITIONED UPON SUCCESSFULLY PASSING A DRUG TEST.

(G) "EMPLOYEE" MEANS ANY PERSON WHO WORKS FOR SALARY, WAGES, OR OTHER REMUNERATION FOR AN EMPLOYER.

(H) "EMPLOYER" MEANS ANY AGENCY WITHIN STATE GOVERNMENT THAT EMPLOYS INDIVIDUALS FOR SALARY, WAGES, OR OTHER REMUNERATION.

(I) "PRESCRIPTION OR NONPRESCRIPTION MEDICATION" MEANS A DRUG OR MEDICATION OBTAINED PURSUANT TO A PRESCRIPTION OR A MEDICATION THAT IS AUTHORIZED PURSUANT TO FEDERAL OR STATE LAW FOR GENERAL DISTRIBUTION AND USE WITHOUT A PRESCRIPTION IN THE TREATMENT OF HUMAN DISEASES, AILMENTS, OR INJURIES.

(J) "REASONABLE SUSPICION DRUG TESTING" MEANS DRUG TESTING BASED ON A BELIEF THAT THE EMPLOYEE IS USING OR HAS USED DRUGS IN VIOLATION OF THE EMPLOYER'S POLICY DRAWN FROM SPECIFIC OBJECTIVE AND ARTICULABLE FACTS AND REASONABLE INFERENCES DRAWN FROM THOSE FACTS IN LIGHT OF EXPERIENCE. REASONABLE SUSPICION DRUG TESTING SHALL NOT BE REQUIRED EXCEPT UPON THE RECOMMENDATION OF A SUPERVISOR WHO IS AT LEAST ONE LEVEL OF SUPERVISION HIGHER THAN THE IMMEDIATE SUPERVISOR OF THE EMPLOYEE IN QUESTION. AMONG OTHER THINGS, SUCH FACTS AND INFERENCES MAY BE BASED UPON:

1. OBSERVABLE PHENOMENA WHILE AT WORK, SUCH AS DIRECT OBSERVATION OF DRUG USE OR OF THE PHYSICAL SYMPTOMS OR MANIFESTATIONS OF BEING UNDER THE INFLUENCE OF A DRUG.

2. ABNORMAL CONDUCT OR ERRATIC BEHAVIOR WHILE AT WORK OR A SIGNIFICANT DETERIORATION IN WORK PERFORMANCE.

3. A REPORT OF DRUG USE, PROVIDED BY A RELIABLE AND CREDIBLE SOURCE, WHICH HAS BEEN INDEPENDENTLY CORROBORATED.

4. EVIDENCE THAT AN INDIVIDUAL HAS TAMPERED WITH A DRUG TEST DURING HIS EMPLOYMENT WITH THE CURRENT EMPLOYER.

5. INFORMATION THAT AN EMPLOYEE HAS CAUSED, OR CONTRIBUTED TO, AN ACCIDENT WHILE AT WORK.

6. EVIDENCE THAT AN EMPLOYEE HAS USED, POSSESSED, SOLD, SOLICITED, OR TRANSFERRED DRUGS WHILE WORKING OR WHILE ON THE EMPLOYER'S PREMISES OR WHILE OPERATING THE EMPLOYER'S VEHICLE, MACHINERY, OR EQUIPMENT.

(K) "SPECIMEN" MEANS A TISSUE OR PRODUCT OF THE HUMAN BODY CAPABLE OF REVEALING THE PRESENCE OF DRUGS OR THEIR METABOLITES.

(L) "EMPLOYEE ASSISTANCE PROGRAM" MEANS AN ESTABLISHED PROGRAM FOR EMPLOYEE ASSESSMENT, COUNSELING, AND POSSIBLE REFERRAL TO AN ALCOHOL AND DRUG REHABILITATION PROGRAM.

(M) "SAFETY-SENSITIVE POSITION" MEANS ANY POSITION, INCLUDING A SUPERVISORY OR MANAGEMENT POSITION, IN WHICH A DRUG IMPAIRMENT WOULD CONSTITUTE AN IMMEDIATE AND DIRECT THREAT TO PUBLIC HEALTH OR SAFETY.

S 84-E. NOTICE TO EMPLOYEES. (A) EMPLOYERS WITH NO DRUG TESTING PROGRAM SHALL ENSURE THAT AT LEAST SIXTY DAYS ELAPSE BETWEEN A GENERAL ONE-TIME NOTICE TO ALL EMPLOYEES THAT A DRUG TESTING PROGRAM IS BEING IMPLEMENTED AND THE BEGINNING OF ACTUAL DRUG TESTING. EMPLOYERS WITH DRUG TESTING PROGRAMS IN PLACE PRIOR TO THE EFFECTIVE DATE OF THIS SECTION ARE NOT REQUIRED TO PROVIDE A SIXTY-DAY NOTICE PERIOD.

(B) PRIOR TO TESTING, ALL EMPLOYEES AND JOB APPLICANTS FOR EMPLOYMENT SHALL BE GIVEN A WRITTEN POLICY STATEMENT FROM THE EMPLOYER WHICH CONTAINS:

1. A GENERAL STATEMENT OF THE EMPLOYER'S POLICY ON EMPLOYEE DRUG USE, WHICH SHALL IDENTIFY:

(I) THE TYPES OF TESTING AN EMPLOYEE OR JOB APPLICANT MAY BE REQUIRED TO SUBMIT TO, INCLUDING REASONABLE SUSPICION OR OTHER BASIS; AND

(II) THE ACTIONS THE EMPLOYER MAY TAKE AGAINST AN EMPLOYEE OR JOB APPLICANT ON THE BASIS OF A POSITIVE CONFIRMED DRUG TEST RESULT.

2. A STATEMENT ADVISING THE EMPLOYEE OR JOB APPLICANT OF THE EXISTENCE OF THIS SECTION.

3. A GENERAL STATEMENT CONCERNING CONFIDENTIALITY.

4. PROCEDURES FOR EMPLOYEES AND JOB APPLICANTS TO CONFIDENTIALLY REPORT THE USE OF PRESCRIPTION OR NONPRESCRIPTION MEDICATIONS BOTH BEFORE AND AFTER BEING TESTED. ADDITIONALLY, EMPLOYEES AND JOB APPLICANTS SHALL RECEIVE NOTICE OF THE MOST COMMON MEDICATIONS BY BRAND NAME OR COMMON NAME, AS APPLICABLE, AS WELL AS BY CHEMICAL NAME, WHICH MAY ALTER OR AFFECT A DRUG TEST. A LIST OF SUCH MEDICATIONS SHALL BE DEVELOPED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES.

5. THE CONSEQUENCES OF REFUSING TO SUBMIT TO A DRUG TEST.

6. NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF EMPLOYEE ASSISTANCE PROGRAMS AND LOCAL ALCOHOL AND DRUG REHABILITATION PROGRAMS.

7. A STATEMENT THAT AN EMPLOYEE OR JOB APPLICANT WHO RECEIVES A POSITIVE CONFIRMED DRUG TEST RESULT MAY CONTEST OR EXPLAIN THE RESULT TO THE EMPLOYER WITHIN FIVE WORKING DAYS AFTER WRITTEN NOTIFICATION OF THE POSITIVE TEST RESULT. IF AN EMPLOYEE OR JOB APPLICANT'S EXPLANATION OR CHALLENGE IS UNSATISFACTORY TO THE EMPLOYER, THE PERSON MAY CONTEST THE DRUG TEST RESULT AS PROVIDED BY SECTIONS EIGHTY-FOUR-M AND EIGHTY-FOUR-N OF THIS TITLE.

8. A STATEMENT INFORMING THE EMPLOYEE OR JOB APPLICANT OF HIS OR HER RESPONSIBILITY TO NOTIFY THE LABORATORY OF ANY ADMINISTRATIVE OR CIVIL ACTIONS BROUGHT PURSUANT TO THIS TITLE.

9. A LIST OF ALL DRUGS FOR WHICH THE EMPLOYER WILL TEST, DESCRIBED BY BRAND NAMES OR COMMON NAMES, AS APPLICABLE, AS WELL AS BY CHEMICAL NAMES.

10. A STATEMENT REGARDING ANY APPLICABLE COLLECTIVE BARGAINING AGREEMENT OR CONTRACT AND THE RIGHT TO APPEAL TO THE APPROPRIATE AGENCY.

11. A STATEMENT NOTIFYING EMPLOYEES AND JOB APPLICANTS OF THEIR RIGHT TO CONSULT THE TESTING LABORATORY FOR TECHNICAL INFORMATION REGARDING PRESCRIPTION AND NONPRESCRIPTION MEDICATION.

(C) AN EMPLOYER SHALL INCLUDE NOTICE OF DRUG TESTING ON VACANCY ANNOUNCEMENTS FOR THOSE POSITIONS WHERE DRUG TESTING IS REQUIRED. A NOTICE OF THE EMPLOYER'S DRUG TESTING POLICY SHALL ALSO BE POSTED IN AN APPROPRIATE AND CONSPICUOUS LOCATION ON THE EMPLOYER'S PREMISES, AND COPIES OF THE POLICY SHALL BE MADE AVAILABLE FOR INSPECTION BY THE GENERAL PUBLIC DURING REGULAR BUSINESS HOURS IN THE EMPLOYER'S PERSONNEL OFFICE OR OTHER SUITABLE LOCATIONS.

S 84-F. TYPES OF TESTING. AN EMPLOYER IS AUTHORIZED, BUT NOT REQUIRED, TO CONDUCT THE FOLLOWING TYPES OF DRUG TESTS:

(A) JOB APPLICANT TESTING. AN EMPLOYER MAY REQUIRE JOB APPLICANTS TO SUBMIT TO A DRUG TEST AND MAY USE A REFUSAL TO SUBMIT TO A DRUG TEST OR A POSITIVE CONFIRMED DRUG TEST AS A BASIS FOR REFUSAL TO HIRE THE JOB APPLICANT.

(B) REASONABLE SUSPICION. AN EMPLOYER MAY REQUIRE AN EMPLOYEE TO SUBMIT TO REASONABLE SUSPICION DRUG TESTING.

(C) ROUTINE FITNESS FOR DUTY. AN EMPLOYER MAY REQUIRE AN EMPLOYEE TO SUBMIT TO A DRUG TEST IF THE TEST IS CONDUCTED AS PART OF A ROUTINELY SCHEDULED EMPLOYEE FITNESS FOR DUTY MEDICAL EXAMINATION THAT IS PART OF

THE EMPLOYER'S ESTABLISHED POLICY OR THAT IS SCHEDULED ROUTINELY FOR ALL MEMBERS OF AN EMPLOYMENT CLASSIFICATION OR GROUP.

(D) FOLLOW-UP TESTING. IF THE EMPLOYEE IN THE COURSE OF EMPLOYMENT ENTERS AN EMPLOYEE ASSISTANCE PROGRAM FOR DRUG-RELATED PROBLEMS, OR AN ALCOHOL AND DRUG REHABILITATION PROGRAM, THE EMPLOYER MAY REQUIRE SUCH EMPLOYEE TO SUBMIT TO A DRUG TEST AS A FOLLOW-UP TO SUCH PROGRAM, AND ON A QUARTERLY, SEMIANNUAL, OR ANNUAL BASIS FOR UP TO TWO YEARS THEREAFTER.

S 84-G. PROCEDURES AND EMPLOYEE PROTECTION. ALL SPECIMEN COLLECTION AND TESTING FOR DRUGS UNDER THIS TITLE SHALL BE PERFORMED IN ACCORDANCE WITH THE FOLLOWING PROCEDURES:

(A) A SAMPLE SHALL BE COLLECTED WITH DUE REGARD TO THE PRIVACY OF THE INDIVIDUAL PROVIDING THE SAMPLE, AND IN A MANNER REASONABLY CALCULATED TO PREVENT SUBSTITUTION OR CONTAMINATION OF THE SAMPLE.

(B) SPECIMEN COLLECTION SHALL BE DOCUMENTED, AND THE DOCUMENTATION PROCEDURES SHALL INCLUDE:

1. LABELING OF SPECIMEN CONTAINERS SO AS TO REASONABLY PRECLUDE THE LIKELIHOOD OF ERRONEOUS IDENTIFICATION OF TEST RESULTS.

2. A FORM FOR THE EMPLOYEE OR JOB APPLICANT TO PROVIDE ANY INFORMATION HE CONSIDERS RELEVANT TO THE TEST, INCLUDING IDENTIFICATION OF CURRENTLY OR RECENTLY USED PRESCRIPTION OR NONPRESCRIPTION MEDICATION, OR OTHER RELEVANT MEDICAL INFORMATION. SUCH FORM SHALL PROVIDE NOTICE OF THE MOST COMMON MEDICATIONS BY BRAND NAME OR COMMON NAME, AS APPLICABLE, AS WELL AS BY CHEMICAL NAME, WHICH MAY ALTER OR AFFECT A DRUG TEST. THE PROVIDING OF INFORMATION SHALL NOT PRECLUDE THE ADMINISTRATION OF THE DRUG TEST, BUT SHALL BE TAKEN INTO ACCOUNT IN INTERPRETING ANY POSITIVE CONFIRMED RESULTS.

(C) SPECIMEN COLLECTION, STORAGE, AND TRANSPORTATION TO THE TESTING SITE SHALL BE PERFORMED IN A MANNER WHICH WILL REASONABLY PRECLUDE SPECIMEN CONTAMINATION OR ADULTERATION.

(D) EACH INITIAL AND CONFIRMATION TEST CONDUCTED UNDER THIS TITLE, NOT INCLUDING THE TAKING OR COLLECTING OF A SPECIMEN TO BE TESTED, SHALL BE CONDUCTED BY A LICENSED LABORATORY AS DESCRIBED IN SECTION EIGHTY-FOUR-K OF THIS TITLE.

(E) A SPECIMEN FOR A DRUG TEST MAY BE TAKEN OR COLLECTED BY ANY OF THE FOLLOWING PERSONS:

1. A PHYSICIAN, A PHYSICIAN'S ASSISTANT, A REGISTERED PROFESSIONAL NURSE, A LICENSED PRACTICAL NURSE, A NURSE PRACTITIONER, OR A CERTIFIED PARAMEDIC WHO IS PRESENT AT THE SCENE OF AN ACCIDENT FOR THE PURPOSE OF RENDERING EMERGENCY MEDICAL SERVICE OR TREATMENT.

2. A QUALIFIED PERSON EMPLOYED BY A LICENSED LABORATORY.

(F) A PERSON WHO COLLECTS OR TAKES A SPECIMEN FOR A DRUG TEST CONDUCTED PURSUANT TO THIS SECTION SHALL COLLECT AN AMOUNT SUFFICIENT FOR TWO DRUG TESTS AS DETERMINED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES.

(G) ANY DRUG TEST CONDUCTED OR REQUESTED BY AN EMPLOYER MAY OCCUR BEFORE, DURING, OR IMMEDIATELY AFTER THE REGULAR WORK PERIOD OF THE EMPLOYEE, AND SHALL BE DEEMED TO BE PERFORMED DURING WORK TIME FOR THE PURPOSES OF DETERMINING COMPENSATION AND BENEFITS FOR THE EMPLOYEE.

(H) EVERY SPECIMEN THAT PRODUCES A POSITIVE CONFIRMED RESULT SHALL BE PRESERVED BY THE LICENSED LABORATORY THAT CONDUCTS THE CONFIRMATION TEST FOR A PERIOD OF AT LEAST TWO HUNDRED TEN DAYS FROM THE TIME THE RESULTS OF THE POSITIVE CONFIRMATION TEST ARE MAILED OR OTHERWISE DELIVERED TO THE EMPLOYER. HOWEVER, IF AN EMPLOYEE OR JOB APPLICANT UNDERTAKES AN ADMINISTRATIVE OR LEGAL CHALLENGE TO THE TEST RESULT, THE EMPLOYEE OR JOB APPLICANT SHALL NOTIFY THE LABORATORY AND THE SAMPLE SHALL BE RETAINED BY THE LABORATORY UNTIL THE CASE OR ADMINISTRATIVE APPEAL IS

SETTLED. DURING THE ONE HUNDRED EIGHTY-DAY PERIOD AFTER WRITTEN NOTIFICATION OF A POSITIVE TEST RESULT, THE EMPLOYEE OR JOB APPLICANT WHO HAS PROVIDED THE SPECIMEN SHALL BE PERMITTED BY THE EMPLOYER TO HAVE A PORTION OF THE SPECIMEN RETESTED, AT THE EMPLOYEE OR JOB APPLICANT'S EXPENSE, AT ANOTHER LABORATORY, LICENSED AND APPROVED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, CHOSEN BY THE EMPLOYEE OR JOB APPLICANT. THE SECOND LABORATORY MUST TEST AN EQUAL OR GREATER SENSITIVITY FOR THE DRUG IN QUESTION AS THE FIRST LABORATORY. THE FIRST LABORATORY WHICH PERFORMED THE TEST FOR THE EMPLOYER SHALL BE RESPONSIBLE FOR THE TRANSFER OF THE PORTION OF THE SPECIMEN TO BE RETESTED, AND FOR THE INTEGRITY OF THE CHAIN OF CUSTODY DURING SUCH TRANSFER.

(I) WITHIN FIVE WORKING DAYS AFTER RECEIPT OF A POSITIVE CONFIRMED TEST RESULT FROM THE TESTING LABORATORY, AN EMPLOYER SHALL INFORM AN EMPLOYEE OR JOB APPLICANT IN WRITING OF SUCH POSITIVE TEST RESULT, THE CONSEQUENCES OF SUCH RESULTS, AND THE OPTIONS AVAILABLE TO THE EMPLOYEE OR JOB APPLICANT.

(J) THE EMPLOYER SHALL PROVIDE TO THE EMPLOYEE OR JOB APPLICANT, UPON REQUEST, A COPY OF THE TEST RESULTS.

(K) WITHIN FIVE WORKING DAYS AFTER RECEIVING NOTICE OF A POSITIVE CONFIRMED TEST RESULT, THE EMPLOYEE OR JOB APPLICANT MAY SUBMIT INFORMATION TO AN EMPLOYER EXPLAINING OR CONTESTING THE TEST RESULTS, AND WHY THE RESULTS DO NOT CONSTITUTE A VIOLATION OF THE EMPLOYER'S POLICY.

(L) IF AN EMPLOYEE OR JOB APPLICANT'S EXPLANATION OR CHALLENGE OF THE POSITIVE TEST RESULTS IS UNSATISFACTORY TO THE EMPLOYER, A WRITTEN EXPLANATION AS TO WHY THE EMPLOYEE OR JOB APPLICANT'S EXPLANATION IS UNSATISFACTORY, ALONG WITH THE REPORT OF POSITIVE RESULTS, SHALL BE PROVIDED BY THE EMPLOYER TO THE EMPLOYEE OR JOB APPLICANT. ALL SUCH DOCUMENTATION SHALL BE KEPT CONFIDENTIAL BY THE EMPLOYER PURSUANT TO SECTION EIGHTY-FOUR-J OF THIS TITLE AND SHALL BE RETAINED BY THE EMPLOYER FOR AT LEAST ONE YEAR.

(M) NO EMPLOYER MAY DISCHARGE, DISCIPLINE, REFUSE TO HIRE, DISCRIMINATE AGAINST, OR REQUEST OR REQUIRE REHABILITATION OF AN EMPLOYEE OR JOB APPLICANT ON THE SOLE BASIS OF A POSITIVE TEST RESULT THAT HAS NOT BEEN VERIFIED BY A CONFIRMATION TEST.

(N) IN ADDITION TO THE LIMITATION UNDER SUBDIVISION (M) OF THIS SECTION:

1. NO EMPLOYER MAY DISCHARGE, DISCIPLINE, OR DISCRIMINATE AGAINST AN EMPLOYEE ON THE SOLE BASIS OF THE EMPLOYEE'S FIRST POSITIVE CONFIRMED DRUG TEST, UNLESS THE EMPLOYER HAS FIRST GIVEN THE EMPLOYEE AN OPPORTUNITY TO PARTICIPATE IN, AT THE EMPLOYEE'S OWN EXPENSE OR PURSUANT TO COVERAGE UNDER A HEALTH INSURANCE PLAN, AN EMPLOYEE ASSISTANCE PROGRAM OR AN ALCOHOL AND DRUG REHABILITATION PROGRAM, AND:

(I) THE EMPLOYEE HAS EITHER REFUSED TO PARTICIPATE IN THE EMPLOYEE ASSISTANCE PROGRAM OR THE ALCOHOL AND DRUG REHABILITATION PROGRAM OR HAS FAILED TO SUCCESSFULLY COMPLETE SUCH PROGRAM, AS EVIDENCED BY WITHDRAWAL FROM THE PROGRAM BEFORE ITS COMPLETION OR A REPORT FROM THE PROGRAM INDICATING UNSATISFACTORY COMPLIANCE, OR BY A POSITIVE TEST RESULT ON A CONFIRMATION TEST AFTER COMPLETION OF THE PROGRAM; OR

(II) THE EMPLOYEE HAS FAILED OR REFUSED TO SIGN A WRITTEN CONSENT FORM ALLOWING THE EMPLOYER TO OBTAIN INFORMATION REGARDING THE PROGRESS AND SUCCESSFUL COMPLETION OF AN EMPLOYEE ASSISTANCE PROGRAM OR AN ALCOHOL AND DRUG REHABILITATION PROGRAM.

2. AN EMPLOYEE IN A SAFETY SENSITIVE POSITION SHALL BE PLACED BY THE EMPLOYER IN A NON-SAFETY SENSITIVE POSITION, OR IF SUCH POSITION IS UNAVAILABLE, ON LEAVE STATUS WHILE PARTICIPATING IN AN EMPLOYEE ASSISTANCE PROGRAM OR AN ALCOHOL AND DRUG REHABILITATION PROGRAM. IF PLACED ON

LEAVE STATUS WITHOUT PAY, THE EMPLOYEE SHALL BE PERMITTED TO USE ANY ACCUMULATED LEAVE CREDITS PRIOR TO BEING PLACED ON LEAVE WITHOUT PAY.

(O) UPON SUCCESSFUL COMPLETION OF AN EMPLOYEE ASSISTANCE PROGRAM OR AN ALCOHOL AND DRUG REHABILITATION PROGRAM, THE EMPLOYEE SHALL BE REINSTATED TO THE SAME OR EQUIVALENT POSITION THAT WAS HELD PRIOR TO SUCH REHABILITATION.

(P) NO EMPLOYER MAY DISCHARGE, DISCIPLINE, OR DISCRIMINATE AGAINST AN EMPLOYEE, OR REFUSE TO HIRE A JOB APPLICANT, ON THE BASIS OF ANY PRIOR MEDICAL HISTORY REVEALED TO THE EMPLOYER PURSUANT TO THIS TITLE.

(Q) AN EMPLOYER WHO PERFORMS DRUG TESTING OR SPECIMEN COLLECTION SHALL USE CHAIN OF CUSTODY PROCEDURES AS ESTABLISHED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES TO ENSURE PROPER RECORDKEEPING, HANDLING, LABELING, AND IDENTIFICATION OF ALL SPECIMENS TO BE TESTED.

(R) AN EMPLOYER SHALL PAY THE COST OF ALL DRUG TESTS, INITIAL AND CONFIRMATION, WHICH HE REQUIRES OF EMPLOYEES.

(S) AN EMPLOYEE OR JOB APPLICANT SHALL PAY THE COSTS OF ANY ADDITIONAL DRUG TESTS NOT REQUIRED BY THE EMPLOYER.

(T) NO EMPLOYER SHALL DISCHARGE, DISCIPLINE, OR DISCRIMINATE AGAINST AN EMPLOYEE SOLELY UPON VOLUNTARILY SEEKING TREATMENT, WHILE UNDER THE EMPLOY OF THE EMPLOYER, FOR A DRUG-RELATED PROBLEM IF THE EMPLOYEE HAS NOT PREVIOUSLY TESTED POSITIVE FOR DRUG USE, ENTERED AN EMPLOYEE ASSISTANCE PROGRAM FOR DRUG-RELATED PROBLEMS, OR ENTERED AN ALCOHOL AND DRUG REHABILITATION PROGRAM.

(U) WHERE TESTING IS CONDUCTED BASED ON REASONABLE SUSPICION, EACH EMPLOYER SHALL PROMPTLY DETAIL IN WRITING THE CIRCUMSTANCES WHICH FORMED THE BASIS OF THE DETERMINATION THAT REASONABLE SUSPICION EXISTED TO WARRANT THE TESTING. A COPY OF THIS DOCUMENTATION SHALL BE GIVEN TO THE EMPLOYEE UPON REQUEST AND THE ORIGINAL DOCUMENTATION SHALL BE KEPT CONFIDENTIAL BY THE EMPLOYER PURSUANT TO SECTION EIGHTY-FOUR-J OF THIS TITLE AND RETAINED BY THE EMPLOYER FOR AT LEAST ONE YEAR.

(V) IF AN EMPLOYEE IS UNABLE TO PARTICIPATE IN OUTPATIENT REHABILITATION, THE EMPLOYEE MAY BE PLACED ON LEAVE STATUS WHILE PARTICIPATING IN AN EMPLOYEE ASSISTANCE PROGRAM OR AN ALCOHOL AND DRUG REHABILITATION PROGRAM. IF PLACED ON LEAVE WITHOUT PAY STATUS, THE EMPLOYEE SHALL BE PERMITTED TO USE ANY ACCUMULATED LEAVE CREDITS PRIOR TO BEING PLACED ON LEAVE WITHOUT PAY. UPON SUCCESSFUL COMPLETION OF AN EMPLOYEE ASSISTANCE PROGRAM OR AN ALCOHOL AND DRUG REHABILITATION PROGRAM, THE EMPLOYEE SHALL BE REINSTATED TO THE SAME OR EQUIVALENT POSITION THAT WAS HELD PRIOR TO SUCH REHABILITATION.

S 84-H. CONFIRMATION TESTING. (A) IF AN INITIAL DRUG TEST IS NEGATIVE, THE EMPLOYER MAY IN ITS SOLE DISCRETION AND AT THE EMPLOYER'S EXPENSE SEEK A CONFIRMATION TEST.

(B) ONLY LICENSED LABORATORIES AS DESCRIBED IN SECTION EIGHTY-FOUR-K OF THIS TITLE SHALL CONDUCT CONFIRMATION DRUG TESTS.

(C) ALL POSITIVE INITIAL TESTS SHALL BE CONFIRMED USING GAS CHROMATOGRAPHY/MASS SPECTROMETRY (GC/MS) OR AN EQUIVALENT OR MORE ACCURATE SCIENTIFICALLY ACCEPTED METHOD APPROVED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES AS SUCH TECHNOLOGY BECOMES AVAILABLE IN A COST EFFECTIVE FORM.

S 84-I. EMPLOYEE PROTECTION. (A) NO EMPLOYEE OR JOB APPLICANT WHOSE DRUG TEST RESULT IS CONFIRMED AS POSITIVE IN ACCORDANCE WITH THE PROVISIONS OF THIS TITLE SHALL, BY VIRTUE OF THE RESULT ALONE BE DEFINED AS A PERSON WITH A DISABILITY.

(B) AN EMPLOYER WHO DISCHARGES OR DISCIPLINES AN EMPLOYEE OR REFUSES TO HIRE A JOB APPLICANT IN COMPLIANCE WITH THIS TITLE SHALL BE CONSIDERED TO HAVE DISCHARGED, DISCIPLINED, OR REFUSED TO HIRE FOR CAUSE.

(C) NO PHYSICIAN-PATIENT RELATIONSHIP IS CREATED BETWEEN AN EMPLOYEE OR JOB APPLICANT AND AN EMPLOYER OR ANY PERSON PERFORMING OR EVALUATING A DRUG TEST, SOLELY BY THE ESTABLISHMENT, IMPLEMENTATION, OR ADMINISTRATION OF A DRUG TESTING PROGRAM.

(D) NOTHING IN THIS TITLE SHALL BE CONSTRUED TO PREVENT AN EMPLOYER FROM ESTABLISHING REASONABLE WORK RULES RELATED TO EMPLOYEE POSSESSION, USE, SALE, OR SOLICITATION OF DRUGS, INCLUDING CONVICTIONS FOR DRUG-RELATED OFFENSES, AND TAKING ACTION BASED UPON A VIOLATION OF ANY OF THOSE RULES.

(E) NOTHING IN THIS TITLE SHALL BE CONSTRUED TO OPERATE RETROACTIVELY, AND NOTHING IN THIS TITLE SHALL ABROGATE THE RIGHT OF AN EMPLOYER UNDER STATE LAW TO CONDUCT DRUG TESTS PRIOR TO JANUARY FIRST, TWO THOUSAND TEN. A DRUG TEST CONDUCTED BY AN EMPLOYER PRIOR TO JANUARY FIRST, TWO THOUSAND TEN IS NOT SUBJECT TO THIS TITLE.

(F) IF AN EMPLOYEE OR JOB APPLICANT REFUSES TO SUBMIT TO A DRUG TEST, THE EMPLOYER SHALL NOT BE BARRED FROM DISCHARGING OR DISCIPLINING THE EMPLOYEE, OR FROM REFUSING TO HIRE THE JOB APPLICANT. HOWEVER, NOTHING IN THIS SUBDIVISION SHALL ABROGATE THE RIGHTS AND REMEDIES OF THE EMPLOYEE OR JOB APPLICANT AS OTHERWISE PROVIDED IN THIS TITLE.

(G) AN EMPLOYER WHO REFUSES TO HIRE A JOB APPLICANT BASED ON A POSITIVE CONFIRMED DRUG TEST RESULT SHALL NOT BE REQUIRED TO HOLD THE EMPLOYMENT POSITION VACANT WHILE THE JOB APPLICANT PURSUES ADMINISTRATIVE ACTION. HOWEVER, SHOULD THE JOB APPLICANT PREVAIL IN HIS OR HER ACTIONS, THE EMPLOYER SHALL PROVIDE HIM OR HER THE OPPORTUNITY OF EMPLOYMENT IN THE NEXT AVAILABLE COMPARABLE POSITION.

(H) AN EMPLOYER SHALL REFER AN EMPLOYEE WITH A FIRST TIME POSITIVE CONFIRMED DRUG TEST RESULT TO AN EMPLOYEE ASSISTANCE PROGRAM OR AN ALCOHOL AND DRUG REHABILITATION PROGRAM. IF THE RESULTS OF A SUBSEQUENT CONFIRMED DRUG TEST ARE POSITIVE, THE EMPLOYER MAY DISCHARGE OR DISCIPLINE THE EMPLOYEE.

(I) NOTHING IN THIS TITLE SHALL BE CONSTRUED TO PROHIBIT AN EMPLOYER FROM CONDUCTING MEDICAL SCREENING OR OTHER TESTS REQUIRED BY ANY STATUTE, RULE, OR REGULATION FOR THE PURPOSE OF MONITORING EXPOSURE OF EMPLOYEES TO TOXIC OR OTHER UNHEALTHY SUBSTANCES IN THE WORKPLACE OR IN THE PERFORMANCE OF JOB RESPONSIBILITIES. SUCH SCREENING OR TESTS SHALL BE LIMITED TO THE SPECIFIC SUBSTANCES EXPRESSLY IDENTIFIED IN THE APPLICABLE STATUTE, RULE, OR REGULATION, UNLESS PRIOR WRITTEN CONSENT OF THE EMPLOYEE IS OBTAINED FOR OTHER TESTS.

(J) AN EMPLOYER SHALL PLACE A SAFETY SENSITIVE POSITION EMPLOYEE WHOSE DRUG TEST RESULT IS CONFIRMED POSITIVE IN A NON SAFETY SENSITIVE POSITION, OR IF SUCH A POSITION IS UNAVAILABLE, ON LEAVE STATUS WHILE THE EMPLOYEE PARTICIPATES IN AN EMPLOYEE ASSISTANCE PROGRAM OR AN ALCOHOL AND DRUG REHABILITATION PROGRAM. IF PLACED ON LEAVE STATUS WITHOUT PAY, THE EMPLOYEE SHALL BE PERMITTED TO USE ANY ACCUMULATED LEAVE CREDITS PRIOR TO BEING PLACED ON LEAVE WITHOUT PAY.

S 84-J. CONFIDENTIALITY. (A) ALL INFORMATION, INTERVIEWS, REPORTS, STATEMENTS, MEMORANDA, AND DRUG TEST RESULTS, WRITTEN OR OTHERWISE, RECEIVED BY THE EMPLOYER THROUGH A DRUG TESTING PROGRAM ARE CONFIDENTIAL COMMUNICATIONS AND MAY NOT BE USED OR RECEIVED IN EVIDENCE, OBTAINED IN DISCOVERY, OR DISCLOSED IN ANY PUBLIC OR PRIVATE PROCEEDINGS, EXCEPT IN ACCORDANCE WITH THIS TITLE.

(B) EMPLOYERS, LABORATORIES, EMPLOYEE ASSISTANCE PROGRAMS, DRUG AND ALCOHOL REHABILITATION PROGRAMS, AND THEIR AGENTS WHO RECEIVE OR HAVE ACCESS TO INFORMATION CONCERNING DRUG TEST RESULTS SHALL KEEP ALL INFORMATION CONFIDENTIAL. RELEASE OF SUCH INFORMATION UNDER ANY OTHER CIRCUMSTANCE SHALL BE SOLELY PURSUANT TO A WRITTEN CONSENT FORM SIGNED VOLUN-

TARILY BY THE PERSON TESTED, EXCEPT WHERE SUCH RELEASE IS COMPELLED BY A HEARING OFFICER OR A COURT OF COMPETENT JURISDICTION PURSUANT TO AN APPEAL TAKEN UNDER THIS TITLE, OR WHERE DEEMED APPROPRIATE BY A PROFESSIONAL OR OCCUPATIONAL LICENSING BOARD IN A RELATED DISCIPLINARY PROCEEDING. THE CONSENT FORM MUST CONTAIN, AT A MINIMUM:

1. THE NAME OF THE PERSON WHO IS AUTHORIZED TO OBTAIN THE INFORMATION.
2. THE PURPOSE OF THE DISCLOSURE.
3. THE PRECISE INFORMATION TO BE DISCLOSED.
4. THE DURATION OF THE CONSENT.
5. THE SIGNATURE OF THE PERSON AUTHORIZING RELEASE OF THE INFORMATION.

(C) INFORMATION ON DRUG TEST RESULTS SHALL NOT BE RELEASED OR USED IN ANY CRIMINAL PROCEEDING AGAINST THE EMPLOYEE OR JOB APPLICANT. INFORMATION RELEASED CONTRARY TO THIS SECTION SHALL BE INADMISSIBLE AS EVIDENCE IN ANY SUCH CRIMINAL PROCEEDING.

(D) NOTHING HEREIN SHALL BE CONSTRUED TO PROHIBIT CERTIFYING BODIES OF SPECIAL RISK EMPLOYEES FROM RECEIVING INFORMATION ON POSITIVE CONFIRMED DRUG TEST RESULTS FOR THE PURPOSE OF REVIEWING CERTIFICATION.

(E) NOTHING HEREIN SHALL BE CONSTRUED TO PROHIBIT THE EMPLOYER, AGENT OF THE EMPLOYER, OR LABORATORY CONDUCTING A DRUG TEST FROM HAVING ACCESS TO EMPLOYEE DRUG TEST INFORMATION WHEN CONSULTING WITH LEGAL COUNSEL IN CONNECTION WITH ACTIONS BROUGHT UNDER OR RELATED TO THIS SECTION OR WHERE THE INFORMATION IS RELEVANT TO ITS DEFENSE IN A CIVIL OR ADMINISTRATIVE MATTER.

S 84-K. DRUG TESTING STANDARDS; LABORATORIES. (A) NO LABORATORY MAY ANALYZE INITIAL OR CONFIRMATION DRUG SPECIMENS UNLESS:

1. THE LABORATORY IS LICENSED AND APPROVED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES USING CRITERIA ESTABLISHED BY THE NATIONAL INSTITUTE ON DRUG ABUSE AS GUIDELINES FOR MODELING THE STATE DRUG TESTING PROGRAM.
2. THE LABORATORY HAS WRITTEN PROCEDURES TO ENSURE CHAIN OF CUSTODY.
3. THE LABORATORY FOLLOWS PROPER QUALITY CONTROL PROCEDURES, INCLUDING, BUT NOT LIMITED TO:

(I) THE USE OF INTERNAL QUALITY CONTROLS INCLUDING THE USE OF SAMPLES OF KNOWN CONCENTRATIONS WHICH ARE USED TO CHECK THE PERFORMANCE AND CALIBRATION OF TESTING EQUIPMENT, AND PERIODIC USE OF BLIND SAMPLES FOR OVERALL ACCURACY.

(II) AN INTERNAL REVIEW AND CERTIFICATION PROCESS FOR DRUG TEST RESULTS, CONDUCTED BY A PERSON QUALIFIED TO PERFORM THAT FUNCTION IN THE TESTING LABORATORY.

(III) SECURITY MEASURES IMPLEMENTED BY THE TESTING LABORATORY TO PRECLUDE ADULTERATION OF SPECIMENS AND DRUG TEST RESULTS.

(IV) OTHER NECESSARY AND PROPER ACTIONS TAKEN TO ENSURE RELIABLE AND ACCURATE DRUG TEST RESULTS.

(B) A LABORATORY SHALL DISCLOSE TO THE EMPLOYER A WRITTEN TEST RESULT REPORT WITHIN SEVEN WORKING DAYS AFTER RECEIPT OF THE SAMPLE. ALL LABORATORY REPORTS OF A DRUG TEST RESULT SHALL, AT A MINIMUM, STATE:

1. THE NAME AND ADDRESS OF THE LABORATORY WHICH PERFORMED THE TEST AND THE POSITIVE IDENTIFICATION OF THE PERSON TESTED.
2. POSITIVE RESULTS ON CONFIRMATION TESTS ONLY, OR NEGATIVE RESULTS, AS APPLICABLE.
3. A LIST OF THE DRUGS FOR WHICH THE DRUG ANALYSES WERE CONDUCTED.
4. THE TYPE OF TESTS CONDUCTED FOR BOTH INITIAL AND CONFIRMATION TESTS AND THE MINIMUM CUT OFF LEVELS OF THE TESTS.
5. ANY CORRELATION BETWEEN MEDICATION REPORTED BY THE EMPLOYEE OR JOB APPLICANT PURSUANT TO PARAGRAPH TWO OF SUBDIVISION (B) OF SECTION EIGHTY-FOUR-G OF THIS TITLE AND A POSITIVE CONFIRMED DRUG TEST RESULT.

NO REPORT SHALL DISCLOSE THE PRESENCE OR ABSENCE OF ANY DRUG OTHER THAN A SPECIFIC DRUG AND ITS METABOLITES LISTED PURSUANT TO THIS TITLE.

(C) THE LABORATORY SHALL SUBMIT TO THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES A MONTHLY REPORT WITH STATISTICAL INFORMATION REGARDING THE TESTING OF EMPLOYEES AND JOB APPLICANTS. THE REPORTS SHALL INCLUDE INFORMATION ON THE METHODS OF ANALYSES CONDUCTED, THE DRUGS TESTED FOR, THE NUMBER OF POSITIVE AND NEGATIVE RESULTS FOR BOTH INITIAL AND CONFIRMATION TESTS, AND ANY OTHER INFORMATION DEEMED APPROPRIATE BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES. NO MONTHLY REPORT SHALL IDENTIFY SPECIFIC EMPLOYEES OR JOB APPLICANTS.

(D) LABORATORIES SHALL PROVIDE TECHNICAL ASSISTANCE TO THE EMPLOYER, EMPLOYEE, OR JOB APPLICANT FOR THE PURPOSE OF INTERPRETING ANY POSITIVE CONFIRMED TEST RESULTS WHICH COULD HAVE BEEN CAUSED BY PRESCRIPTION OR NONPRESCRIPTION MEDICATION TAKEN BY THE EMPLOYEE OR JOB APPLICANT.

S 84-L. RULES. (A) THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES IS HEREBY AUTHORIZED TO PROMULGATE RULES, USING CRITERIA ESTABLISHED BY THE NATIONAL INSTITUTE ON DRUG ABUSE AS GUIDELINES FOR MODELING THE STATE DRUG TESTING PROGRAM, CONCERNING, BUT NOT LIMITED TO:

1. STANDARDS FOR DRUG TESTING LABORATORY LICENSING, SUSPENSION, AND REVOCATION OF A LICENSE.

2. BODY SPECIMENS AND MINIMUM SPECIMEN AMOUNTS WHICH ARE APPROPRIATE FOR DRUG TESTING.

3. METHODS OF ANALYSIS AND PROCEDURES TO ENSURE RELIABLE DRUG TESTING RESULTS, INCLUDING STANDARDS FOR INITIAL TESTS AND CONFIRMATION TESTS.

4. MINIMUM CUT OFF DETECTION LEVELS FOR DRUGS OR THEIR METABOLITES FOR THE PURPOSES OF DETERMINING A POSITIVE TEST RESULT.

5. CHAIN OF CUSTODY PROCEDURES TO ENSURE PROPER IDENTIFICATION, LABELING, AND HANDLING OF SPECIMENS BEING TESTED.

6. RETENTION, STORAGE, AND TRANSPORTATION PROCEDURES TO ENSURE RELIABLE RESULTS ON CONFIRMATION TESTS AND RETESTS.

7. A LIST OF THE MOST COMMON MEDICATIONS BY BRAND NAME OR COMMON NAME, AS APPLICABLE, AS WELL AS BY CHEMICAL NAME, WHICH MAY ALTER OR AFFECT A DRUG TEST.

(B) THIS TITLE SHALL NOT BE CONSTRUED TO ELIMINATE THE BARGAINABLE RIGHTS AS PROVIDED IN THE COLLECTIVE BARGAINING PROCESS WHERE APPLICABLE.

S 84-M. DISCIPLINE REMEDIES. (A) AN EXECUTIVE BRANCH EMPLOYEE WHO IS DISCIPLINED OR WHO IS A JOB APPLICANT FOR ANOTHER POSITION AND IS NOT HIRED PURSUANT TO THIS TITLE, MAY FILE AN APPEAL WITH THE APPROPRIATE AGENCY. ANY APPEAL MUST BE FILED WITHIN THIRTY CALENDAR DAYS OF RECEIPT BY THE EMPLOYEE OR JOB APPLICANT OF NOTICE OF DISCIPLINE OR REFUSAL TO HIRE. THE NOTICE SHALL INFORM THE EMPLOYEE OR JOB APPLICANT OF THE RIGHT TO FILE AN APPEAL, OR IF AVAILABLE, THE RIGHT TO FILE A COLLECTIVE BARGAINING GRIEVANCE. A HEARING ON THE APPEAL SHALL BE CONDUCTED WITHIN THIRTY DAYS OF THE FILING OF THE APPEAL, UNLESS AN EXTENSION IS REQUESTED BY THE EMPLOYEE OR JOB APPLICANT AND GRANTED BY THE APPROPRIATE AGENCY OR AN ARBITRATOR.

(B) THE APPROPRIATE AGENCY SHALL PROMULGATE RULES CONCERNING THE RECEIPT, PROCESSING, AND RESOLUTION OF APPEALS FILED PURSUANT TO THIS TITLE.

(C) APPEALS TO THE APPROPRIATE AGENCY SHALL BE THE EXCLUSIVE ADMINISTRATIVE REMEDY FOR ANY EMPLOYEE WHO IS DISCIPLINED OR ANY JOB APPLICANT WHO IS NOT HIRED PURSUANT TO THIS TITLE. HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF AN EMPLOYEE OR JOB APPLICANT TO FILE A COLLECTIVE BARGAINING GRIEVANCE PROVIDED THAT AN EMPLOYEE OR JOB APPLICANT MAY NOT FILE BOTH AN APPEAL AND A GRIEVANCE.

(D) AN EMPLOYEE OR A JOB APPLICANT WHO HAS BEEN DISCIPLINED OR WHO HAS NOT BEEN HIRED PURSUANT TO THIS TITLE MUST EXHAUST EITHER THE ADMINISTRATIVE APPEAL PROCESS OR COLLECTIVE BARGAINING GRIEVANCE-ARBITRATION PROCESS.

(E) UPON RESOLVING AN APPEAL FILED PURSUANT TO SUBDIVISION (C) OF THIS SECTION, AND FINDING A VIOLATION OF THIS TITLE, THE APPROPRIATE AGENCY MAY ORDER THE FOLLOWING RELIEF:

1. RESCIND THE DISCIPLINARY ACTION, EXPUNGE RELATED RECORDS FROM THE PERSONNEL FILE OF THE EMPLOYEE OR JOB APPLICANT AND REINSTATE THE EMPLOYEE.

2. ORDER COMPLIANCE WITH SUBDIVISION (G) OF SECTION EIGHTY-FOUR-I OF THIS TITLE.

3. AWARD BACK PAY AND BENEFITS.

4. AWARD THE PREVAILING EMPLOYEE OR JOB APPLICANT THE NECESSARY COSTS OF THE APPEAL, REASONABLE ATTORNEY'S FEES, AND EXPERT WITNESS FEES.

S 84-N. NONDISCIPLINE REMEDIES. (A) ANY PERSON ALLEGING A VIOLATION OF THE PROVISIONS OF THIS TITLE, THAT IS NOT REMEDIABLE BY THE APPROPRIATE AGENCY OR AN ARBITRATOR PURSUANT TO SECTION EIGHTY-FOUR-M OF THIS TITLE, MUST INSTITUTE A CIVIL ACTION FOR INJUNCTIVE RELIEF OR DAMAGES, OR BOTH, IN A COURT OF COMPETENT JURISDICTION WITHIN ONE HUNDRED EIGHTY DAYS OF THE ALLEGED VIOLATION, OR BE BARRED FROM OBTAINING THE FOLLOWING RELIEF. RELIEF IS LIMITED TO:

1. AN ORDER RESTRAINING THE CONTINUED VIOLATION OF THIS TITLE.

2. AN AWARD OF THE COSTS OF LITIGATION, EXPERT WITNESS FEES, REASONABLE ATTORNEY'S FEES, AND NONECONOMIC DAMAGES PROVIDED THAT DAMAGES SHALL BE LIMITED TO THE RECOVERY OF DAMAGES DIRECTLY RESULTING FROM INJURY OR LOSS CAUSED BY EACH VIOLATION OF THIS TITLE.

(B) ANY EMPLOYER WHO COMPLIES WITH THE PROVISIONS OF THIS TITLE SHALL BE WITHOUT LIABILITY FOR ALL CIVIL ACTIONS ARISING FROM ANY DRUG TESTING PROGRAM OR PROCEDURE PERFORMED IN COMPLIANCE WITH THIS TITLE.

(C) PURSUANT TO ANY CLAIM ALLEGING A VIOLATION OF THIS TITLE, INCLUDING A CLAIM UNDER THIS TITLE WHERE IT IS ALLEGED THAT AN EMPLOYER'S ACTION WITH RESPECT TO A PERSON WAS BASED ON AN INCORRECT TEST RESULT, THERE SHALL BE A REBUTTABLE PRESUMPTION THAT THE TEST WAS VALID IF THE EMPLOYER COMPLIED WITH THE PROVISIONS OF THIS TITLE.

(D) NO CAUSE OF ACTION SHALL ARISE IN FAVOR OF ANY PERSON BASED UPON THE FAILURE OF AN EMPLOYER TO ESTABLISH A PROGRAM OR POLICY FOR DRUG TESTING.

S 84-O. FEDERAL COMPLIANCE. THE DRUG TESTING PROCEDURES PROVIDED IN THIS TITLE DO NOT APPLY WHERE THE SPECIFIC WORK PERFORMED REQUIRES EMPLOYEES OR JOB APPLICANTS TO BE SUBJECT TO DRUG TESTING PURSUANT TO:

(A) FEDERAL REGULATIONS THAT SPECIFICALLY PREEMPT STATE AND LOCAL REGULATION OF DRUG TESTING WITH RESPECT TO SUCH EMPLOYEES AND JOB APPLICANTS;

(B) FEDERAL REGULATIONS OR REQUIREMENTS ENACTED OR IMPLEMENTED IN CONNECTION WITH THE OPERATION OF FEDERALLY REGULATED FACILITIES;

(C) FEDERAL CONTRACTS WHERE THE DRUG TESTING IS CONDUCTED FOR SAFETY, OR PROTECTION OF SENSITIVE OR PROPRIETARY DATA OR NATIONAL SECURITY; OR

(D) STATE AGENCY RULES THAT ADOPT FEDERAL REGULATIONS APPLICABLE TO THE INTERSTATE COMPONENT OF A FEDERALLY REGULATED ACTIVITY.

S 84-P. LICENSE FEE. FEES FROM LICENSURE OF DRUG TESTING LABORATORIES SHALL BE SUFFICIENT TO CARRY OUT THE RESPONSIBILITIES OF THE DEPARTMENT FOR THE REGULATION OF DRUG TESTING LABORATORIES. THE DEPARTMENT SHALL COLLECT FEES FOR ALL LICENSES ISSUED UNDER THIS TITLE. THE FEE SCHEDULE FOR FISCAL YEAR TWO THOUSAND NINE--TWO THOUSAND TEN SHALL NOT EXCEED THE MAXIMUM FEES PROVIDED HEREIN AND SUCH SCHEDULE ADOPTED BY THE RULE BY

THE DEPARTMENT PURSUANT TO THIS TITLE. EACH NONREFUNDABLE FEE SHALL BE DUE AT THE TIME OF APPLICATION AND SHALL BE PAYABLE TO THE DEPARTMENT TO BE DEPOSITED IN A TRUST FUND ADMINISTERED BY THE DEPARTMENT AND USED ONLY FOR THE PURPOSES OF THIS TITLE. THE FEE SCHEDULE IS AS FOLLOWS: FOR LICENSURE AS A DRUG TESTING LABORATORY, AN ANNUAL FEE OF NOT LESS THAN EIGHT THOUSAND DOLLARS OR MORE THAN TEN THOUSAND DOLLARS PER FISCAL YEAR; FOR LATE FILING OF AN APPLICATION FOR RENEWAL, AN ADDITIONAL FEE OF FIVE HUNDRED DOLLARS PER DAY SHALL BE CHARGED.

S 2. The labor law is amended by adding a new article 15-A to read as follows:

ARTICLE 15-A

DRUG-FREE WORKPLACE PROGRAM

SECTION 440. LEGISLATIVE INTENT; DRUG-FREE WORKPLACES.
441. DRUG-FREE WORKPLACE PROGRAM REQUIREMENTS.
442. PREFERENCE TO BUSINESSES WITH DRUG-FREE WORKPLACE PROGRAMS.

S 440. LEGISLATIVE INTENT; DRUG-FREE WORKPLACES. IT IS THE INTENT OF THE LEGISLATURE TO PROMOTE DRUG-FREE WORKPLACES IN ORDER THAT EMPLOYERS IN THE STATE BE AFFORDED THE OPPORTUNITY TO MAXIMIZE THEIR LEVELS OF PRODUCTIVITY, ENHANCE THEIR COMPETITIVE POSITIONS IN THE MARKETPLACE, AND REACH THEIR DESIRED LEVELS OF SUCCESS WITHOUT EXPERIENCING THE COSTS, DELAYS, AND TRAGEDIES ASSOCIATED WITH WORK-RELATED ACCIDENTS RESULTING FROM DRUG ABUSE BY EMPLOYEES. IT IS FURTHER THE INTENT OF THE LEGISLATURE THAT DRUG ABUSE BE DISCOURAGED AND THAT EMPLOYEES WHO CHOOSE TO ENGAGE IN DRUG ABUSE FACE THE RISK OF UNEMPLOYMENT AND THE FORFEITURE OF WORKERS' COMPENSATION BENEFITS. IF AN EMPLOYER IMPLEMENTS A DRUG-FREE WORKPLACE PROGRAM WHICH INCLUDES NOTICE, EDUCATION, AND TESTING FOR DRUGS AND ALCOHOL PURSUANT TO RULES DEVELOPED BY THE DEPARTMENT, THE EMPLOYER MAY REQUIRE THE EMPLOYEE TO SUBMIT TO A TEST FOR THE PRESENCE OF DRUGS AND ALCOHOL AND, IF A DRUG OR ALCOHOL IS FOUND TO BE PRESENT IN THE EMPLOYEE'S SYSTEM AT A LEVEL PRESCRIBED BY RULE ADOPTED PURSUANT TO THIS ARTICLE, THE EMPLOYEE MAY BE TERMINATED AND SHALL FORFEIT HIS ELIGIBILITY FOR MEDICAL AND INDEMNITY BENEFITS UPON EXHAUSTION OF THE PROCEDURES PRESCRIBED IN THIS ARTICLE. HOWEVER, A DRUG-FREE WORKPLACE PROGRAM SHALL REQUIRE THE EMPLOYER TO NOTIFY ALL EMPLOYEES THAT IT IS A CONDITION OF EMPLOYMENT TO REFRAIN FROM TAKING DRUGS ON OR OFF THE JOB AND IF THE INJURED WORKER REFUSES TO SUBMIT TO A TEST FOR DRUGS OR ALCOHOL, HE FORFEITS HIS ELIGIBILITY FOR MEDICAL AND INDEMNITY BENEFITS.

S 441. DRUG-FREE WORKPLACE PROGRAM REQUIREMENTS. THE FOLLOWING SHALL APPLY TO A DRUG-FREE WORKPLACE PROGRAM IMPLEMENTED PURSUANT TO RULES ADOPTED BY THE DEPARTMENT:

1. DEFINITIONS. EXCEPT WHERE THE CONTEXT OTHERWISE REQUIRES, AS USED IN THIS ARTICLE:

A. "DRUG" MEANS ALCOHOL, INCLUDING DISTILLED SPIRITS, WINE, MALT BEVERAGES, AND INTOXICATING LIQUORS; AMPHETAMINES; CANNABINOIDS; COCAINE; PHENCYCLIDINE (PCP); HALLUCINOGENS; METHAQUALONE; OPIATES; BARBITURATES; BENZODIAZEPHINES; SYNTHETIC NARCOTICS; DESIGNER DRUGS; OR A METABOLITE OF ANY OF THE SUBSTANCES LISTED HEREIN.

B. "DRUG TEST" OR "TEST" MEANS ANY CHEMICAL, BIOLOGICAL, OR PHYSICAL INSTRUMENTAL ANALYSIS ADMINISTERED FOR THE PURPOSE OF DETERMINING THE PRESENCE OR ABSENCE OF A DRUG OR ITS METABOLITES.

C. "INITIAL DRUG TEST" MEANS A SENSITIVE, RAPID, AND RELIABLE PROCEDURE TO IDENTIFY NEGATIVE AND PRESUMPTIVE POSITIVE SPECIMENS. ALL INITIAL TESTS SHALL USE AN IMMUNOASSAY PROCEDURE OR AN EQUIVALENT, OR SHALL USE A MORE ACCURATE SCIENTIFICALLY ACCEPTED METHOD APPROVED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES AS SUCH MORE ACCURATE TECHNOLOGY BECOMES AVAILABLE IN A COST-EFFECTIVE FORM.

D. "CONFIRMATION TESTS", "CONFIRMED TEST", OR "CONFIRMED DRUG TEST" MEANS A SECOND ANALYTICAL PROCEDURE USED TO IDENTIFY THE PRESENCE OF A SPECIFIC DRUG OR METABOLITE IN A SPECIMEN. THE CONFIRMATION TEST MUST BE DIFFERENT IN SCIENTIFIC PRINCIPLE FROM THAT OF THE INITIAL TEST PROCEDURE. THIS CONFIRMATION METHOD MUST BE CAPABLE OF PROVIDING REQUISITE SPECIFICITY, SENSITIVITY, AND QUANTITATIVE ACCURACY.

E. "CHAIN OF CUSTODY" REFERS TO THE METHODOLOGY OF TRACKING SPECIFIED MATERIALS OR SUBSTANCES FOR THE PURPOSE OF MAINTAINING CONTROL AND ACCOUNTABILITY FROM INITIAL COLLECTION TO FINAL DISPOSITION FOR ALL SUCH MATERIALS OR SUBSTANCES AND PROVIDING FOR ACCOUNTABILITY AT EACH STAGE IN HANDLING, TESTING, AND STORING SPECIMENS AND REPORTING TEST RESULTS.

F. "JOB APPLICANT" MEANS A PERSON WHO HAS APPLIED FOR A POSITION WITH AN EMPLOYER AND HAS BEEN OFFERED EMPLOYMENT CONDITIONED UPON SUCCESSFULLY PASSING A DRUG TEST.

G. "EMPLOYEE" MEANS ANY PERSON WHO WORKS FOR SALARY, WAGES, OR OTHER REMUNERATION FOR AN EMPLOYER.

H. "EMPLOYER" MEANS A PERSON OR ENTITY THAT EMPLOYS A PERSON AND THAT IS COVERED BY THE WORKERS' COMPENSATION LAW.

I. "PRESCRIPTION OR NONPRESCRIPTION MEDICATION" MEANS A DRUG OR MEDICATION OBTAINED PURSUANT TO A PRESCRIPTION OR A MEDICATION THAT IS AUTHORIZED PURSUANT TO FEDERAL OR STATE LAW FOR GENERAL DISTRIBUTION AND USE WITHOUT A PRESCRIPTION IN THE TREATMENT OF HUMAN DISEASES, AILMENTS, OR INJURIES.

J. "REASONABLE SUSPICION DRUG TESTING" MEANS DRUG TESTING BASED ON A BELIEF THAT AN EMPLOYEE IS USING OR HAS USED DRUGS IN VIOLATION OF THE EMPLOYER'S POLICY DRAWN FROM SPECIFIC OBJECTIVE AND ARTICULABLE FACTS AND REASONABLE INFERENCES DRAWN FROM THOSE FACTS IN LIGHT OF EXPERIENCE. AMONG OTHER THINGS, SUCH FACTS AND INFERENCES MAY BE BASED UPON:

(1) OBSERVABLE PHENOMENA WHILE AT WORK, SUCH AS DIRECT OBSERVATION OF DRUG USE OR OF THE PHYSICAL SYMPTOMS OR MANIFESTATIONS OF BEING UNDER THE INFLUENCE OF A DRUG.

(2) ABNORMAL CONDUCT OR ERRATIC BEHAVIOR WHILE AT WORK OR A SIGNIFICANT DETERIORATION IN WORK PERFORMANCE.

(3) A REPORT OF DRUG USE, PROVIDED BY A RELIABLE AND CREDIBLE SOURCE, WHICH HAS BEEN INDEPENDENTLY CORROBORATED.

(4) EVIDENCE THAT AN INDIVIDUAL HAS TAMPERED WITH A DRUG TEST DURING HIS EMPLOYMENT WITH THE CURRENT EMPLOYER.

(5) INFORMATION THAT AN EMPLOYEE HAS CAUSED, OR CONTRIBUTED TO, AN ACCIDENT WHILE AT WORK.

(6) EVIDENCE THAT AN EMPLOYEE HAS USED, POSSESSED, SOLD, SOLICITED, OR TRANSFERRED DRUGS WHILE WORKING OR WHILE ON THE EMPLOYER'S PREMISES OR WHILE OPERATING THE EMPLOYER'S VEHICLE, MACHINERY, OR EQUIPMENT.

K. "SPECIMEN" MEANS TISSUE, HAIR, OR PRODUCT OF THE HUMAN BODY CAPABLE OF REVEALING THE PRESENCE OF DRUGS OR THEIR METABOLITES.

L. "EMPLOYEE ASSISTANCE PROGRAM" MEANS AN ESTABLISHED PROGRAM FOR EMPLOYEE ASSESSMENT, COUNSELING, AND POSSIBLE REFERRAL TO AN ALCOHOL AND DRUG REHABILITATION PROGRAM.

2. DRUG TESTING. ALL DRUG TESTING CONDUCTED BY EMPLOYERS SHALL BE IN CONFORMITY WITH THE STANDARDS ESTABLISHED IN THIS SECTION AND ALL APPLICABLE RULES ADOPTED PURSUANT TO THIS SECTION. HOWEVER, EMPLOYERS SHALL NOT HAVE A LEGAL DUTY UNDER THIS SECTION TO REQUEST AN EMPLOYEE OR JOB APPLICANT TO UNDERGO DRUG TESTING.

3. NOTICE TO EMPLOYEES AND JOB APPLICANTS. PRIOR TO TESTING, ALL EMPLOYEES AND JOB APPLICANTS FOR EMPLOYMENT MUST BE GIVEN A WRITTEN POLICY STATEMENT FROM THE EMPLOYER WHICH CONTAINS:

A. A GENERAL STATEMENT OF THE EMPLOYER'S POLICY ON EMPLOYEE DRUG USE, WHICH SHALL IDENTIFY:

(1) THE TYPES OF TESTING AN EMPLOYEE OR JOB APPLICANT MAY BE REQUIRED TO SUBMIT TO, INCLUDING REASONABLE SUSPICION OR OTHER BASIS; AND

(2) THE ACTIONS THE EMPLOYER MAY TAKE AGAINST AN EMPLOYEE OR JOB APPLICANT ON THE BASIS OF A POSITIVE CONFIRMED DRUG TEST RESULT.

B. A STATEMENT ADVISING THE EMPLOYEE OR JOB APPLICANT OF THE EXISTENCE OF THIS SECTION.

C. A GENERAL STATEMENT CONCERNING CONFIDENTIALITY.

D. PROCEDURES FOR EMPLOYEES AND JOB APPLICANTS TO CONFIDENTIALLY REPORT THE USE OF PRESCRIPTION OR NONPRESCRIPTION MEDICATIONS BOTH BEFORE AND AFTER BEING TESTED. ADDITIONALLY, EMPLOYEES AND JOB APPLICANTS SHALL RECEIVE NOTICE OF THE MOST COMMON MEDICATIONS BY BRAND NAME OR COMMON NAME, AS APPLICABLE, AS WELL AS BY CHEMICAL NAME, WHICH MAY ALTER OR AFFECT A DRUG TEST. A LIST OF SUCH MEDICATIONS AS DEVELOPED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES SHALL BE AVAILABLE TO EMPLOYERS THROUGH THE DEPARTMENT.

E. THE CONSEQUENCES OF REFUSING TO SUBMIT TO A DRUG TEST.

F. NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF EMPLOYEE ASSISTANCE DEPARTMENTS AND LOCAL ALCOHOL AND DRUG REHABILITATION PROGRAMS.

G. A STATEMENT THAT AN EMPLOYEE OR JOB APPLICANT WHO RECEIVES A POSITIVE CONFIRMED DRUG TEST RESULT MAY CONTEST OR EXPLAIN THE RESULT TO THE EMPLOYER WITHIN FIVE WORKING DAYS AFTER WRITTEN NOTIFICATION OF THE POSITIVE TEST RESULT. IF AN EMPLOYEE'S OR JOB APPLICANT'S EXPLANATION OR CHALLENGE IS UNSATISFACTORY TO THE EMPLOYER, THE PERSON MAY CONTEST THE DRUG TEST RESULT PURSUANT TO RULES ADOPTED BY THE DEPARTMENT.

H. A STATEMENT INFORMING THE EMPLOYEE OR JOB APPLICANT OF HIS RESPONSIBILITY TO NOTIFY THE LABORATORY OF ANY ADMINISTRATIVE OR CIVIL ACTION BROUGHT PURSUANT TO THIS SECTION.

I. A LIST OF ALL DRUGS FOR WHICH THE EMPLOYER WILL TEST, DESCRIBED BY BRAND NAMES OR COMMON NAMES, AS APPLICABLE, AS WELL AS BY CHEMICAL NAMES.

J. A STATEMENT REGARDING ANY APPLICABLE COLLECTIVE BARGAINING AGREEMENT OR CONTRACT AND THE RIGHT TO APPEAL TO THE DEPARTMENT OR APPLICABLE COURT.

K. A STATEMENT NOTIFYING EMPLOYEES AND JOB APPLICANTS OF THEIR RIGHT TO CONSULT THE TESTING LABORATORY FOR TECHNICAL INFORMATION REGARDING PRESCRIPTION AND NONPRESCRIPTION MEDICATION.

L. AN EMPLOYER NOT HAVING A DRUG TESTING PROGRAM SHALL ENSURE THAT AT LEAST SIXTY DAYS ELAPSE BETWEEN A GENERAL ONE-TIME NOTICE TO ALL EMPLOYEES THAT A DRUG TESTING PROGRAM IS BEING IMPLEMENTED AND THE BEGINNING OF ACTUAL DRUG TESTING. AN EMPLOYER HAVING A DRUG TESTING PROGRAM IN PLACE PRIOR TO THE EFFECTIVE DATE OF THIS SECTION IS NOT REQUIRED TO PROVIDE A SIXTY-DAY NOTICE PERIOD.

M. AN EMPLOYER SHALL INCLUDE NOTICE OF DRUG TESTING ON VACANCY ANNOUNCEMENTS FOR THOSE POSITIONS FOR WHICH DRUG TESTING IS REQUIRED. A NOTICE OF THE EMPLOYER'S DRUG TESTING POLICY MUST ALSO BE POSTED IN AN APPROPRIATE AND CONSPICUOUS LOCATION ON THE EMPLOYER'S PREMISES, AND COPIES OF THE POLICY MUST BE MADE AVAILABLE FOR INSPECTION BY THE GENERAL PUBLIC DURING REGULAR BUSINESS HOURS IN THE EMPLOYER'S PERSONNEL OFFICE OR OTHER SUITABLE LOCATIONS.

4. TYPES OF TESTING. AN EMPLOYER IS REQUIRED TO CONDUCT THE FOLLOWING TYPES OF DRUG TESTS IN ORDER TO QUALIFY FOR PREFERENTIAL TREATMENT PROVIDED BY SECTION FOUR HUNDRED FORTY-TWO OF THIS ARTICLE.

A. JOB APPLICANT TESTING. AN EMPLOYER MUST REQUIRE JOB APPLICANTS TO SUBMIT TO A DRUG TEST AND MAY USE A REFUSAL TO SUBMIT TO A DRUG TEST OR

A POSITIVE CONFIRMED DRUG TEST AS A BASIS FOR REFUSAL TO HIRE THE JOB APPLICANT.

B. REASONABLE SUSPICION. AN EMPLOYER MUST REQUIRE AN EMPLOYEE TO SUBMIT TO REASONABLE SUSPICION DRUG TESTING.

C. ROUTINE FITNESS-FOR-DUTY. AN EMPLOYER MUST REQUIRE AN EMPLOYEE TO SUBMIT TO A DRUG TEST IF THE TEST IS CONDUCTED AS PART OF A ROUTINELY SCHEDULED EMPLOYEE FITNESS-FOR-DUTY MEDICAL EXAMINATION THAT IS PART OF THE EMPLOYER'S ESTABLISHED POLICY OR THAT IS SCHEDULED ROUTINELY FOR ALL MEMBERS OF AN EMPLOYMENT CLASSIFICATION OR GROUP.

D. FOLLOW-UP TESTING. IF THE EMPLOYEE IN THE COURSE OF EMPLOYMENT ENTERS AN EMPLOYEE ASSISTANCE PROGRAM FOR DRUG-RELATED PROBLEMS, OR AN ALCOHOL AND DRUG REHABILITATION PROGRAM, THE EMPLOYER MUST REQUIRE THE EMPLOYEE TO SUBMIT TO A DRUG TEST AS A FOLLOW-UP TO SUCH PROGRAM, AND ON A QUARTERLY, SEMIANNUAL, OR ANNUAL BASIS FOR UP TO TWO YEARS THEREAFTER.

5. PROCEDURES AND EMPLOYEE PROTECTION. ALL SPECIMEN COLLECTION AND TESTING FOR DRUGS UNDER THIS SECTION SHALL BE PERFORMED IN ACCORDANCE WITH THE FOLLOWING PROCEDURES:

A. A SAMPLE SHALL BE COLLECTED WITH DUE REGARD TO THE PRIVACY OF THE INDIVIDUAL PROVIDING THE SAMPLE, AND IN A MANNER REASONABLY CALCULATED TO PREVENT SUBSTITUTION OR CONTAMINATION OF THE SAMPLE.

B. SPECIMEN COLLECTION SHALL BE DOCUMENTED, AND THE DOCUMENTATION PROCEDURES SHALL INCLUDE:

(1) LABELING OF SPECIMEN CONTAINERS SO AS TO REASONABLY PRECLUDE THE LIKELIHOOD OF ERRONEOUS IDENTIFICATION OF TEST RESULTS.

(2) A FORM FOR THE EMPLOYEE OR JOB APPLICANT TO PROVIDE ANY INFORMATION HE CONSIDERS RELEVANT TO THE TEST, INCLUDING IDENTIFICATION OF CURRENTLY OR RECENTLY USED PRESCRIPTION OR NONPRESCRIPTION MEDICATION OR OTHER RELEVANT MEDICAL INFORMATION. SUCH FORM SHALL PROVIDE NOTICE OF THE MOST COMMON MEDICATIONS BY BRAND NAME OR COMMON NAME, AS APPLICABLE, AS WELL AS BY CHEMICAL NAME, WHICH MAY ALTER OR AFFECT A DRUG TEST. THE PROVIDING OF INFORMATION SHALL NOT PRECLUDE THE ADMINISTRATION OF THE DRUG TEST, BUT SHALL BE TAKEN INTO ACCOUNT IN INTERPRETING ANY POSITIVE CONFIRMED RESULTS.

C. SPECIMEN COLLECTION, STORAGE, AND TRANSPORTATION TO THE TESTING SITE SHALL BE PERFORMED IN A MANNER WHICH WILL REASONABLY PRECLUDE SPECIMEN CONTAMINATION OR ADULTERATION.

D. EACH INITIAL AND CONFIRMATION TEST CONDUCTED UNDER THIS SECTION, NOT INCLUDING THE TAKING OR COLLECTING OF A SPECIMEN TO BE TESTED, SHALL BE CONDUCTED BY A LICENSED LABORATORY AS DESCRIBED IN SUBDIVISION NINE OF THIS SECTION.

E. A SPECIMEN FOR A DRUG TEST MAY BE TAKEN OR COLLECTED BY ANY OF THE FOLLOWING PERSONS:

(1) A PHYSICIAN, A PHYSICIAN ASSISTANT, A REGISTERED PROFESSIONAL NURSE, A LICENSED PRACTICAL NURSE, OR A NURSE PRACTITIONER OR A CERTIFIED PARAMEDIC WHO IS PRESENT AT THE SCENE OF AN ACCIDENT FOR THE PURPOSE OF RENDERING EMERGENCY MEDICAL SERVICE OR TREATMENT.

(2) A QUALIFIED PERSON EMPLOYED BY A LICENSED LABORATORY.

F. A PERSON WHO COLLECTS OR TAKES A SPECIMEN FOR A DRUG TEST CONDUCTED PURSUANT TO THIS SECTION SHALL COLLECT AN AMOUNT SUFFICIENT FOR TWO DRUG TESTS AS DETERMINED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES.

G. EVERY SPECIMEN THAT PRODUCES A POSITIVE CONFIRMED RESULT SHALL BE PRESERVED BY THE LICENSED LABORATORY THAT CONDUCTS THE CONFIRMATION TEST FOR A PERIOD OF AT LEAST TWO HUNDRED TEN DAYS AFTER THE RESULTS OF THE POSITIVE CONFIRMATION TEST ARE MAILED OR OTHERWISE DELIVERED TO THE EMPLOYER. HOWEVER, IF AN EMPLOYEE OR JOB APPLICANT UNDERTAKES AN ADMIN-

ISTRATIVE OR LEGAL CHALLENGE TO THE TEST RESULT, THE EMPLOYEE OR JOB APPLICANT SHALL NOTIFY THE LABORATORY AND THE SAMPLE SHALL BE RETAINED BY THE LABORATORY UNTIL THE CASE OR ADMINISTRATIVE APPEAL IS SETTLED. DURING THE ONE HUNDRED EIGHTY DAY PERIOD AFTER WRITTEN NOTIFICATION OF A POSITIVE TEST RESULT, THE EMPLOYEE OR JOB APPLICANT WHO HAS PROVIDED THE SPECIMEN SHALL BE PERMITTED BY THE EMPLOYER TO HAVE A PORTION OF THE SPECIMEN RETESTED, AT THE EMPLOYEE'S OR JOB APPLICANT'S EXPENSE, AT ANOTHER LABORATORY, LICENSED AND APPROVED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, CHOSEN BY THE EMPLOYEE OR JOB APPLICANT. THE SECOND LABORATORY MUST TEST AT EQUAL OR GREATER SENSITIVITY FOR THE DRUG IN QUESTION AS THE FIRST LABORATORY. THE FIRST LABORATORY WHICH PERFORMED THE TEST FOR THE EMPLOYER SHALL BE RESPONSIBLE FOR THE TRANSFER OF THE PORTION OF THE SPECIMEN TO BE RETESTED, AND FOR THE INTEGRITY OF THE CHAIN OF CUSTODY DURING SUCH TRANSFER.

H. WITHIN FIVE WORKING DAYS AFTER RECEIPT OF A POSITIVE CONFIRMED TEST RESULT FROM THE TESTING LABORATORY, AN EMPLOYER SHALL INFORM AN EMPLOYEE OR JOB APPLICANT IN WRITING OF SUCH POSITIVE TEST RESULT, THE CONSEQUENCES OF SUCH RESULTS, AND THE OPTIONS AVAILABLE TO THE EMPLOYEE OR JOB APPLICANT.

I. THE EMPLOYER SHALL PROVIDE TO THE EMPLOYEE OR JOB APPLICANT, UPON REQUEST, A COPY OF THE TEST RESULTS.

J. WITHIN FIVE WORKING DAYS AFTER RECEIVING NOTICE OF A POSITIVE CONFIRMED TEST RESULT, THE EMPLOYEE OR JOB APPLICANT MAY SUBMIT INFORMATION TO AN EMPLOYER EXPLAINING OR CONTESTING THE TEST RESULTS, AND WHY THE RESULTS DO NOT CONSTITUTE A VIOLATION OF THE EMPLOYER'S POLICY.

K. IF THE EMPLOYEE'S OR JOB APPLICANT'S EXPLANATION OR CHALLENGE OF THE POSITIVE TEST RESULTS IS UNSATISFACTORY TO THE EMPLOYER, A WRITTEN EXPLANATION AS TO WHY THE EMPLOYEE'S OR JOB APPLICANT'S EXPLANATION IS UNSATISFACTORY, ALONG WITH THE REPORT OF POSITIVE RESULTS SHALL BE PROVIDED BY THE EMPLOYER TO THE EMPLOYEE OR JOB APPLICANT AND ALL SUCH DOCUMENTATION SHALL BE KEPT CONFIDENTIAL BY THE EMPLOYER PURSUANT TO SUBDIVISION EIGHT OF THIS SECTION AND SHALL BE RETAINED BY THE EMPLOYER FOR AT LEAST ONE YEAR.

L. NO EMPLOYER MAY DISCHARGE, DISCIPLINE, REFUSE TO HIRE, DISCRIMINATE AGAINST, OR REQUEST OR REQUIRE REHABILITATION OF AN EMPLOYEE OR JOB APPLICANT ON THE SOLE BASIS OF A POSITIVE TEST RESULT THAT HAS NOT BEEN VERIFIED BY A CONFIRMATION TEST.

M. AN EMPLOYER WHO PERFORMS DRUG TESTING OR SPECIMEN COLLECTION SHALL USE CHAIN OF CUSTODY PROCEDURES AS ESTABLISHED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES TO ENSURE PROPER RECORDKEEPING, HANDLING, LABELING, AND IDENTIFICATION OF ALL SPECIMENS TO BE TESTED.

N. AN EMPLOYER SHALL PAY THE COST OF ALL DRUG TESTS, INITIAL AND CONFIRMATION, WHICH HE REQUIRES OF EMPLOYEES.

O. AN EMPLOYEE OR JOB APPLICANT SHALL PAY THE COSTS OF ANY ADDITIONAL DRUG TESTS NOT REQUIRED BY THE EMPLOYER.

P. NO EMPLOYER SHALL DISCHARGE, DISCIPLINE, OR DISCRIMINATE AGAINST AN EMPLOYEE SOLELY UPON THE EMPLOYEE'S VOLUNTARILY SEEKING TREATMENT, WHILE UNDER THE EMPLOY OF THE EMPLOYER, FOR A DRUG-RELATED PROBLEM IF THE EMPLOYEE HAS NOT PREVIOUSLY TESTED POSITIVE FOR DRUG USE, ENTERED AN EMPLOYEE ASSISTANCE PROGRAM FOR DRUG-RELATED PROBLEMS, OR ENTERED AN ALCOHOL AND DRUG REHABILITATION PROGRAM.

Q. IF TESTING IS CONDUCTED BASED ON REASONABLE SUSPICION, THE EMPLOYER SHALL PROMPTLY DETAIL IN WRITING THE CIRCUMSTANCES WHICH FORMED THE BASIS OF THE DETERMINATION THAT REASONABLE SUSPICION EXISTED TO WARRANT THE TESTING. A COPY OF THIS DOCUMENTATION SHALL BE GIVEN TO THE EMPLOYEE UPON REQUEST AND THE ORIGINAL DOCUMENTATION SHALL BE KEPT CONFIDENTIAL

BY THE EMPLOYER PURSUANT TO SUBDIVISION EIGHT OF THIS SECTION AND SHALL BE RETAINED BY THE EMPLOYER FOR AT LEAST ONE YEAR.

6. CONFIRMATION TESTING. A. IF AN INITIAL DRUG TEST IS NEGATIVE, THE EMPLOYER MAY IN ITS SOLE DISCRETION SEEK A CONFIRMATION TEST.

B. ONLY LICENSED LABORATORIES AS DESCRIBED IN SUBDIVISION NINE OF THIS SECTION SHALL CONDUCT CONFIRMATION DRUG TESTS.

C. ALL POSITIVE INITIAL TESTS SHALL BE CONFIRMED USING GAS CHROMATOGRAPHY/MASS SPECTROMETRY (GC/MS) OR AN EQUIVALENT OR MORE ACCURATE SCIENTIFICALLY ACCEPTED METHOD APPROVED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE AS SUCH TECHNOLOGY BECOMES AVAILABLE IN A COST-EFFECTIVE FORM.

7. EMPLOYER PROTECTION.

A. NO EMPLOYEE OR JOB APPLICANT WHOSE DRUG TEST RESULT IS CONFIRMED AS POSITIVE IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION SHALL, BY VIRTUE OF THE RESULT ALONE, BE DEFINED AS A PERSON HAVING A DISABILITY.

B. AN EMPLOYER WHO DISCHARGES OR DISCIPLINES AN EMPLOYEE OR REFUSES TO HIRE A JOB APPLICANT IN COMPLIANCE WITH THIS SECTION SHALL BE CONSIDERED TO HAVE DISCHARGED, DISCIPLINED, OR REFUSED TO HIRE FOR CAUSE.

C. NO PHYSICIAN-PATIENT RELATIONSHIP IS CREATED BETWEEN AN EMPLOYEE OR JOB APPLICANT AND AN EMPLOYER OR ANY PERSON PERFORMING OR EVALUATING A DRUG TEST, SOLELY BY THE ESTABLISHMENT, IMPLEMENTATION, OR ADMINISTRATION OF A DRUG TESTING PROGRAM.

D. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT AN EMPLOYER FROM ESTABLISHING REASONABLE WORK RULES RELATED TO EMPLOYEE POSSESSION, USE, SALE, OR SOLICITATION OF DRUGS, INCLUDING CONVICTIONS FOR DRUG-RELATED OFFENSES, AND TAKING ACTION BASED UPON A VIOLATION OF ANY OF THOSE RULES.

E. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO OPERATE RETROACTIVELY, AND NOTHING IN THIS SECTION SHALL ABROGATE THE RIGHT OF AN EMPLOYER UNDER STATE LAW TO CONDUCT DRUG TESTS, OR IMPLEMENT EMPLOYEE DRUG TESTING PROGRAMS, PRIOR TO JANUARY FIRST, TWO THOUSAND TEN.

F. IF AN EMPLOYEE OR JOB APPLICANT REFUSES TO SUBMIT TO A DRUG TEST, THE EMPLOYER SHALL NOT BE BARRED FROM DISCHARGING OR DISCIPLINING THE EMPLOYEE OR FROM REFUSING TO HIRE THE JOB APPLICANT. HOWEVER, NOTHING IN THIS PARAGRAPH SHALL ABROGATE THE RIGHTS AND REMEDIES OF THE EMPLOYEE OR JOB APPLICANT AS OTHERWISE PROVIDED IN THIS SECTION.

G. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT AN EMPLOYER FROM CONDUCTING MEDICAL SCREENING OR OTHER TESTS REQUIRED BY ANY STATUTE, RULE, OR REGULATION FOR THE PURPOSE OF MONITORING EXPOSURE OF EMPLOYEES TO TOXIC OR OTHER UNHEALTHY SUBSTANCES IN THE WORKPLACE OR IN THE PERFORMANCE OF JOB RESPONSIBILITIES. SUCH SCREENING OR TESTS SHALL BE LIMITED TO THE SPECIFIC SUBSTANCES EXPRESSLY IDENTIFIED IN THE APPLICABLE STATUTE, RULE, OR REGULATION, UNLESS PRIOR WRITTEN CONSENT OF THE EMPLOYEE IS OBTAINED FOR OTHER TESTS.

8. CONFIDENTIALITY. A. ALL INFORMATION, INTERVIEWS, REPORTS, STATEMENTS, MEMORANDA, AND DRUG TEST RESULTS, WRITTEN OR OTHERWISE RECEIVED BY THE EMPLOYER THROUGH A DRUG TESTING PROGRAM ARE CONFIDENTIAL COMMUNICATIONS AND MAY NOT BE USED OR RECEIVED IN EVIDENCE, OBTAINED IN DISCOVERY, OR DISCLOSED IN ANY PUBLIC OR PRIVATE PROCEEDINGS, EXCEPT IN ACCORDANCE WITH THIS SECTION.

B. EMPLOYERS, LABORATORIES, EMPLOYEE ASSISTANCE PROGRAMS, DRUG AND ALCOHOL REHABILITATION PROGRAMS, AND THEIR AGENTS WHO RECEIVE OR HAVE ACCESS TO INFORMATION CONCERNING DRUG TEST RESULTS SHALL KEEP ALL INFORMATION CONFIDENTIAL. RELEASE OF SUCH INFORMATION UNDER ANY OTHER CIRCUMSTANCE SHALL BE SOLELY PURSUANT TO A WRITTEN CONSENT FORM SIGNED VOLUNTARILY BY THE PERSON TESTED, UNLESS SUCH RELEASE IS COMPELLED BY A

HEARING OFFICER OR A COURT OF COMPETENT JURISDICTION PURSUANT TO AN APPEAL TAKEN UNDER THIS SECTION, OR UNLESS DEEMED APPROPRIATE BY A PROFESSIONAL OR OCCUPATIONAL LICENSING BOARD IN A RELATED DISCIPLINARY PROCEEDING. THE CONSENT FORM MUST CONTAIN, AT A MINIMUM:

(1) THE NAME OF THE PERSON WHO IS AUTHORIZED TO OBTAIN THE INFORMATION.

(2) THE PURPOSE OF THE DISCLOSURE.

(3) THE PRECISE INFORMATION TO BE DISCLOSED.

(4) THE DURATION OF THE CONSENT.

(5) THE SIGNATURE OF THE PERSON AUTHORIZING RELEASE OF THE INFORMATION.

C. INFORMATION ON DRUG TEST RESULTS SHALL NOT BE RELEASED OR USED IN ANY CRIMINAL PROCEEDING AGAINST THE EMPLOYEE OR JOB APPLICANT. INFORMATION RELEASED CONTRARY TO THIS SECTION SHALL BE INADMISSIBLE AS EVIDENCE IN ANY SUCH CRIMINAL PROCEEDING.

D. NOTHING HEREIN SHALL BE CONSTRUED TO PROHIBIT THE EMPLOYER, AGENT OF THE EMPLOYER, OR LABORATORY CONDUCTING A DRUG TEST FROM HAVING ACCESS TO EMPLOYEE DRUG TEST INFORMATION WHEN CONSULTING WITH LEGAL COUNSEL IN CONNECTION WITH ACTIONS BROUGHT UNDER OR RELATED TO THIS SECTION OR WHEN THE INFORMATION IS RELEVANT TO ITS DEFENSE IN A CIVIL OR ADMINISTRATIVE MATTER.

9. DRUG TESTING STANDARDS; LABORATORIES. A. NO LABORATORY MAY ANALYZE INITIAL OR CONFIRMATION DRUG SPECIMENS UNLESS:

(1) THE LABORATORY IS LICENSED AND APPROVED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES USING CRITERIA ESTABLISHED BY THE NATIONAL INSTITUTE ON DRUG ABUSE AS GUIDELINES FOR MODELING THE STATE DRUG TESTING PROGRAM PURSUANT TO THIS SECTION.

(2) THE LABORATORY HAS WRITTEN PROCEDURES TO ENSURE THE CHAIN OF CUSTODY.

(3) THE LABORATORY FOLLOWS PROPER QUALITY CONTROL PROCEDURES, INCLUDING, BUT NOT LIMITED TO:

(A) THE USE OF INTERNAL QUALITY CONTROLS INCLUDING THE USE OF SAMPLES OF KNOWN CONCENTRATIONS WHICH ARE USED TO CHECK THE PERFORMANCE AND CALIBRATION OF TESTING EQUIPMENT, AND PERIODIC USE OF BLIND SAMPLES FOR OVERALL ACCURACY.

(B) AN INTERNAL REVIEW AND CERTIFICATION PROCESS FOR DRUG TEST RESULTS, CONDUCTED BY A PERSON QUALIFIED TO PERFORM THAT FUNCTION IN THE TESTING LABORATORY.

(C) SECURITY MEASURES IMPLEMENTED BY THE TESTING LABORATORY TO PRECLUDE ADULTERATION OF SPECIMENS AND DRUG TEST RESULTS.

(D) OTHER NECESSARY AND PROPER ACTIONS TAKEN TO ENSURE RELIABLE AND ACCURATE DRUG TEST RESULTS.

B. A LABORATORY SHALL DISCLOSE TO THE EMPLOYER A WRITTEN TEST RESULT REPORT WITHIN SEVEN WORKING DAYS AFTER RECEIPT OF THE SAMPLE. ALL LABORATORY REPORTS OF A DRUG TEST RESULT SHALL, AT A MINIMUM, STATE:

(1) THE NAME AND ADDRESS OF THE LABORATORY WHICH PERFORMED THE TEST AND THE POSITIVE IDENTIFICATION OF THE PERSON TESTED.

(2) POSITIVE RESULTS ON CONFIRMATION TESTS ONLY, OR NEGATIVE RESULTS, AS APPLICABLE.

(3) A LIST OF THE DRUGS FOR WHICH THE DRUG ANALYSES WERE CONDUCTED.

(4) THE TYPE OF TESTS CONDUCTED FOR BOTH INITIAL AND CONFIRMATION TESTS AND THE MINIMUM CUT OFF LEVELS OF THE TESTS.

(5) ANY CORRELATION BETWEEN MEDICATION REPORTED BY THE EMPLOYEE OR JOB APPLICANT PURSUANT TO SUBPARAGRAPH TWO OF PARAGRAPH B OF SUBDIVISION FIVE OF THIS SECTION, AND A POSITIVE CONFIRMED DRUG TEST RESULT. NO

REPORT SHALL DISCLOSE THE PRESENCE OR ABSENCE OF ANY DRUG OTHER THAN A SPECIFIC DRUG AND ITS METABOLITES LISTED PURSUANT TO THIS SECTION.

C. THE LABORATORY SHALL SUBMIT TO THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES A MONTHLY REPORT WITH STATISTICAL INFORMATION REGARDING THE TESTING OF EMPLOYEES AND JOB APPLICANTS. THE REPORT SHALL INCLUDE INFORMATION ON THE METHODS OF ANALYSES CONDUCTED, THE DRUGS TESTED FOR, THE NUMBER OF POSITIVE AND NEGATIVE RESULTS FOR BOTH INITIAL AND CONFIRMATION TESTS, AND ANY OTHER INFORMATION DEEMED APPROPRIATE BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES. NO MONTHLY REPORT SHALL IDENTIFY SPECIFIC EMPLOYEES OR JOB APPLICANTS.

D. LABORATORIES SHALL PROVIDE TECHNICAL ASSISTANCE TO THE EMPLOYER, EMPLOYEE, OR JOB APPLICANT FOR THE PURPOSE OF INTERPRETING ANY POSITIVE CONFIRMED TEST RESULTS WHICH COULD HAVE BEEN CAUSED BY PRESCRIPTION OR NONPRESCRIPTION MEDICATION TAKEN BY THE EMPLOYEE OR JOB APPLICANT.

10. RULES. A. THE DEPARTMENT SHALL ADOPT RULES USING RULES ADOPTED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES PURSUANT TO TITLE F OF ARTICLE FIVE OF THE CIVIL SERVICE LAW AND CRITERIA ESTABLISHED BY THE NATIONAL INSTITUTE ON DRUG ABUSE AS GUIDELINES FOR MODELING THE STATE DRUG TESTING PROGRAM, CONCERNING, BUT NOT LIMITED TO:

(1) STANDARDS FOR DRUG TESTING LABORATORY LICENSING AND SUSPENSION AND REVOCATION OF A LICENSE.

(2) BODY SPECIMENS AND MINIMUM SPECIMEN AMOUNTS WHICH ARE APPROPRIATE FOR DRUG TESTING.

(3) METHODS OF ANALYSIS AND PROCEDURES TO ENSURE RELIABLE DRUG TESTING RESULTS, INCLUDING STANDARDS FOR INITIAL TESTS AND CONFIRMATION TESTS.

(4) MINIMUM CUTOFF DETECTION LEVELS FOR DRUGS OR THEIR METABOLITES FOR THE PURPOSES OF DETERMINING A POSITIVE TEST RESULT.

(5) CHAIN OF CUSTODY PROCEDURES TO ENSURE PROPER IDENTIFICATION, LABELING, AND HANDLING OF SPECIMENS BEING TESTED.

(6) RETENTION, STORAGE, AND TRANSPORTATION PROCEDURES TO ENSURE RELIABLE RESULTS ON CONFIRMATION TESTS AND RETESTS.

B. THIS SECTION SHALL NOT BE CONSTRUED TO ELIMINATE THE BARGAINABLE RIGHTS AS PROVIDED IN THE COLLECTIVE BARGAINING PROCESS IF APPLICABLE.

S 442. PREFERENCE TO BUSINESSES WITH DRUG-FREE WORKPLACE PROGRAMS. WHENEVER TWO OR MORE BIDS WHICH ARE EQUAL WITH RESPECT TO PRICE, QUALITY, AND SERVICE ARE RECEIVED BY THE STATE OR BY ANY POLITICAL SUBDIVISION FOR THE PROCUREMENT OF COMMODITIES OR CONTRACTUAL SERVICES, A BID RECEIVED FROM A BUSINESS THAT CERTIFIES THAT IT HAS IMPLEMENTED A DRUG-FREE WORKPLACE PROGRAM SHALL BE GIVEN PREFERENCE IN THE AWARD PROCESS. IN ORDER TO HAVE A DRUG-FREE WORKPLACE PROGRAM A BUSINESS SHALL:

1. PUBLISH A STATEMENT NOTIFYING EMPLOYEES THAT THE UNLAWFUL MANUFACTURE, DISTRIBUTION, DISPENSING, POSSESSION, OR USE OF A CONTROLLED SUBSTANCE IS PROHIBITED IN THE WORKPLACE AND SPECIFYING THE ACTIONS THAT WILL BE TAKEN AGAINST EMPLOYEES FOR VIOLATIONS OF SUCH PROHIBITION.

2. INFORM EMPLOYEES ABOUT THE DANGERS OF DRUG ABUSE IN THE WORKPLACE, THE BUSINESS'S POLICY OF MAINTAINING A DRUG-FREE WORKPLACE, ANY AVAILABLE DRUG COUNSELING REHABILITATION, AND EMPLOYEE ASSISTANCE PROGRAMS AND THE PENALTIES THAT MAY BE IMPOSED UPON EMPLOYEES FOR DRUG ABUSE VIOLATIONS.

3. GIVE EACH EMPLOYEE ENGAGED IN PROVIDING THE COMMODITIES OR CONTRACTUAL SERVICES THAT ARE UNDER BID A COPY OF THE STATEMENT SPECIFIED IN SUBDIVISION ONE OF THIS SECTION.

4. IN THE STATEMENT SPECIFIED IN SUBDIVISION ONE OF THIS SECTION, NOTIFY THE EMPLOYEES THAT, AS A CONDITION OF WORKING ON THE COMMODITIES OR CONTRACTUAL SERVICES THAT ARE UNDER BID, THE EMPLOYEE WILL ABIDE BY THE TERMS OF THE STATEMENT AND WILL NOTIFY THE EMPLOYER OF ANY

CONVICTION OF, OR PLEA OF GUILTY OR NOLO CONTENDERE TO, ANY VIOLATION OF ANY PROVISION OF ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, OR OF ANY CONTROLLED SUBSTANCE LAW OF THE UNITED STATES OR ANY STATE, FOR A VIOLATION OCCURRING IN THE WORKPLACE NO LATER THAN FIVE DAYS AFTER SUCH CONVICTION.

5. IMPOSE A SANCTION ON, OR REQUIRE THE SATISFACTORY PARTICIPATION IN A DRUG ABUSE ASSISTANCE OR REHABILITATION PROGRAM IF SUCH IS AVAILABLE IN THE EMPLOYEE'S COMMUNITY BY ANY EMPLOYEE WHO IS SO CONVICTED.

6. MAKE A GOOD FAITH EFFORT TO CONTINUE TO MAINTAIN A DRUG-FREE WORKPLACE THROUGH IMPLEMENTATION OF THIS SECTION.

S 3. Title L of the criminal procedure law is amended by adding a new article 435 to read as follows:

ARTICLE 435

DRUG OFFENDER PUNISHMENT PROGRAM

SECTION 435.10 SHORT TITLE.
435.15 LEGISLATIVE FINDINGS, PURPOSE, AND INTENT.
435.20 DEFINITIONS.
435.25 DRUG PUNISHMENT PROGRAM CONTRACTS; PROGRAM MANAGER AND ASSESSMENT AND TREATMENT PROVIDERS.
435.30 DRUG PUNISHMENT PROGRAM.
435.35 DRUG PUNISHMENT PROGRAM ASSESSMENT AND TREATMENT OVERVIEW AND GOALS.
435.40 DUTIES OF DEPARTMENT.
435.45 DRUG PUNISHMENT PROGRAM FUNDS; ACCOUNTING; AUDITS.
435.48 DRUG PUNISHMENT PROGRAM; ASSESSMENT AND PLACEMENT PROCEDURES.
435.50 RECORDS OF DRUG PUNISHMENT PROGRAM ASSESSMENT AND TREATMENT PROVIDERS; CONFIDENTIALITY.
435.53 INFORMATION SYSTEMS.
435.55 DRUG PUNISHMENT PROGRAM.
435.60 DESIGNATED TREATMENT COMMUNITIES.
435.65 CORE TREATMENT PROGRAM.
435.70 DRUG OFFENDER ADVISORY BOARD.
435.75 DRUG PUNISHMENT PROGRAM QUALITY ASSURANCE COMPONENT; DUTIES OF STATEWIDE PROGRAM MANAGER.
435.80 DRUG PUNISHMENT PROGRAM EVALUATION.
435.85 FINANCIAL CONSIDERATIONS FOR ASSESSMENT, TREATMENT, AND TRANSPORTATION OF DRUG OFFENDERS.

S 435.10 SHORT TITLE.

THIS ARTICLE MAY BE CITED AS THE "NEW YORK DRUG PUNISHMENT ACT OF 2009".

S 435.15 LEGISLATIVE FINDINGS, PURPOSE, AND INTENT.

1. THE LEGISLATURE FINDS THAT FIGHTING CRIME EFFECTIVELY REQUIRES A MULTIPRONGED EFFORT FOCUSING ON PARTICULAR CLASSES OF OFFENDERS AND THE DEVELOPMENT OF PARTICULAR PROGRAMS. BECAUSE THIS STATE'S CRIMINAL JUSTICE SYSTEM SENTENCES MORE OFFENDERS THAN THE AVAILABLE NUMBER OF PRISON BEDS AND OTHER NONPRISON PLACEMENTS, THE POTENTIAL FOR OVERCROWDING THIS STATE'S PRISONS BEYOND ALLOWABLE LIMITS HAS FORCED THE EARLY RELEASE OF MANY OFFENDERS, INCLUDING VIOLENT OFFENDERS. MOREOVER, SINCE THIS STATE'S CORRECTIONAL SYSTEM HAS AN INADEQUATE NUMBER OF PROGRAMS FOR A SIGNIFICANT NUMBER OF OFFENDERS WHOSE CRIMINALITY IS DUE TO OR CONNECTED WITH DRUG ABUSE, THE RECIDIVISM RATES FOR THESE OFFENDERS EXCEED THOSE TOLERATED BY THE LEGISLATURE AND BY THE CITIZENS OF THIS STATE.

2. THE LEGISLATURE, THEREFORE, ESTABLISHES THE FOLLOWING PUBLIC POLICY:

(A) IN ORDER TO ENSURE THAT ADEQUATE PRISON BEDS ARE AVAILABLE TO PERMIT THE LENGTHENING OF TIME SERVED BY VIOLENT OFFENDERS, NONVIOLENT OFFENDERS SHALL BE PLACED, WHERE APPROPRIATE AND TO THE MAXIMUM EXTENT POSSIBLE, IN COMMUNITY-BASED ALTERNATIVES TO PRISON.

(B) COMMUNITY-BASED ALTERNATIVES SHALL BE EXPANDED TO ENSURE COST-EFFECTIVE AND TIMELY RESPONSES TO CRIMINAL ACTIVITY PERPETRATED BY NONVIOLENT OFFENDERS AND TO REDUCE PROBATION CASELOADS TO LEVELS WHICH PERMIT INTENSIVE SUPERVISION.

(C) FOR NONVIOLENT OFFENDERS WHOSE CRIMINALITY IS RELATED TO DRUG ABUSE AND FOR WHOM REHABILITATION IS DETERMINED TO BE FEASIBLE, COMPREHENSIVE, INTENSELY SUPERVISED DRUG PUNISHMENT TREATMENT PROGRAM BEDS SHALL BE PROVIDED AS PART OF A CONCERTED EFFORT TO REDUCE THE RECIDIVISM RATES OF THESE OFFENDERS.

3. THE LEGISLATURE RECOGNIZES THAT, IN ORDER TO ENSURE MAXIMUM INCARCERATION OF VIOLENT OFFENDERS, THE REALITIES OF ECONOMICS AND PRISON SPACE REQUIRE THAT NONVIOLENT OFFENDERS WHO ARE ASSESSED AS REHABILITATABLE TO BE REHABILITATED PRIOR TO REINTEGRATION INTO SOCIETY SO THAT THEY WILL BE FACTORED OUT OF THIS STATE'S PRISON PROBLEM, AND FURTHER RECOGNIZES THAT TO THIS END ENHANCED, COMPREHENSIVE TREATMENT PROGRAMS WITH LONG-TERM PROSPECTS FOR REDUCING CRIME IN THIS STATE'S COMMUNITIES MUST BE DEVELOPED AND COMMUNITY RESOURCES FOR THE TREATMENT AND REHABILITATION OF OFFENDERS FROM THE COMMUNITY MUST BE EXPANDED.

4. THE LEGISLATURE FINDS THAT VICTIM RESTITUTION IS AN IMPORTANT PART OF A COMPREHENSIVE TREATMENT PROGRAM FOR REHABILITATABLE NONVIOLENT OFFENDERS, AND IT IS THE INTENT OF THE LEGISLATURE THAT VICTIM RESTITUTION BE MADE, WHERE POSSIBLE AND WHERE AGREED TO BY THE VICTIM. THEREFORE, WHEN APPROPRIATE TO TREATMENT AND APPROVED BY THE COURT, IT IS THE INTENT OF THE LEGISLATURE THAT VICTIM RESTITUTION BE REQUIRED.

5. THE LEGISLATURE RECOGNIZES THAT:

(A) THE STATE'S NONVIOLENT PRISON POPULATION EXISTS PRIMARILY BECAUSE OF DRUG ABUSE, WHICH THE LEGISLATURE FINDS MUST BE COUNTERED IN ORDER TO REDUCE THE ESCALATING CRIME RATE.

(B) THE STATE'S CORRECTIONAL SYSTEM IS LIMITED IN ITS DRUG ABUSE TREATMENT EFFICACY BECAUSE:

(1) MOST OFFENDERS WHO NEED DRUG ABUSE TREATMENT AND WHO ARE AMENABLE TO INTERVENTION EFFORTS ARE NOT IN THE DEPARTMENT'S CUSTODY FOR A SUFFICIENT TIME TO ACCOMPLISH THE INITIAL OBJECTIVE OF BREAKING THE CYCLE OF DRUG DEPENDENCE.

(2) TREATMENT EFFECTIVENESS IS REDUCED BY THE AVAILABILITY OF DRUGS IN PRISONS.

(3) THE STATE'S CORRECTIONAL SYSTEM DOES NOT PROVIDE THE FOLLOW UP SURVEILLANCE OR AFTERCARE NECESSARY TO MAINTAIN POSITIVE DRUG ABUSE TREATMENT OUTCOMES.

6. IT IS THE INTENT OF THE LEGISLATURE THAT NONVIOLENT FELONY OFFENDERS WITH DRUG ABUSE PROBLEMS WHO ARE PLACED ON PROBATION AND WHO ARE FOUND BY THE COURT TO BE GOOD CANDIDATES FOR REHABILITATION RECEIVE DRUG ABUSE ASSESSMENT, AND, WHERE INDICATED, TREATMENT, INTENSIVE SUPERVISION, AND LIFE SKILLS REHABILITATION WHILE CONFINED IN SECURE SETTINGS.

7. IT IS THE INTENT OF THE LEGISLATURE THAT:

(A) A DRUG PUNISHMENT PROGRAM BE PROVIDED FOR ELIGIBLE DRUG OFFENDERS WHO ARE NOT MANAGING THEIR DRUG ABUSE PROBLEM EFFECTIVELY WITHIN AVAILABLE COMMUNITY PROGRAMS UNDER TRADITIONAL PROBATION SUPERVISION AND WHO WOULD NOT CURRENTLY REQUIRE RELOCATION TO PRISON IF A MORE SECURE PROBATION ALTERNATIVE WERE AVAILABLE TO THE COURTS.

(B) A MECHANISM BE ESTABLISHED WHEREBY STATE FUNDS ARE PROVIDED TO QUALIFIED, LICENSED ALCOHOL AND DRUG TREATMENT AGENCIES TO DEVELOP A RANGE OF COMMUNITY-BASED DRUG PUNISHMENT TREATMENT PROGRAMS FOR ELIGIBLE OFFENDERS UNDER THIS ARTICLE.

S 435.20 DEFINITIONS.

AS USED IN THIS ARTICLE:

1. "DRUG OFFENDER" OR "OFFENDER" MEANS A NONVIOLENT FELONY OFFENDER WHO IS PLACED ON PROBATION AND WHO MEETS THE FOLLOWING CRITERIA:

(A) IS CONVICTED ON THE OFFENSE OF OR HAS ADJUDICATION WITHHELD FOR FELONY POSSESSION OR PURCHASE OF A CONTROLLED SUBSTANCE PURSUANT TO ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW AND HAS BEEN CONVICTED OF OR HAD ADJUDICATION WITHHELD FOR AT LEAST ONE BUT NOT MORE THAN TWO FELONY DRUG OFFENSES PURSUANT TO ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW, NONE OF WHICH CONSTITUTES A VIOLENT FELONY OFFENSE AS DEFINED IN SECTION 70.02 OF THE PENAL LAW; AND

(B) (1) IS BELIEVED BY THE COURT, BASED UPON REASONABLE GROUNDS, TO HAVE ENGAGED IN CRIMINAL ACTIVITY DUE TO DRUG ABUSE; OR

(2) HAS VOLUNTARILY ADMITTED TO DRUG ABUSE AND HAS REQUESTED TREATMENT; AND

(C) IS CHARGED WITH, OR HAS BEEN FOUND GUILTY OF A VIOLATION OF PROBATION ARISING DIRECTLY FROM SUSPECTED OR CONFIRMED DRUG ABUSE;

(D) (1) HAS EXPERIENCED DIFFICULTY IN, OR IS NOT AMENABLE TO, PARTICIPATING IN A COMMUNITY DRUG ABUSE TREATMENT PROGRAM, AND REQUIRES A MORE RESTRICTIVE TREATMENT SETTING; OR

(2) AN APPROPRIATE COMMUNITY DRUG ABUSE TREATMENT PROGRAM IS CURRENTLY UNAVAILABLE.

2. "COMPREHENSIVE ASSESSMENT" OR "ASSESSMENT" MEANS THE GATHERING OF INFORMATION NECESSARY TO EVALUATE AN OFFENDER'S PHYSICAL, PSYCHOLOGICAL, EDUCATIONAL, VOCATIONAL, AND SOCIAL CONDITION AND FAMILY ENVIRONMENT AS THEY RELATE TO HIS ELIGIBILITY AND NEED FOR, AND AMENABILITY TO, DRUG PUNISHMENT TREATMENT SERVICES.

3. "DEPARTMENT" MEANS THE DEPARTMENT OF CORRECTIONAL SERVICES.

4. "REHABILITATIVE PUNISHMENT" MEANS DRUG TREATMENT SERVICES PROVIDED IN COMBINATION WITH SUCH REHABILITATIVE SERVICES AS COUNSELING, EDUCATION, AND VOCATIONAL, PARENTING, AND LIFE SKILLS TRAINING IN AN ENVIRONMENT OF PHASED DECREASING RESTRICTIVENESS, WITH PUNISHMENT COMPONENTS SUCH AS VICTIM RESTITUTION AND DRUG ABUSE TESTING TO ASSIST IN THE REHABILITATION OF THE DRUG OFFENDER.

5. "DESIGNATED FACILITY" OR "DESIGNATED DRUG TREATMENT FACILITY OR COMMUNITY" MEANS ANY INSTITUTION, SECURE OR NONSECURE RESIDENTIAL OR NONRESIDENTIAL FACILITY, OR TREATMENT COMMUNITY DESIGNATED TO PROVIDE REHABILITATIVE PUNISHMENT AND DRUG TREATMENT SERVICES TO OFFENDERS PURSUANT TO THIS ARTICLE.

6. "DRUG PUNISHMENT PROGRAM" OR "PROGRAM" MEANS A REHABILITATIVE PUNISHMENT PROGRAM ADMINISTERED BY A STATEWIDE PROGRAM MANAGER IN TREATMENT COMMUNITIES WITHIN THE JUDICIAL CIRCUITS THROUGH LICENSED ALCOHOL AND DRUG ABUSE SERVICES AND PROGRAMS PROVIDED FOR ELIGIBLE DRUG OFFENDERS WHO OTHERWISE COULD HAVE BEEN INCARCERATED IN THE STATE CORRECTIONAL SYSTEM. "DRUG PUNISHMENT" INCLUDES CUSTODIAL AND NONCUSTODIAL DRUG TREATMENT PHASES WITH EXTENDED CARE AS REQUIRED OR NEEDED, INDIVIDUALIZED ASSESSMENT AND TREATMENT SERVICES, GUIDANCE, TRAINING, AND OTHER REHABILITATIVE PUNISHMENT AND TREATMENT SERVICES IN AREAS SUCH AS HEALTH, EDUCATION, VOCATIONAL TRAINING, SPECIAL EDUCATION, SOCIAL SERVICES, AND PSYCHOLOGICAL COUNSELING. NO DRUG PUNISHMENT PROGRAM SHALL BE APPROVED WHICH HAS A RESIDENTIAL CAPACITY OF ONE HUNDRED FIFTY OR

MORE OFFENDERS IN ANY ONE PHASE. NO PROGRAM PROVIDER SHALL BE ELIGIBLE FOR MORE THAN THREE CONTRACTS STATEWIDE.

7. "STATEWIDE PROGRAM MANAGER" OR "PROGRAM MANAGER" MEANS A NOT-FOR-PROFIT ORGANIZATION SELECTED BY THE DEPARTMENT AS THE STATEWIDE MANAGER OF THE DRUG PUNISHMENT PROGRAM SERVICE PROVIDERS. THE STATEWIDE PROGRAM MANAGER SHALL BE EXPERIENCED IN DRUG ABUSE PROGRAMMING AND TREATMENT OF OFFENDERS INVOLVED WITH DRUGS AND SHALL OPERATE UNDER CONTRACT WITH THE DEPARTMENT PURSUANT TO SECTION 435.25 OF THIS ARTICLE. THE STATEWIDE PROGRAM MANAGER SHALL NOT BE A RECIPIENT OF CONTRACTUAL SERVICES FOR THE ASSESSMENT, TREATMENT, OR EVALUATION OF OFFENDERS UNDER THIS ARTICLE.

8. "DRUG ABUSE" MEANS ABUSE OF ANY DRUG, INCLUDING ALCOHOL.

9. "APPLICATION PROCESS AND PROCEDURES" MEANS THE CRITERIA AND GUIDELINES DEVELOPED BY THE DEPARTMENT FOR THE ESTABLISHMENT OF DRUG PUNISHMENT PROGRAMS, THE GRANTING OF FUNDS FOR PROGRAMS AUTHORIZED BY THIS ARTICLE, AND THE MONITORING, EVALUATION, AND REVIEW OF PROGRAMS FUNDED UNDER THIS ARTICLE.

10. "DRUG PUNISHMENT PLAN" OR "PLAN" MEANS A DOCUMENT PREPARED BY THE DRUG OFFENDER ADVISORY BOARD, AND SUBMITTED TO AND APPROVED BY THE DEPARTMENT, WHICH IDENTIFIES PROPOSED DRUG PUNISHMENT PROGRAMS TO BE IMPLEMENTED IN ACCORDANCE WITH THIS ARTICLE AND WHICH JUSTIFIES THE FUNDING OF SUCH PROGRAMS WITH REGARD TO LOCAL NEED AND COMMUNITY SUPPORT. INDIVIDUALIZED DRUG PUNISHMENT PLANS FOR EACH DRUG OFFENDER, AND A DRUG PUNISHMENT PLAN FOR EACH PROGRAM PROVIDER, SHALL BE DEVELOPED IN ACCORDANCE WITH THE STATEWIDE DRUG PUNISHMENT PLAN.

11. "RECIPIENT" INCLUDES ANY ENTITY RECEIVING, DIRECTLY OR INDIRECTLY, AND ANY FINANCIAL AID UNDER THIS ARTICLE.

12. "COMMISSIONER" MEANS THE COMMISSIONER OF CORRECTIONAL SERVICES.

13. "PROGRAM EVALUATOR" MEANS A NONPROFIT PUBLIC AGENCY WHICH IS NOT A PROVIDER OF DRUG PUNISHMENT PROGRAM SERVICES OR THE STATEWIDE DRUG PUNISHMENT PROGRAM MANAGER AND WHICH HAS SUBSTANTIAL EXPERTISE IN THE STATISTICAL ANALYSIS OF ISSUES OF LAW, MENTAL HEALTH, DRUG ABUSE TREATMENT PROCEDURES, VICTIMS' AND INMATES' RIGHTS, AND PROGRAM OUTCOME AND COST-EFFECTIVENESS MEASUREMENT. SUCH AGENCY OR ORGANIZATION SHALL ALSO BE EXPERIENCED IN WORKING WITH THE DEPARTMENT.

S 435.25 DRUG PUNISHMENT PROGRAM CONTRACTS; PROGRAM MANAGER AND ASSESSMENT AND TREATMENT PROVIDERS.

1. PURSUANT TO THE PROVISIONS OF THIS ARTICLE, CONTRACTS WHICH INCLUDE SAFEGUARDS OF ALL CONSTITUTIONAL RIGHTS AFFORDED INMATES SHALL BE ENTERED INTO FOR DRUG PUNISHMENT PROGRAMS.

2. THE DEPARTMENT SHALL SELECT A STATEWIDE PROGRAM MANAGER AND SHALL CONTRACT WITH SUCH PROGRAM MANAGER FOR:

(A) THE OVERSIGHT OF IMPLEMENTATION OF DRUG PUNISHMENT PROGRAM ASSESSMENT AND TREATMENT APPROACHES.

(B) THE IDENTIFICATION AND PREQUALIFICATION, BY SUBMISSION FOR RECOMMENDATION BY THE DRUG OFFENDER ADVISORY BOARD, OF LICENSED ORGANIZATIONS, INCLUDING MINORITY ORGANIZATIONS WHEN POSSIBLE, TO PROVIDE DRUG PUNISHMENT PROGRAM ASSESSMENT AND TREATMENT SERVICES.

(C) THE QUALITY ASSURANCE MONITORING OF ALL DRUG PUNISHMENT ASSESSMENT AND TREATMENT PROGRAMS AND SERVICES, THE TRAINING OF DRUG PUNISHMENT PROGRAM PROVIDERS AND PERSONNEL, AND THE DEVELOPMENT OF TREATMENT MANUALS FOR EACH MAJOR COMPONENT OF THE CORE TREATMENT PROGRAM PURSUANT TO SECTION 435.65, IN COOPERATION WITH THE DRUG OFFENDER ADVISORY BOARD AND IN COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE AND ALL APPLICABLE RULES AND GUIDELINES PURSUANT THERETO.

(D) THE PROVISION OF ASSISTANCE TO DRUG PUNISHMENT PROGRAM ASSESSMENT AND TREATMENT PROVIDERS IN DEVELOPING TREATMENT COMMUNITY DESIGN PURSUANT TO SECTION 435.60 OF THIS ARTICLE.

(E) THE DEVELOPMENT OF AN ANNUAL REPORT ON THE PERFORMANCE OF THE DRUG PUNISHMENT PROGRAM, TO BE PRESENTED TO THE DRUG OFFENDER ADVISORY BOARD, THE DEPARTMENT, THE PROGRAM EVALUATOR, THE GOVERNOR, THE PRESIDENT OF THE SENATE, AND THE SPEAKER OF THE ASSEMBLY NO LATER THAN JANUARY FIRST OF EACH YEAR.

3. ASSESSMENT AND TREATMENT OF OFFENDERS PURSUANT TO DRUG PUNISHMENT PROGRAM CONTRACTS UNDER THIS ARTICLE SHALL BE CONDUCTED BY QUALIFIED LICENSED AGENCIES, WHICH SHALL EXERCISE ALL PROFESSIONAL JUDGMENT INDEPENDENTLY OF THE DEPARTMENT.

4. (A) THE DEPARTMENT SHALL CONTRACT WITH ORGANIZATIONS FOR DRUG PUNISHMENT PROGRAM ASSESSMENT AND TREATMENT SERVICES.

(B) DRUG PUNISHMENT PROGRAM ASSESSMENT AND TREATMENT PROVIDERS SHALL BE SELECTED WHO HAVE THE CAPACITY TO ASSESS AND TREAT THE UNIQUE PROBLEMS PRESENTED BY OFFENDERS WITH DIFFERENT RACIAL AND ETHNIC BACKGROUNDS.

5. THE DEPARTMENT SHALL CONTRACT WITH A PROGRAM EVALUATOR FOR THE EVALUATION PROGRAM.

6. THE DEPARTMENT SHALL RETAIN CONTRACTUAL AUTHORITY TO REJECT ANY ASSESSMENT OR TREATMENT PROVIDER FOR LACK OF QUALIFICATION FOR THE DRUG PUNISHMENT PROGRAM OR FOR PROGRAM CONTRACT NONCOMPLIANCE, OR AS A RESULT OF AN UNSATISFACTORY EVALUATION BY THE DRUG OFFENDER ADVISORY BOARD PURSUANT TO SECTION 435.70 OF THIS ARTICLE, THE STATEWIDE PROGRAM MANAGER, OR THE PROGRAM EVALUATOR.

7. THE DEPARTMENT SHALL RETAIN CONTRACTUAL AUTHORITY TO REJECT THE STATEWIDE PROGRAM MANAGER BASED ON UNSATISFACTORY EVALUATION OF THE PROGRAM MANAGER OR THE DRUG PUNISHMENT PROGRAM BY THE DRUG OFFENDER ADVISORY BOARD BASED ON UNSATISFACTORY EVALUATION OF THE DRUG PUNISHMENT PROGRAM BY THE PROGRAM EVALUATOR, OR FOR CONTRACT NONCOMPLIANCE.

8. THE DEPARTMENT MAY PROMULGATE RULES AS NECESSARY FOR THE IMPLEMENTATION OF THIS SECTION.

S 435.30 DRUG PUNISHMENT PROGRAM.

1. THERE IS CREATED THE DRUG PUNISHMENT PROGRAM FOR OFFENDERS WHO ARE SELECTED BASED ON CRIMINAL ACTIVITY LINKED TO DRUG ABUSE AND AMENABILITY TO DRUG PUNISHMENT IN A PHASED TREATMENT PROGRAM OF SLOWLY DECREASING INTENSITY.

2. THE FOLLOWING PRINCIPLES SHALL GUIDE THE EFFECTIVE TREATMENT OF OFFENDERS UNDER THE DRUG PUNISHMENT PROGRAM:

(A) CLEAR CONSEQUENCES FOR BEHAVIOR.

(B) INITIAL ISOLATION FROM THE GENERAL OFFENDER POPULATION.

(C) ENCOURAGEMENT OF ANTI-CRIMINAL MODELING AND REINFORCEMENT OF PRO-SOCIAL BEHAVIOR.

(D) PROMOTION OF PROBLEM-SOLVING SKILLS.

(E) REINFORCEMENT OF COGNITIVE-BEHAVIORAL STRATEGIES.

(F) UTILIZATION OF MULTIMODAL TREATMENT APPROACHES.

(G) GROUP REHABILITATIVE PUNISHMENT AND TREATMENT FORMAT.

(H) HIGHLY STRUCTURED REHABILITATIVE PUNISHMENT AND TREATMENT MILIEU.

(I) ALLOWANCE FOR INTENSIVE AND LENGTHY INVOLVEMENT IN THE DRUG PUNISHMENT PROGRAM.

(J) GRADUATED REENTRY TO THE COMMUNITY.

3. THE FOLLOWING INTERVENTIONS, AS ESSENTIAL COMPONENTS OF EFFECTIVE DRUG PUNISHMENT, SHALL BE ADDRESSED IN DEVELOPING A COMPREHENSIVE DRUG PUNISHMENT PROGRAM:

(A) ASSESSMENT.

(B) DRUG ABUSE EDUCATION.
(C) SKILLS-BASED INTERVENTIONS.
(D) RELAPSE PREVENTION.
(E) FREQUENT DRUG TESTING.
(F) AIDS EDUCATION.

4. IF THE DRUG PUNISHMENT PROGRAM IS DISCONTINUED, OR SO MODIFIED AS TO BE UNSUITABLE TO THE DRUG OFFENDER'S TREATMENT NEEDS, THE COURT MAY IMPOSE ANY APPROPRIATE SENTENCE WHICH IT MIGHT HAVE ORIGINALLY IMPOSED BEFORE PLACING THE DRUG OFFENDER INTO THE DRUG PUNISHMENT PROGRAM.

5. THE DISTRICT ATTORNEY, VICTIM, DEFENSE ATTORNEY, PAROLE OR PROBATION OFFICER, AND LOCAL DRUG PUNISHMENT PROGRAM PROVIDER SHALL BE CONSULTED REGARDING POTENTIAL REFERRALS TO A DRUG PUNISHMENT PROGRAM; HOWEVER, THE COURT SHALL MAKE THE FINAL DECISION AS TO REFERRALS.

6. THE COURT SHALL ORDER RESTITUTION WHEN APPROPRIATE AS A CONDITION OF A DRUG PUNISHMENT PROGRAM PLACEMENT AND SHALL REQUIRE A FINANCIALLY ABLE DRUG OFFENDER TO PAY FOR ALL OR A PORTION OF THE COST OF HIS PARTICIPATION IN THE DRUG PUNISHMENT PROGRAM AND DRUG TESTING.

7. THE COURT MAY, UPON RECOMMENDATION OF THE DRUG PUNISHMENT PROGRAM PROVIDER, REQUIRE THE DRUG OFFENDER TO PARTICIPATE IN COMMUNITY-BASED AFTERCARE SERVICES AFTER SATISFACTORY COMPLETION OF THE DRUG PUNISHMENT PROGRAM.

8. NOTHING IN THIS ARTICLE SHALL PREVENT A COURT FROM SENTENCING A PERSON CONVICTED OF A FELONY DRUG OFFENSE AS OTHERWISE PROVIDED BY LAW.

S 435.35 DRUG PUNISHMENT PROGRAM ASSESSMENT AND TREATMENT OVERVIEW AND GOALS.

ASSESSMENT OF OFFENDERS FOR THE DRUG PUNISHMENT PROGRAM SHALL INCLUDE MULTITIERED SCREENING DESIGNED TO SELECT OFFENDERS WHOSE CRIMINAL ACTIVITY IS LINKED TO DRUG ABUSE AND WHO ARE AMENABLE TO DRUG PUNISHMENT PROGRAM TREATMENT. ENTRY INTO THE DRUG PUNISHMENT PROGRAM COMMENCES WITH THE SCREENING OF OFFENDERS FOR ELIGIBILITY USING THE CRITERIA OF SUBDIVISION ONE OF SECTION 435.20 OF THIS ARTICLE. OFFENDERS WHO HAVE BEEN REFERRED BY A JUDGE OR PROBATION OFFICER AS ELIGIBLE FOR ASSESSMENT FOR THE PROGRAM ARE ASSESSED BY A DRUG PUNISHMENT PROGRAM COMMUNITY ASSESSMENT PROVIDER. THE FINAL ASSESSMENT REPORT ISSUED BY THE PROVIDER SHALL BE PROVIDED TO THE PROBATION OFFICER AND THE COURT, AND SHALL GUIDE THE COURT IN ESTABLISHING OR MODIFYING THE CONDITIONS OF PROBATION OF AN OFFENDER WHO IS ASSESSED AS ELIGIBLE FOR PLACEMENT IN THE DRUG PUNISHMENT PROGRAM.

1. ASSESSMENT GOALS. SPECIFIC ASSESSMENT GOALS OF THE DRUG PUNISHMENT PROGRAM INCLUDE, BUT ARE NOT LIMITED TO:

(A) IDENTIFYING OFFENDERS WHO ARE LIKELY TO BENEFIT FROM DRUG PUNISHMENT PROGRAM TREATMENT DUE TO AN EARLY ONSET OF DRUG ABUSE AND A PATTERN OF CRIMINALITY COMBINED WITH DRUG ABUSE AND WHO, THEREFORE, PRESENT THE GREATEST RISK OF RECIDIVISM WITHIN THE CRIMINAL JUSTICE SYSTEM.

(B) DISCOURAGING ADMISSION OF OFFENDERS WHO PRESENT AN UNREASONABLE THREAT TO THE COMMUNITY IF DIVERTED FROM A PRISON BED TO THE DRUG PUNISHMENT PROGRAM.

(C) PREVENTING ADMISSION OF DRUG OFFENDERS WHO CAN BE TREATED EFFECTIVELY IN LESS RESTRICTIVE PROGRAMS.

(D) PROVIDING DIAGNOSTIC INFORMATION AND PSYCHOSOCIAL HISTORY SUFFICIENT TO ENABLE DRUG PUNISHMENT PROGRAM TREATMENT STAFF TO IDENTIFY POTENTIAL BEHAVIOR PROBLEMS AND OTHER PROBLEM AREAS FOR THE DRUG OFFENDER WHICH SHOULD BE ASSESSED IN MORE DETAIL DURING DRUG PUNISHMENT PROGRAM INTAKE AND TREATMENT PLANNING.

(E) PROVIDING A TIMELY AND INFORMATIVE REPORT TO THE PROBATION OFFICER AND THE COURT DESCRIBING A REFERRED DRUG OFFENDER'S DRUG PUNISHMENT

PROGRAM ELIGIBILITY STATUS AND ANY RECOMMENDATIONS FOR TREATMENT FOR THE DRUG OFFENDER.

2. TREATMENT GOALS. SPECIFIC TREATMENT GOALS OF THE DRUG PUNISHMENT PROGRAM INCLUDE, BUT ARE NOT LIMITED TO:

(A) REDUCTION OF CRIMINAL RECIDIVISM.

(B) REDUCTION OF DRUG ABUSE, WITH ABSTINENCE AS THE GOAL FOR EACH DRUG OFFENDER.

(C) DEVELOPMENT OF EMPLOYMENT SKILLS AND ATTAINMENT OF MEANINGFUL EMPLOYMENT.

(D) DEVELOPMENT OF A POSITIVE PEER SUPPORT NETWORK, AND ONGOING PARTICIPATION IN SERVICES TO MAINTAIN TREATMENT PROGRESS.

(E) ENHANCEMENT OF EDUCATIONAL SKILLS, SELF-CARE AND SELF-SUFFICIENCY CAPABILITIES, AND PARENTING SKILLS.

S 435.40 DUTIES OF DEPARTMENT.

THE DEPARTMENT SHALL:

1. ADMINISTER THIS ARTICLE TO EFFECTUATE THE INTENT AND PURPOSE MANDATED BY THE LEGISLATURE.

2. CONDUCT STATEWIDE PUBLIC EDUCATION CONCERNING THE INTENT AND PURPOSE OF THIS ARTICLE AND DELIVER A REPORT TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY REGARDING THE EFFECTIVENESS OF DIVERTING OFFENDERS WHO OTHERWISE COULD HAVE BEEN INCARCERATED IN STATE CORRECTIONAL INSTITUTIONS.

3. PROVIDE TECHNICAL ASSISTANCE NECESSARY TO THE IMPLEMENTATION OF THIS ARTICLE TO LICENSED NONPROFIT AGENCIES.

4. ASSIST THE DRUG OFFENDER ADVISORY BOARD IN PREPARATION OF THE STATEWIDE DRUG PUNISHMENT PLAN.

5. DEVELOP MINIMUM STANDARDS, POLICIES AND ADMINISTRATIVE RULES FOR THE IMPLEMENTATION OF APPROVED RECOMMENDATIONS OF THE DRUG OFFENDER ADVISORY BOARD.

6. DEVELOP AN APPLICATION PROCESS AND THE PROCEDURES NEEDED FOR IMPLEMENTATION.

7. APPROVE THOSE PROVIDERS WHO MEET OR EXCEED THE MINIMUM STANDARDS ESTABLISHED BY THE DRUG OFFENDER ADVISORY BOARD IN THE APPROVED DRUG PUNISHMENT PLAN.

8. CONDUCT AN ANNUAL OVERALL PROGRAM REVIEW, INCLUDING REVIEW OF THE EVALUATION PROGRAM AND MONITORING OF EACH TREATMENT PROGRAM AS OFTEN AS NEEDED TO ENSURE PROGRAM ACCOUNTABILITY.

9. PROVIDE, BY RULE, UNIFORM STANDARDS AND PROCEDURES FOR THE INITIATION OF INITIAL SCREENING FOR DRUG OFFENDERS BY PROBATION OFFICERS OF THE DEPARTMENT. PROCEDURES SHALL INCLUDE SUBMISSION OF THE SCREENING REFERRAL TO THE COURT PRIOR TO THE COMMENCEMENT OF ANY ASSESSMENT PROCEDURES.

S 435.45 DRUG PUNISHMENT PROGRAM FUNDS; ACCOUNTING; AUDITS.

1. ELIGIBILITY OF DRUG TREATMENT PLANS FOR FINANCIAL AID.

(A) A LICENSED TREATMENT AGENCY MAY BE ELIGIBLE FOR DIRECT DRUG PUNISHMENT PROGRAM FINANCIAL AID UNDER THIS ARTICLE AFTER APPROVAL BY THE DRUG OFFENDER ADVISORY BOARD. UPON APPROVAL BY THE BOARD, THE APPLICATION SHALL BE TRANSMITTED TO THE DEPARTMENT, WHICH SHALL HAVE THIRTY DAYS TO ENDORSE OR REJECT THE BOARD'S APPROVAL. REJECTION OF THE BOARD'S APPROVAL SHALL BE FOR CAUSE, AND THE DEPARTMENT SHALL CLEARLY STATE THE REASONS IN WRITING. FAILURE OF THE DEPARTMENT TO RESPOND WITHIN THE THIRTY-DAY PERIOD SHALL BE DEEMED AN ENDORSEMENT.

(B) IN ORDER TO RECEIVE FUNDING, AN ELIGIBLE ENTITY SHALL SUBMIT AN APPLICATION TO THE DEPARTMENT, WHICH INCLUDES A DRUG PUNISHMENT PLAN, AN ACCEPTABLE SITE, FACILITY DESIGN WITH CONSTRUCTION DOCUMENTS AND SPECIFICATIONS, A CONSTRUCTION BUDGET, AND A FINANCING PLAN WITH SOURCES OF

EQUITY AND DEBT AND SCHEDULES FOR DELIVERY. SUCH FUNDING APPLICATION SHALL BE PROVIDED TO THE STATEWIDE PROGRAM MANAGER AT THE TIME OF PREQUALIFICATION, AND THE PROGRAM MANAGER SHALL PREQUALIFY THE ENTITY ONLY AFTER ASCERTAINING THAT THE APPLICATION CONTAINS ALL REQUIRED MATERIALS.

(C) APPLICATIONS FOR FINANCIAL AID MUST CONTAIN AN ESTIMATE OF THE COST OF THE PROGRAM OR, IN LIEU THEREOF, A SPECIFIC FORMULA OR METHOD FOR CALCULATING THE NEEDED AMOUNT OF FUNDING.

2. COMMUNITY-BASED TREATMENT OPTIONS AND SERVICES.

(A) DRUG PUNISHMENT PROGRAM FUNDS MAY BE USED TO DEVELOP OR EXPAND THE RANGE OF COMMUNITY DRUG TREATMENT SERVICES FOR THE DRUG PUNISHMENT PROGRAM AT THE LOCAL LEVEL. COMMUNITY-BASED DRUG PUNISHMENT PROGRAM OPTIONS MAY INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

(1) SHORT-TERM AND LONG-TERM RESIDENTIAL TREATMENT OPTIONS IN ACCORDANCE WITH SECTION 435.55 OF THIS ARTICLE WITH EXTENDED ONGOING CARE AS NEEDED, WHICH INVOLVE CLOSE SUPERVISION IN A RESIDENTIAL SETTING.

(2) ENROLLMENT OF DRUG OFFENDERS IN RESIDENTIAL INPATIENT OR OUTPATIENT ALCOHOL OR DRUG ABUSE TREATMENT CENTERS FOR DETOXIFICATION AND THERAPY. ENROLLMENT SHALL BE BASED UPON AN ASSESSMENT PURSUANT TO THIS ARTICLE THAT A PARTICIPANT IS A DRUG OFFENDER AND REQUIRES DETOXIFICATION. HOWEVER, FINANCIAL AID FOR DETOXIFICATION SERVICES SHALL ONLY BE MADE FOR INPATIENT SERVICES, AND DETOXIFICATION SHALL BE COMPLETED PRIOR TO PHASE I OF TREATMENT.

(3) INDIVIDUALIZED SERVICES WHICH ASSESS AND TREAT THE SPECIAL NEEDS OF OFFENDERS ELIGIBLE UNDER THIS ARTICLE. SERVICES TO THE COURT TO ASSIST IN THE ASSESSMENT OF ELIGIBLE OFFENDERS MAY INCLUDE URINE SCREENING AND THE PURCHASE OF PSYCHOLOGICAL, MEDICAL, EDUCATIONAL, VOCATIONAL, DRUG, ALCOHOL, AND CLIENT-SPECIFIC PLAN DIAGNOSTIC EVALUATIONS. OTHER SERVICES WHICH MAY BE PURCHASED ON AN INDIVIDUALIZED BASIS INCLUDE JOB TRAINING, DRUG AND ALCOHOL COUNSELING, INDIVIDUAL COUNSELING, FAMILY COUNSELING, HIGH SCHOOL GRADUATE EQUIVALENCY DIPLOMA CLASSES, AND NECESSARY TRANSPORTATION EXPENSES, TO BE PROVIDED IN PHASES I, II, AND III OF THE DRUG PUNISHMENT PROGRAM.

THESE COMMUNITY-BASED OPTIONS SHALL BE USED IN CONJUNCTION WITH OTHER COMMUNITY PROBATION SUPERVISION PROGRAMS.

(B) THE SERVICES AVAILABLE UNDER THIS ARTICLE MAY BE CONTRACTED TO QUALIFIED, LICENSED AGENCIES OR ENTITIES.

(C) ANY OPTIONS OR SERVICES ESTABLISHED UNDER THIS ARTICLE SHALL SERVE DRUG OFFENDERS FROM THE ENTIRE JUDICIAL CIRCUIT.

(D) USER FEES PAID BY A DRUG OFFENDER PARTICIPATING IN ANY OPTION OR SERVICE ESTABLISHED UNDER THIS ARTICLE SHALL NOT SUPPLANT OR OTHERWISE INTERFERE WITH THE PAYMENT OF RESTITUTION BY THE DRUG OFFENDER TO THE VICTIM OF THE CRIME.

3. LIMITATIONS ON THE USE OF FUNDS; ACCOUNTING; AUDIT.

(A) DRUG PUNISHMENT PROGRAM FUNDS, WITH THE EXCEPTION OF SURPLUS FUNDS UNDER PARAGRAPH (C) OF SUBDIVISION FOUR OF THIS SECTION, SHALL NOT BE USED TO:

(1) SUPPLANT EXISTING STATE CORRECTIONAL SYSTEM PROGRAMS;

(2) CONSTRUCT, RENOVATE, OR OPERATE LOCAL CORRECTIONAL FACILITIES; OR

(3) CONSTRUCT, RENOVATE, OR OPERATE STATE PRISONS.

(B) ADMINISTRATIVE COSTS CONNECTED WITH THE EXPENDITURE OF DRUG PUNISHMENT PROGRAM FUNDS UNDER THIS ARTICLE SHALL NOT EXCEED A PERCENTAGE AMOUNT ESTABLISHED BY THE COMMISSIONER IN CONSULTATION WITH THE DRUG OFFENDER ADVISORY BOARD.

(C) THE CHIEF INTERNAL AUDITOR OF THE DEPARTMENT IS DIRECTED TO DEVELOP, SUBJECT TO APPROVAL OF THE COMMISSIONER, A UNIFORM ACCOUNTING SYSTEM

CONFORMING TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES FOR THE LOCAL DRUG PUNISHMENT TREATMENT PROGRAMS OPERATING UNDER THE PROVISIONS OF THIS ARTICLE, AND EACH DRUG PUNISHMENT TREATMENT PROGRAM SHALL ESTABLISH AND MAINTAIN THE UNIFORM ACCOUNTING SYSTEM.

(D) (1) THE ANNUAL REPORTS AND ALL BOOKS OF ACCOUNTS AND FINANCIAL RECORDS OF ALL FUNDS RECEIVED BY GRANT, CONTRACT, OR OTHERWISE FROM STATE, LOCAL, OR FEDERAL SOURCES SHALL BE SUBJECT TO AUDIT ANNUALLY BY THE COMPTROLLER OR THE CHIEF INTERNAL AUDITOR OF THE DEPARTMENT. THE AUDIT MAY BE PERFORMED BY A LICENSED INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT SELECTED BY THE DRUG PUNISHMENT PROGRAM. THE COST OF AN AUDIT PERFORMED BY A LICENSED INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT SHALL BE PAID BY THE LOCAL RECIPIENT.

(2) ANY AUDIT OF A RECIPIENT SHALL BE PERFORMED BY LICENSED INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS.

(3) ALL AUDITS SHALL BE COMPLETED AS SOON AS PRACTICABLE AFTER THE END OF THE FISCAL YEAR OF THE DRUG PUNISHMENT PROGRAM. ONE COPY OF EACH AUDIT SHALL BE FURNISHED TO THE BOARD, TO THE CHIEF INTERNAL AUDITOR OF THE DEPARTMENT, TO THE PROGRAM MANAGER, AND TO THE COMPTROLLER. THE AUDIT IS A PUBLIC RECORD.

4. DRUG PUNISHMENT PLAN; FUNDING CRITERIA; VOLUNTARY PARTICIPATION.

(A) A DRUG PUNISHMENT PLAN SHALL BE DEVELOPED BY THE DRUG OFFENDER ADVISORY BOARD AND SHALL SUFFICIENTLY DOCUMENT THE LOCAL NEED AND SUPPORT FOR THE PROPOSED PROGRAMS. THE DRUG OFFENDER ADVISORY BOARD SHALL SUBMIT ITS PLAN TO THE DEPARTMENT.

(B) THE FORMAT FOR ANY DRUG PUNISHMENT PLAN SHALL BE SPECIFIED BY THE DEPARTMENT IN THE APPLICATION PROCESS AND PROCEDURES DEVELOPED BY THE DEPARTMENT.

(C) FUNDING UNDER THIS ARTICLE SHALL BE GRANTED ANNUALLY, WITH THE DISBURSEMENT OF FUNDS MONTHLY FOLLOWING THE SUBMISSION AND APPROVAL OF AN EXPENDITURE-MONITORING REPORT AND A PROGRAM-MONITORING REPORT. LOCAL DRUG PUNISHMENT TREATMENT PROGRAMS ARE ELIGIBLE TO APPLY FOR ANY UNSPENT FUNDS WHICH EXIST AT THE BEGINNING OF THE FOURTH QUARTER. AT THE END OF THE FISCAL YEAR, ANY MONEYS UNSPENT BY THE PROGRAM SHALL REVERT IN THE MANNER PROVIDED BY LAW.

(D) FUNDING UNDER THIS ARTICLE SHALL BE GRANTED ON THE BASIS OF DOCUMENTATION OF LOCAL DRUG PUNISHMENT PROGRAM NEED, TOGETHER WITH CONSIDERATION OF WHETHER THE DRUG OFFENDER ADVISORY BOARD'S DRUG PUNISHMENT PLAN IS CONSISTENT WITH THE PURPOSE OF THIS ARTICLE, THE GEOGRAPHICAL AND PROGRAM CONSIDERATIONS OF THE STATE, AND FUNDING AVAILABILITY. IN ADDITION, THE DEPARTMENT SHALL CONSIDER THE FOLLOWING CRITERIA PERTAINING TO THE COMMUNITY WHEN GRANTING FUNDS UNDER THIS ARTICLE:

(1) THE NUMBER OF ELIGIBLE DRUG OFFENDERS WHO ARE COMMITTED TO THE DEPARTMENT.

(2) THE POPULATION OF THE COMMUNITY AND THE PERCENTAGE OF POPULATION BETWEEN THE AGES OF EIGHTEEN AND TWENTY-NINE.

(3) THE AVAILABILITY OF LOCAL DRUG TREATMENT SERVICES.

(4) LOCAL SERVICE CAPABILITY TO SUPPORT THE DRUG PUNISHMENT PROGRAM.

(E) FUNDING AND EVALUATION CRITERIA SHALL BE OUTLINED IN THE APPLICATION PROCESS AND PROCEDURES TO BE DEVELOPED BY THE DEPARTMENT IN ORDER THAT EACH APPLICANT MAY KNOW THE BASIS UPON WHICH FUNDS WILL BE GRANTED.

(F) PARTICIPATION IN THE PROGRAMS SET FORTH IN THIS ARTICLE IS CONTRACTUAL AND VOLUNTARY. ANY PARTICIPATING TREATMENT AGENCY MAY, BY WRITTEN AUTHORIZATION, NOTIFY THE DRUG OFFENDER ADVISORY BOARD, THE DEPARTMENT, AND THE COMPTROLLER OF ITS INTENTION TO WITHDRAW FROM PARTICIPATION IN THE DRUG PUNISHMENT PROGRAM. WITHDRAWAL SHALL BECOME EFFECTIVE ON THE LAST DAY OF THE FISCAL YEAR.

5. CONTINUED FUNDING; ADDITIONAL INCENTIVE FUND; NONCOMPLIANCE WITH PLAN.

(A) IN ORDER TO REMAIN ELIGIBLE FOR CONTINUED FUNDING, A RECIPIENT MUST SUBSTANTIALLY COMPLY WITH THE STANDARDS AND RULES OF THE DEPARTMENT CONCERNING PROGRAM EFFECTIVENESS, AND EACH RECIPIENT SHALL PARTICIPATE IN AN EVALUATION TO DETERMINE LOCAL AND STATE PROGRAM EFFECTIVENESS.

(B) CONTINUED FUNDING SHALL BE BASED ON DEMONSTRATED EFFECTIVENESS IN REDUCING THE NUMBER OF COMMITMENTS TO STATE CORRECTIONAL INSTITUTIONS WHICH WOULD LIKELY HAVE OCCURRED WITHOUT THE PROGRAMS FUNDED UNDER THIS ARTICLE AND ON EVIDENCE THAT THE PROGRAMS ARE NOT DEALING WITH PERSONS WHO OTHERWISE WOULD HAVE BEEN SUITABLE FOR REGULAR PROBATION.

(C) SUBJECT TO FUNDING AVAILABILITY, EACH PARTICIPATING AGENCY IS ELIGIBLE TO RECEIVE ADDITIONAL INCENTIVE FUNDING TO EXTEND PROGRAMS TO OTHER ELIGIBLE DRUG OFFENDERS OR TO ADD NEW DRUG PUNISHMENT PROGRAMS IF IT EXCEEDS THE OBJECTIVES OF ITS INDIVIDUAL DRUG PUNISHMENT PLAN.

(D) EITHER THE DRUG OFFENDER ADVISORY BOARD OR THE DEPARTMENT MAY AT ANY TIME DETERMINE THAT THERE ARE REASONABLE GROUNDS TO BELIEVE THAT A PARTICIPATING AGENCY IS NOT COMPLYING WITH ITS PLAN, OR WITH ANY MINIMUM STANDARD ESTABLISHED PURSUANT TO THIS ARTICLE, IN WHICH CASE THE BOARD OR DEPARTMENT SHALL NOTIFY, IN WRITING, THE COMMISSIONER. UPON RECEIPT OF SUCH NOTICE, THE COMMISSIONER SHALL NOTIFY THE BOARD, THE DEPARTMENT, THE STATEWIDE PROGRAM MANAGER, AND THE ADMINISTRATOR OF THE PROGRAM, IN WRITING, THAT A DETERMINATION AS TO COMPLIANCE WILL BE MADE AND THAT THE PARTICIPATING AGENCY HAS SIXTY DAYS IN WHICH TO DEMONSTRATE COMPLIANCE TO THE COMMISSIONER. UPON EXPIRATION OF THE SIXTY-DAY PERIOD, IF THE COMMISSIONER FINDS THAT THE PARTICIPATING JUDICIAL DISTRICT OR AGENCY IS NOT COMPLYING WITH ITS PLAN OR WITH THE MINIMUM STANDARDS ESTABLISHED PURSUANT TO THIS ARTICLE, THE COMMISSIONER SHALL REQUIRE THE AGENCY TO PROVIDE A WRITTEN COMPLIANCE AGREEMENT FOR THE CORRECTION OF SPECIFIC DEFICIENCIES IDENTIFIED BY THE COMMISSIONER. IF NO SUCH AGREEMENT IS SUBMITTED TO THE COMMISSIONER WITHIN THE TIME LIMIT SPECIFIED OR IF SUCH DEFICIENCIES ARE NOT CORRECTED WITHIN FORTY-FIVE DAYS AFTER SUCH AN AGREEMENT HAS BEEN APPROVED BY THE COMMISSIONER, THE COMMISSIONER MAY SUSPEND ANY PART OR ALL OF THE FUNDING UNTIL COMPLIANCE IS ACHIEVED.

S 435.48 DRUG PUNISHMENT PROGRAM; ASSESSMENT AND PLACEMENT PROCEDURES.

OFFENDERS WHO ARE BELIEVED BY A JUDGE OR PROBATION OFFICER TO MEET THE CRITERIA OF A DRUG OFFENDER SHALL BE SCREENED, REFERRED, AND ASSESSED AS PROVIDED FOR IN THIS SECTION.

1. OFFENDERS WHO ARE BELIEVED TO MEET THE CRITERIA OF A DRUG OFFENDER SHALL BE INITIALLY SCREENED FOR THE DRUG PUNISHMENT PROGRAM BY THE JUDGE OR PROBATION OFFICER FOR ELIGIBILITY AS A DRUG OFFENDER, INCLUDING PRIOR FELONY CONVICTIONS, PRIOR PRISON TIME SERVED, AND EVIDENCE OF CRIMINAL ACTIVITY LINKED TO DRUG ABUSE OR VOLUNTARY ADMISSION OF DRUG ABUSE.

2. WITH RESPECT TO ALL OFFENDERS WHO ARE DETERMINED TO BE ELIGIBLE FOR THE DRUG PUNISHMENT PROGRAM BASED ON THE INITIAL SCREENING PURSUANT TO SUBDIVISION ONE OF THIS SECTION, THE JUDGE SHALL REQUEST, OBTAIN, AND CONSIDER, AS PART OF A SUMMARY REPORT DESIGNED TO GIVE THE COURT INFORMATION CRITICAL TO ITS IMPOSITION OF SENTENCE OR PLACEMENT, A COMPREHENSIVE ASSESSMENT TO BE CONDUCTED BY A DRUG PUNISHMENT PROGRAM COMMUNITY ASSESSMENT PROVIDER LOCATED WITHIN THE JUDICIAL DISTRICT OF THE REFERRING PROBATION OFFICER OR COURT. WHEN POSSIBLE AND APPROPRIATE, SEVERAL DRUG PUNISHMENT PROGRAM COMMUNITY ASSESSMENT PROVIDERS SHALL BE CONTRACTED TO PROVIDE ASSESSMENTS WITHIN A JUDICIAL DISTRICT.

3. A REFERRAL FOR A DRUG PUNISHMENT PROGRAM COMPREHENSIVE ASSESSMENT SHALL BE ACCOMPANIED BY A COPY OF THE INITIAL SCREENING INSTRUMENT PERFORMED BY THE JUDGE OR PROBATION OFFICER AND ALL AVAILABLE RECORDS

DESCRIBING THE OFFENDER'S DRUG ABUSE, PSYCHOSOCIAL, AND CRIMINAL HISTORIES, INCLUDING DRUG TESTING RESULTS, PRIOR PARTICIPATION IN DRUG ABUSE TREATMENT, ARRESTS, PROBATION VIOLATIONS, AND ANY OTHER PERTINENT INFORMATION. LEGAL COUNSEL OF THE DEPARTMENT SHALL PROVIDE FOR EXPEDITED REVIEW AND RELEASE OF SUCH RECORDS TO THE COMPREHENSIVE ASSESSMENT PROVIDER.

4. THE DRUG PUNISHMENT PROGRAM COMPREHENSIVE ASSESSMENT SHALL ADDRESS, AT A MINIMUM, THE FOLLOWING AREAS:

(A) HISTORY OF DRUG ABUSE AND DEPENDENCY.

(B) HISTORY OF CRIME AND HOW SUCH HISTORY RELATES TO THE OFFENDER'S DRUG ABUSE.

(C) HISTORY OF DRUG ABUSE TREATMENT.

(D) MENTAL HEALTH SYMPTOMS.

(E) RECENT VIOLENT OR AGGRESSIVE BEHAVIOR.

5. THE DRUG PUNISHMENT PROGRAM COMPREHENSIVE ASSESSMENT PROVIDER MAY ELECT TO TERMINATE THE EVALUATION IF THE OFFENDER FAILS TO COOPERATE IN PROVIDING NEEDED INFORMATION. THE REFERRING JUDGE OR PROBATION OFFICER SHALL BE PROVIDED WITH THE RATIONALE FOR TERMINATION OF ANY DRUG PUNISHMENT COMPREHENSIVE ASSESSMENT.

6. EACH DRUG PUNISHMENT COMPREHENSIVE ASSESSMENT REPORT SHALL BE COMPLETED AND DELIVERED TO THE PROBATION OFFICER AND TO THE COURT WITHIN SEVENTY-TWO HOURS AFTER RECEIVING THE DRUG PUNISHMENT ASSESSMENT REQUEST, UNLESS ADDITIONAL TIME IS AUTHORIZED BY THE REFERRING JUDGE BASED ON NEED THEREFOR.

7. IF THE DRUG PUNISHMENT PROGRAM ASSESSMENT PROVIDER RECOMMENDS AGAINST ADMISSION TO THE DRUG PUNISHMENT PROGRAM, THE ASSESSMENT REPORT SHALL RECOMMEND DRUG ABUSE TREATMENT MODALITIES AND COMMUNITY SETTINGS FOR SUCH ADDITIONAL SERVICES AS ARE NEEDED TO PROMOTE THE OFFENDER'S REHABILITATION AND HIS RECOVERY FROM DRUG ABUSE AND DEPENDENCY.

8. A DRUG OFFENDER SHALL BE ADMITTED TO THE DRUG PUNISHMENT PROGRAM ONLY WHEN PLACED IN THE PROGRAM BY THE COURT BASED UPON THE RECOMMENDATION OF A DRUG PUNISHMENT PROGRAM ASSESSMENT PROVIDER.

9. (A) ASSIGNMENT TO THE DRUG PUNISHMENT PROGRAM SHALL OCCUR FOLLOWING A PROBATION HEARING OR A PROBATION OR COMMUNITY CONTROL MODIFICATION OR REVOCATION HEARING.

(B) FOR ANY OFFENDER WHO MEETS THE CRITERIA OF A DRUG OFFENDER AND WHO IS DETERMINED BY THE DRUG PUNISHMENT PROGRAM ASSESSMENT PROVIDER TO BE ELIGIBLE FOR THE DRUG PUNISHMENT PROGRAM, THE COURT MAY IMPOSE THE CONDITIONS OF PROBATION OR MODIFY THE CONDITIONS OF PROBATION OR COMMUNITY CONTROL TO REQUIRE THE DRUG OFFENDER TO ENTER THE DRUG PUNISHMENT PROGRAM AND TO REMAIN IN SUCH PROGRAM FOR A TERM OF UP TO EIGHTEEN MONTHS, DURING WHICH TERM THE DRUG OFFENDER MUST PARTICIPATE FULLY IN AND SUCCESSFULLY COMPLETE THE DRUG PUNISHMENT PROGRAM OR FACE THE LIKELIHOOD OF INCARCERATION IN PRISON.

(C) THE COURT SHALL IMPOSE, AS A CONDITION OF A DRUG OFFENDER'S DRUG TREATMENT PROBATION, THAT HE SIGN A FORM WHICH SHALL BE PROVIDED BY THE DEPARTMENT AND WHICH GIVES THE DRUG OFFENDER'S INFORMED CONSENT TO TREATMENT AND CONSENT TO THE RELEASE OF THE RECORDS AND INFORMATION.

10. IF THERE IS NOT AN AVAILABLE BED IN AN EXISTING DRUG PUNISHMENT PROGRAM FACILITY WITHIN THE JUDICIAL DISTRICT, THE DRUG OFFENDER MAY BE PLACED ON A WAITING LIST AND SHALL BE ADMITTED TO A DRUG PUNISHMENT PROGRAM FACILITY AT THE EARLIEST POSSIBLE DATE.

S 435.50 RECORDS OF DRUG PUNISHMENT PROGRAM ASSESSMENT AND TREATMENT PROVIDERS; CONFIDENTIALITY.

DRUG TEST RESULTS MAY BE DIVULGED TO THE DRUG PUNISHMENT PROGRAM TREATMENT COMMUNITY AND DEPARTMENT PERSONNEL WHO ARE INVOLVED WITH THE

DRUG OFFENDER. ALL RECORDS OF DRUG PUNISHMENT PROGRAM ASSESSMENT AND TREATMENT PROVIDERS SHALL BE MAINTAINED BY THE INDIVIDUAL PROVIDER AND SHALL INCLUDE THE DRUG OFFENDER'S ASSESSMENT AND TREATMENT INFORMATION AND SUCH OTHER INFORMATION AS MAY BE REQUIRED UNDER RULES OF THE DEPARTMENT. UNLESS WAIVED BY EXPRESS AND INFORMED CONSENT BY THE DRUG OFFENDER OR HIS GUARDIAN OR, IF THE DRUG OFFENDER IS DECEASED, BY HIS PERSONAL REPRESENTATIVE OR BY THE PERSON WHO STANDS NEXT IN LINE OF INTESTATE SUCCESSION, THE PRIVILEGED AND CONFIDENTIAL STATUS OF THE CLINICAL ASSESSMENT AND TREATMENT RECORD SHALL NOT BE LOST BY EITHER AUTHORIZED OR UNAUTHORIZED DISCLOSURE.

1. DRUG PUNISHMENT PROGRAM ASSESSMENT AND TREATMENT RECORDS SHALL NOT BE PUBLIC RECORDS AND SHALL NOT BE RELEASED, EXCEPT:

(A) TO SUCH PERSONS AND AGENCIES AS ARE DESIGNATED BY THE DRUG OFFENDER OR HIS GUARDIAN.

(B) TO PERSONS AUTHORIZED BY ORDER OF COURT, EXCLUDING MATTERS PRIVILEGED BY OTHER PROVISIONS OF LAW.

(C) TO A QUALIFIED RESEARCHER, A STAFF MEMBER OF THE DESIGNATED TREATMENT FACILITY, OR AN EMPLOYEE OF THE DEPARTMENT WHEN THE ADMINISTRATOR OF THE FACILITY OR THE COMMISSIONER DEEMS IT NECESSARY FOR TREATMENT OF THE DRUG OFFENDER, MAINTENANCE OF ADEQUATE RECORDS, COMPILATION OF TREATMENT DATA, OR EVALUATION OF PROGRAMS.

(D) FOR STATISTICAL AND RESEARCH PURPOSES IF THE INFORMATION IS ABSTRACTED IN SUCH A WAY AS TO PROTECT THE IDENTITY OF INDIVIDUAL DRUG OFFENDERS.

2. ANY LAW ENFORCEMENT AGENCY, DESIGNATED TREATMENT FACILITY, GOVERNMENTAL OR COMMUNITY AGENCY, OR OTHER ENTITY RECEIVING INFORMATION PURSUANT TO THIS SECTION SHALL MAINTAIN SUCH INFORMATION AS A CONFIDENTIAL RECORD AS PROVIDED IN THIS SECTION.

3. (A) THE DEPARTMENT SHALL PROVIDE TO THE COURTS FORMS TO BE SIGNED AS A CONDITION OF DRUG TREATMENT PROBATION, PROVIDING THE DRUG OFFENDERS' INFORMED CONSENT TO TREATMENT AND CONSENT TO RELEASE OF RECORDS AND INFORMATION.

(B) ALL DRUG PUNISHMENT PROGRAM ASSESSMENT AND TREATMENT RECORDS ARE CONFIDENTIAL TO THE EXTENT DESCRIBED IN THIS SECTION.

4. THE DEPARTMENT SHALL HAVE FULL ACCESS TO ALL DRUG PUNISHMENT PROGRAM RECORDS TO ENSURE COORDINATION OF DRUG PUNISHMENT PROGRAM SERVICES, AND SHALL PROVIDE TO THE PROGRAM EVALUATOR ALL INFORMATION NEEDED TO PERFORM THE EVALUATION PROGRAM.

S 435.53 INFORMATION SYSTEMS.

1. FOR THE PURPOSE OF ASSISTING IN ADMINISTRATION, AND DRUG PUNISHMENT TREATMENT DECISION-MAKING WHEN APPLICABLE, ALL DRUG PUNISHMENT PROGRAM ASSESSMENT AND TREATMENT PROVIDERS SHALL MAINTAIN A CENTRAL IDENTIFICATION FILE ON THE DRUG OFFENDERS THEY ASSESS OR TREAT.

2. ALL DRUG PUNISHMENT PROGRAM ASSESSMENT AND TREATMENT PROVIDERS SHALL COLLECT, MAINTAIN, AND REPORT TO THE DEPARTMENT ALL INFORMATION NECESSARY TO COMPLY WITH MANDATORY REPORTING, PURSUANT TO DEPARTMENTAL RULES. COMPLIANCE WITH THIS SUBDIVISION SHALL BE MADE PART OF THE CONTRACTUAL DUTIES OF EACH DRUG PUNISHMENT PROGRAM PROVIDER.

3. A STATEWIDE AUTOMATED TRACKING SYSTEM FOR DRUG PUNISHMENT PROGRAM OFFENDERS SHALL BE DEVELOPED AND IMPLEMENTED BY THE DIVISION OF STATE POLICE.

S 435.55 DRUG PUNISHMENT PROGRAM.

THE DRUG PUNISHMENT PROGRAM SHALL BE AS FOLLOWS:

1. PHASE I: INTENSIVE RESIDENTIAL. UP TO SIX MONTHS OF INTENSIVE RESIDENTIAL TREATMENT IN A DESIGNATED MODIFIED TREATMENT COMMUNITY SECURE RESIDENTIAL INSTITUTION. PHASE I INSTITUTIONS SHALL CONSIST OF SEPARATE

SECURE INTAKE RESIDENTIAL UNITS, AND MAY BE DESIGNED FOR COED PROGRAMMING, ACCORDING TO THE NEED FOR TREATMENT SLOTS WITHIN THE JUDICIAL DISTRICT.

(A) UPON ADMISSION TO A DRUG PUNISHMENT PROGRAM TREATMENT COMMUNITY, DRUG OFFENDERS SHALL BE HOUSED IN A SEPARATE INTAKE UNIT IN ORDER TO PARTICIPATE IN A SERIES OF SPECIALIZED INTENSIVE ORIENTATION ACTIVITIES, INCLUDING, BUT NOT LIMITED TO, ACTIVITIES DESIGNED TO INITIATE AWARENESS AND UNDERSTANDING BY EACH DRUG OFFENDER OF THE CONSEQUENCES OF HIS FAILURE IN THE DRUG PUNISHMENT PROGRAM.

(B) AFTER ENTERING EACH DRUG PUNISHMENT PROGRAM TREATMENT PHASE, AN INDIVIDUALIZED DRUG PUNISHMENT PLAN SHALL BE DEVELOPED FOR THE DRUG OFFENDER BY A TREATMENT TEAM FROM THE DRUG PUNISHMENT PROGRAM, WITH NOTICE TO AND RIGHT OF MODIFICATION BY THE DEPARTMENT. SUCH PLAN SHALL INCLUDE, BUT IS NOT LIMITED TO:

(1) A DESCRIPTION OF MEASURABLE GOALS FOR THE DRUG OFFENDER, WITH SPECIFIC TREATMENT INTERVENTIONS RECOMMENDED TO MEET EACH GOAL.

(2) MEASURABLE BEHAVIORAL CRITERIA FOR SUCCESSFUL COMPLETION OF THE TREATMENT PHASE WHICH THE DRUG OFFENDER HAS JUST ENTERED.

(3) A DESCRIPTION OF THE TREATMENT PLANNED FOR THE TREATMENT PHASE, THE STAFF RESPONSIBLE FOR MONITORING TREATMENT, AND THE DATES OF ANTICIPATED DRUG PUNISHMENT PLAN REVIEW.

(C) FOLLOWING COMPLETION OF THE INTAKE PROCESS AND DEVELOPMENT OF A DRUG PUNISHMENT PLAN, DRUG OFFENDERS MUST COMPLETE A PROGRAM OF UP TO SIX MONTHS OF COMPREHENSIVE DRUG ABUSE TREATMENT PRIOR TO BEING ASSIGNED TO A DRUG PUNISHMENT PROGRAM PHASE II TREATMENT UNIT.

(D) ROUTINE AND RANDOM DRUG TESTING SHALL BE CONDUCTED DURING PHASE I. DURING PHASE I, ENTRY INTO AND EXIT FROM INSTITUTIONAL FACILITIES SHALL BE MONITORED, BUT THE PURPOSE OF SUCH MONITORING SHALL NOT BE TO PHYSICALLY PROHIBIT ABSCONDING. AN ABSCONDING SHALL BE CONSIDERED A VIOLATION OF A CONDITION OF PROBATION.

2. PHASE II: GRADUATED REENTRY. UP TO THREE MONTHS OF EMPLOYMENT EXPERIENCE AND TRANSITION WORK IN A COMMUNITY REENTRY RESIDENTIAL SETTING. PHASE II DRUG PUNISHMENT PROGRAM FACILITIES SHALL CONSIST OF COMMUNITY REENTRY RESIDENTIAL FACILITIES.

(A) FOLLOWING TRANSFER TO PHASE II, THE DRUG OFFENDER SHALL BE ASSIGNED A PRIMARY DRUG PUNISHMENT PROGRAM COUNSELOR TO ASSIST THE CASE MANAGEMENT COUNSELOR IN DEVELOPING A DRUG PUNISHMENT PLAN FOR THE PHASE AND IN MONITORING THE DRUG OFFENDER'S PROGRESS THROUGH THE PHASE. THE DRUG PUNISHMENT PROGRAM COUNSELOR SHALL PROVIDE, ON A FORM PROVIDED BY THE DRUG OFFENDER ADVISORY BOARD, A COPY OF THE DRUG PUNISHMENT PLAN TO THE SUPERVISING PROBATION OFFICER AND SHALL PROVIDE BRIEF MONTHLY UPDATES ON THE DRUG OFFENDER'S PROGRAM PERFORMANCE TO THE SUPERVISING PROBATION OFFICER AND THE COURT.

(B) ROUTINE AND RANDOM DRUG TESTING SHALL BE CONDUCTED DURING PHASE II.

(C) A CASE MANAGEMENT COUNSELOR SHALL IDENTIFY VOCATIONAL TRAINING AND EMPLOYMENT OPPORTUNITIES, HOUSING, AND OTHER SUPPORT SERVICES FOR THE DRUG OFFENDER IN THE COMMUNITY.

(D) PRIOR TO A DRUG OFFENDER'S COMPLETION OF PHASE II, THE CASE MANAGEMENT COUNSELOR SHALL IDENTIFY AN OUTPATIENT COUNSELOR FROM A DESIGNATED DRUG PUNISHMENT PROGRAM PROVIDER AGENCY WHO SHALL BE RESPONSIBLE FOR DELIVERING AT LEAST NINE MONTHS OF OUTPATIENT FOLLOW-UP TREATMENT SERVICES, IN CLOSE PROXIMITY TO THE DRUG OFFENDER'S PLACE OF RESIDENCE, DURING PHASE III. THE OUTPATIENT SERVICE PROVIDER SHALL RECEIVE A COPY OF THE DRUG OFFENDER'S AFTERCARE PLAN AS DESCRIBED IN PARAGRAPH (E)

OF THIS SUBDIVISION FROM THE CASE MANAGER FOR THE SUPERVISED OUTPATIENT PHASE OF THE DRUG PUNISHMENT PROGRAM.

(E) A DRUG OFFENDER'S AFTERCARE PLAN SHALL INCLUDE A DESCRIPTION OF THE FOLLOWING:

(1) TREATMENT AND REHABILITATION GOALS AND KEY AREAS OF DIFFICULTIES.

(2) DRUG PUNISHMENT PLAN ACTIVITIES COMPLETED BY THE DRUG OFFENDER.

(3) THE DRUG OFFENDER'S AREAS OF PROGRESS AND DISCIPLINARY ACTIONS.

(4) THE PRESENT STATUS OF THE DRUG OFFENDER WITH RESPECT TO HIS DRUG PUNISHMENT PLAN.

(5) THE DRUG PUNISHMENT PLAN GOALS THAT SHOULD BE ADDRESSED IN PHASE III, DURING WHICH PHASE TREATMENT SHALL BE PROVIDED IN THE LEAST RESTRICTIVE SETTING IN WHICH THE GOALS FOR THE DRUG OFFENDER CAN BE ACCOMPLISHED.

3. PHASE III: SUPERVISED OUTPATIENT. AT LEAST NINE MONTHS OF SUPERVISED COMMUNITY OUTPATIENT TREATMENT, DECREASING IN INTENSITY AS THE DRUG OFFENDER RESPONDS TO TREATMENT AND BECOMES APPROPRIATELY ESTABLISHED IN THE COMMUNITY.

(A) THE DEPARTMENT SHALL DEVELOP AND IMPLEMENT STANDARDS FOR PROVIDING SUPERVISION OF THE OFFENDER, WHICH SHALL BE COMPARABLE TO THOSE ASSOCIATED WITH THE COMMUNITY CONTROL PROGRAM.

(B) DURING PHASE III, THE DRUG OFFENDER SHALL RESIDE IN HIS COMMUNITY. THE PROBATION OFFICER SHALL MAINTAIN A PER WEEK MINIMUM OF TWO FACE-TO-FACE CONTACTS, ONE OF WHICH IS IN THE DRUG OFFENDER'S RESIDENCE. NO LESS THAN ONE CONTACT EVERY OTHER WEEK SHALL BE ANY EVENING CONTACT, AND THE PROBATION OFFICER SHALL VISIT THE DRUG OFFENDER'S RESIDENCE NO LESS THAN EVERY OTHER WEEKEND AND SHALL MAINTAIN DAILY TELEPHONE CONTACT WITH THE DRUG OFFENDER, INCLUDING ON WEEKENDS.

(C) ROUTINE AND RANDOM DRUG TESTING SHALL BE CONDUCTED AT LEAST WEEKLY DURING PHASE III.

(D) THE DRUG OFFENDER SHALL PARTICIPATE IN FULL-TIME EMPLOYMENT OR VOCATIONAL TRAINING DURING PHASE III.

(E) MAJOR GOALS OF PHASE III INCLUDE, BUT ARE NOT LIMITED TO:

(1) REHEARSAL AND REFINEMENT OF THE DRUG OFFENDER'S RELAPSE PREVENTION STRATEGIES.

(2) CONTINUED WORK TOWARD COMPLETION OF THE DRUG OFFENDER'S DRUG PUNISHMENT PLAN.

(3) MAINTENANCE OF BEHAVIOR CHANGES ACHIEVED BY THE DRUG OFFENDER DURING THE FIRST TWO PHASES OF TREATMENT.

(F) FOLLOW-UP TREATMENT SHALL PROVIDE AT LEAST THREE THREE-MONTH LEVELS OF DECREASING INTENSITY TO ENSURE ADEQUATE MONITORING OF AND SUPPORT FOR THE DRUG OFFENDER IN A GRADUATED TRANSITION TO INDEPENDENT LIVING WHICH INCLUDES ATTENDANCE IN WEEKLY GROUP SESSIONS AND SELF-HELP GROUPS, WHICH MAY INCLUDE ALCOHOLICS ANONYMOUS, NARCOTICS ANONYMOUS, AND COCAINE ANONYMOUS.

(G) AFTER THE DRUG OFFENDER HAS SUCCESSFULLY COMPLETED ALL PHASES OF THE DRUG PUNISHMENT PROGRAM, AND WITHIN ONE MONTH AFTER COMPLETION OF THE FOLLOW-UP PROGRAM, THE DRUG OFFENDER'S TREATMENT COUNSELOR SHALL PREPARE A DRUG PUNISHMENT PROGRAM COMPLETION SUMMARY THAT INCLUDES THE DRUG OFFENDER'S PROGRESS IN OUTPATIENT TREATMENT AND REHABILITATION AND ANY RECOMMENDATIONS FOR FURTHER TREATMENT, COUNSELING, OR OTHER SOCIAL OR REHABILITATIVE SERVICES FOR THE DRUG OFFENDER.

4. TERMINATION FROM DRUG PUNISHMENT PROGRAM. AN OFFENDER PLACED IN THE DRUG PUNISHMENT PROGRAM AS A RESULT OF A CONDITION OF PROBATION IS SUBJECT TO REVOCATION OF PROBATION. THE DEPARTMENT SHALL ASSIGN A PROBATION OFFICER TO THE FACILITY PROVIDING SERVICES AS PROVIDED IN THIS SECTION. THE TREATMENT PROVIDER SHALL REPORT TO THE ASSIGNED PROBATION

OFFICER SUCH BEHAVIOR WHICH MAY CONSTITUTE A VIOLATION OF ANY OF THE CONDITIONS OF PROBATION. THE PROVIDER SHALL RECOMMEND TO THE PROBATION OFFICER WHAT ACTION SHOULD BE TAKEN WITH RESPECT TO THE ALLEGED VIOLATIONS, AND THE OFFICER SHALL PROVIDE A REPORT TO THE COURT WITH RECOMMENDATIONS.

5. DISCIPLINE IN DRUG PUNISHMENT PROGRAM TREATMENT COMMUNITIES. A SERIES OF GRADUATED SANCTIONS SHALL BE DEVELOPED BY THE STATEWIDE PROGRAM MANAGER, SUBJECT TO APPROVAL OF THE DEPARTMENT AND THE DRUG OFFENDER ADVISORY BOARD, FOR USE IN THE TREATMENT COMMUNITIES OF THE DRUG PUNISHMENT PROGRAM. THE SANCTIONS SHALL BE DESIGNED TO PROVIDE CLEAR CONSEQUENCES FOR A DRUG OFFENDER'S MISCONDUCT AS WELL AS TO PROVIDE DISCIPLINE WITHIN THE TREATMENT COMMUNITY. THE RANGE OF SANCTIONS PROVIDED FOR EACH PROGRAM PHASE SHALL BE APPROPRIATE SANCTIONS FOR THAT PHASE OF TREATMENT.

NOTHING CONTAINED IN THIS SECTION SHALL CONFER A RIGHT TO OR AN EXPECTATION OF A RIGHT TO TREATMENT.

S 435.60 DESIGNATED TREATMENT COMMUNITIES.

1. DESIGNATED TREATMENT COMMUNITIES FOR DRUG OFFENDERS MAY BE CONTRACTED FOR OR SITED AND CONSTRUCTED BY THE DEPARTMENT PURSUANT TO DEPARTMENTAL RULE, IN CONSULTATION WITH THE STATEWIDE PROGRAM MANAGER TO ENSURE THAT TREATMENT COMMUNITY DESIGN IS COMPATIBLE WITH TREATMENT AND OTHER PROGRAM NEEDS. THE DEPARTMENT IS AUTHORIZED TO CONTRACT FOR THE CONSTRUCTION OF THE DRUG PUNISHMENT PROGRAM TREATMENT COMMUNITY INSTITUTIONS. PHASE I INSTITUTIONAL DRUG PUNISHMENT PROGRAM FACILITIES SHALL CONSIST OF SECURE INTAKE AND RESIDENTIAL UNITS. PHASE II INSTITUTIONAL DRUG PUNISHMENT PROGRAM FACILITIES SHALL CONSIST OF COMMUNITY REENTRY FACILITIES AND MAY BE LOCATED ON A SINGLE SITE WITH PHASE I UNITS, PROVIDED THE PHASE I INSTITUTIONAL FACILITY IS SITED IN CLOSE PROXIMITY TO THE PROGRAM'S TREATMENT COMMUNITY RESOURCES. AN ASSESSMENT OF NEED FOR ADDITIONAL PHASE I INSTITUTIONAL FACILITIES SHALL BE CONDUCTED PRIOR TO THE SITING OR CONSTRUCTION OF MORE THAN ONE PHASE I SECURE RESIDENTIAL INSTITUTIONAL FACILITY FOR THE DRUG PUNISHMENT PROGRAM IN ANY PARTICULAR JUDICIAL DISTRICT.

2. THE PHASE I PORTION OF TREATMENT COMMUNITIES FOR DRUG OFFENDERS SHALL CONSIST OF SEPARATE AND SECURE INSTITUTIONAL FACILITIES ESTABLISHED UNDER THE AUTHORITY OF THE DEPARTMENT.

3. DESIGNATED TREATMENT COMMUNITIES FOR DRUG OFFENDERS SHALL BE ADEQUATELY STAFFED BY THE DESIGNATED ASSESSMENT AND TREATMENT PROVIDERS, AND THE DEPARTMENT SHALL PROVIDE A PROBATION OFFICER FOR EACH RESIDENTIAL FACILITY.

4. MINIMUM STANDARDS AND REQUIREMENTS FOR DESIGNATED DRUG PUNISHMENT PROGRAM TREATMENT COMMUNITIES SHALL BE CONTRACTUALLY PRESCRIBED PURSUANT TO SECTION 435.25 OF THIS ARTICLE.

5. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO REQUIRE OR ALLOW THE DEPARTMENT TO PROVIDE ASSESSMENT OR TREATMENT SERVICES TO DRUG OFFENDERS IN THE DRUG PUNISHMENT PROGRAM, OTHER THAN THE COMMENCEMENT OF INITIAL SCREENING OF AN OFFENDER WHO MAY MEET THE CRITERIA OF A DRUG OFFENDER BY THE DEPARTMENT'S PROBATION OFFICER.

6. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO PERMIT DRUG OFFENDERS TO BE HOUSED OR TREATED IN LOCAL JAILS PURSUANT TO THE DRUG PUNISHMENT PROGRAM.

S 435.65 CORE TREATMENT PROGRAM.

1. ALL DRUG OFFENDERS IN THE DRUG PUNISHMENT PROGRAM SHALL COMPLETE A CORE TREATMENT PROGRAM, INCLUDING, BUT NOT LIMITED TO:

(A) DRUG ABUSE TREATMENT, INCLUDING:

(1) RELAPSE PREVENTION.

(2) BOTH ROUTINE AND RANDOM DRUG TESTING.
(3) DRUG ABUSE EDUCATION.
(4) AIDS EDUCATION.
(B) MENTAL HEALTH SERVICES.
(C) PREVOCATIONAL AND VOCATIONAL SERVICES, INCLUDING EMPLOYABILITY SKILLS TRAINING AND JOB TRAINING REALISTICALLY DESIGNED TO LEAD TO MEANINGFUL JOB PLACEMENT.
(D) DIAGNOSTIC EVALUATION.
(E) INDIVIDUAL THERAPY, INCLUDING TREATMENT OF CRIMINAL THOUGHT PROCESSES, AND INCLUDING GROUP AND FAMILY THERAPY WHERE APPROPRIATE.
(F) INDEPENDENT LIVING SKILLS, PARENTING SKILLS, AND SELF-SUFFICIENCY SKILLS.
(G) EDUCATIONAL SERVICES, INCLUDING SPECIAL EDUCATION AND PRE-GED LITERACY SERVICES WHERE NEEDED.
(H) RECREATIONAL ACTIVITIES.
(I) VICTIM RESTITUTION WHERE APPROPRIATE.
(J) CASE MANAGEMENT SERVICES, GENERAL GROUP COUNSELING, SELF-HELP GROUPS, AND GRADUATED REENTRY INTO THE COMMUNITY.
2. A COMPREHENSIVE EDUCATIONAL AND VOCATIONAL COMPONENT WITHIN THE DRUG PUNISHMENT PROGRAM SHALL INCLUDE A RANGE OF SKILLS DEVELOPMENT OPPORTUNITIES TO ENABLE EACH DRUG OFFENDER TO OBTAIN SKILLS COMMENSURATE WITH HIS INTERESTS AND ABILITIES.
(A) THE GOALS OF THE EDUCATIONAL AND VOCATIONAL COMPONENTS OF THE DRUG PUNISHMENT PROGRAM ARE TO:
(1) ENHANCE BASIC LIFE SKILLS,
(2) DEVELOP MARKETABLE VOCATIONAL SKILLS, AND
(3) IMPROVE LITERACY SKILLS,
SO AS TO ALLOW THE DRUG OFFENDER TO MAINTAIN TREATMENT BENEFITS AND GAIN MEANINGFUL EMPLOYMENT IN THE COMMUNITY.
(B) SPECIFIC OBJECTIVES OF THE EDUCATIONAL AND VOCATIONAL COMPONENTS OF THE DRUG PUNISHMENT PROGRAM INCLUDE THE DEVELOPMENT OR IMPROVEMENT OF READING SKILLS AND THE PLACEMENT OF EACH DRUG OFFENDER INTO VOCATIONAL TRAINING OR MEANINGFUL EMPLOYMENT DURING PHASES II AND III.
(C) DURING THE DRUG PUNISHMENT PROGRAM INTAKE ORIENTATION, AN EDUCATIONAL AND VOCATIONAL COMPONENT OF THE INDIVIDUALIZED DRUG PUNISHMENT PLAN SHALL BE DEVELOPED FOR EACH DRUG OFFENDER, WHICH INCLUDES LITERACY, EMPLOYABILITY, AND VOCATIONAL SKILLS, ASSESSMENT, INDIVIDUALIZED PLANNING, PARTICIPATION IN EDUCATIONAL AND VOCATIONAL ACTIVITIES, AND POST-PROGRAM PLACEMENT.
(D) ADULT EDUCATION TEACHERS FOR DRUG OFFENDERS MAY BE PROVIDED BY THE LOCAL SCHOOL BOARD. ADULT BASIC EDUCATION MAY BE OFFERED DURING PHASE II OF THE DRUG PUNISHMENT PROGRAM IN LOCAL COMMUNITY COLLEGES OR IN OTHER SETTINGS.
3. THE CORE TREATMENT PROGRAM SHALL BE PROVIDED THROUGHOUT ALL PHASES OF A DRUG OFFENDER'S INDIVIDUAL DRUG PUNISHMENT PLAN, INCLUDING PHASE III AFTERCARE.
S 435.70 DRUG OFFENDER ADVISORY BOARD.
1. THE DRUG OFFENDER ADVISORY BOARD IS CREATED TO SERVE IN AN ADVISORY CAPACITY TO THE DEPARTMENT AND THE STATEWIDE PROGRAM MANAGER AND SHALL REPRESENT THE GEOGRAPHICAL AND ETHNIC DIVERSITY OF THE STATE. MEMBERSHIP OF THE BOARD SHALL CONSIST OF THE FOLLOWING:
(A) A DESIGNEE OF THE DEPARTMENT.
(B) A DESIGNEE OF THE DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES.
(C) A DESIGNEE OF THE PROGRAM EVALUATOR.

(D) A DESIGNEE OF THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES.

(E) A JUDGE APPOINTED BY THE OFFICE OF COURT ADMINISTRATION.

(F) A SHERIFF APPOINTED BY THE NEW YORK STATE SHERIFF'S ASSOCIATION.

(G) A DISTRICT ATTORNEY APPOINTED BY THE NEW YORK STATE DISTRICT ATTORNEY'S ASSOCIATION.

(H) A PUBLIC DEFENDER APPOINTED BY THE NEW YORK STATE DEFENDERS ASSOCIATION.

(I) A TEACHER WHO HAS KNOWLEDGE IN THE AREAS OF ADULT BASIC LITERACY EDUCATION AND VOCATIONAL EDUCATION, APPOINTED BY THE COMMISSIONER OF EDUCATION.

(J) REPRESENTATIVES FROM THREE NONPROFIT DRUG TREATMENT AGENCIES WITH EXPERIENCE IN TREATING DRUG ABUSING OFFENDERS, APPOINTED BY THE DEPARTMENT.

THE SHERIFF, DISTRICT ATTORNEY, JUDGE, AND PUBLIC DEFENDER SHALL SERVE ON THE ADVISORY BOARD DURING THEIR TERMS OF OFFICE. IN ORDER TO PROVIDE STAGGERED TERMS, TWO OF THE REPRESENTATIVES FROM THE NONPROFIT DRUG TREATMENT AGENCIES AND THE TEACHER SHALL BE INITIALLY APPOINTED TO TERMS OF THREE YEARS, AND THEREAFTER TO TERMS OF TWO YEARS. THE REMAINING MEMBERS SHALL BE FILLED IN THE SAME MANNER AS ORIGINAL APPOINTMENTS FOR ANY UNEXPIRED TERM. MEMBERS OF THE ADVISORY BOARD MAY BE REAPPOINTED IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SUBDIVISION.

2. MAJOR RESPONSIBILITIES OF THE BOARD ARE:

(A) TO PREPARE AND SUBMIT FOR DEPARTMENT APPROVAL A DRUG PUNISHMENT PLAN IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE, AND TO ENSURE THAT THE ASSESSMENT, TREATMENT, AND EVALUATION COMPONENTS OF THE DRUG PUNISHMENT PROGRAM ARE CONDUCTED IN AN EFFECTIVE AND TIMELY MANNER.

(B) TO REVIEW REQUESTS FOR APPLICATIONS OF PROVIDERS TO RENDER ASSESSMENT OR TREATMENT SERVICES IN THE DRUG PUNISHMENT PROGRAM.

(C) TO REVIEW PREQUALIFIED PROPOSALS FOR THE PURPOSE OF MAKING A RECOMMENDATION TO THE DEPARTMENT.

(D) TO REVIEW SITE ACQUISITION FOR DRUG PUNISHMENT PROGRAM TREATMENT INSTITUTIONAL COMMUNITIES.

(E) TO REVIEW ARCHITECTURAL PROTOTYPES OF PHASE I AND PHASE II TREATMENT INSTITUTIONAL COMMUNITIES.

(F) TO REVIEW TRAINING AND TREATMENT CURRICULA FOR DRUG PUNISHMENT PROGRAM PROVIDERS AND STAFF.

(G) TO PROVIDE OVERVIEW AND COORDINATION OF DRUG PUNISHMENT PROGRAM PROVIDERS, THE DEPARTMENT, THE PROGRAM EVALUATOR, AND THE TREATMENT COMMUNITIES OF THE DRUG PUNISHMENT PROGRAM.

3. THE BOARD SHALL ALSO:

(A) ASSESS STATEWIDE NEEDS AND ADVISE THE DEPARTMENT AND THE LEGISLATURE REGARDING SPECIFIC DRUG TREATMENT PROGRAM OPTIONS NEEDED FOR DRUG OFFENDERS.

(B) RECOMMEND THE ESTABLISHMENT OF LOCAL ELIGIBILITY STANDARDS FOR LOCAL DRUG TREATMENT PROGRAMS WHICH MEET THE NEEDS OF THE PLAN.

(C) RECOMMEND DRUG TREATMENT GUIDELINES.

(D) RECOMMEND DRUG PUNISHMENT PROGRAM POLICIES.

(E) RECOMMEND TO THE DEPARTMENT THOSE PROVIDERS WHO MEET OR EXCEED THE MINIMUM STANDARDS ESTABLISHED BY THE BOARD.

(F) PROVIDE OVERVIEW OF THE QUALITY ASSURANCE CONDUCTED BY THE STATEWIDE PROGRAMS MANAGER OF THE DRUG TREATMENT SERVICES IN THE PROGRAM AND REPORT AND ADVISE THE DEPARTMENT OF NEEDED MODIFICATIONS.

(G) INFORM AND EDUCATE THE GENERAL PUBLIC REGARDING THE NEED FOR DIVERSION OF ELIGIBLE DRUG OFFENDERS FROM CONFINEMENT IN CORRECTIONAL INSTITUTIONS TO DRUG TREATMENT PROGRAMS.

4. NO MEMBER OF THE BOARD SHALL BE A RECIPIENT OF CONTRACTUAL SERVICES FOR THE ASSESSMENT, TREATMENT, OR EVALUATION OF OFFENDERS UNDER THIS ARTICLE.

5. THE BOARD SHALL MEET REGULARLY TO TRANSACT BUSINESS AND SHALL ELECT ITS OWN CHAIRMAN, VICE CHAIRMAN, SECRETARY, AND NECESSARY COMMITTEES.

6. BOARD MEMBERS SHALL RECEIVE PER DIEM AND TRAVEL EXPENSES.

S 435.75 DRUG PUNISHMENT PROGRAM QUALITY ASSURANCE COMPONENT; DUTIES OF STATEWIDE PROGRAM MANAGER.

IN ORDER TO ENSURE THE QUALITY AND APPROPRIATENESS OF THE DELIVERY OF SERVICES WITHIN THE DRUG PUNISHMENT PROGRAM, THE STATEWIDE PROGRAM MANAGER SHALL:

1. CONDUCT AN ANNUAL UTILIZATION REVIEW TO ENSURE THE APPROPRIATE USE AND EFFICIENT SCHEDULING OF DRUG PUNISHMENT PROGRAM RESOURCES AND TO ASSIST IN THE MAINTENANCE OF HIGH QUALITY CARE AT ALL TREATMENT INSTITUTIONAL COMMUNITIES. THE UTILIZATION REVIEW SHALL INCLUDE AN OBJECTIVE REVIEW, THROUGHOUT THE DRUG PUNISHMENT PROGRAM, OF THE FOLLOWING:

(A) ADMISSIONS AND TERMINATIONS DECISIONS.

(B) TRANSITIONAL CARE PLANNING.

(C) DISCHARGE PLANNING.

(D) CONTINUED STAY DECISIONS.

(E) USE OF ADJUNCT REFERRAL SERVICES.

2. CONDUCT ONGOING CLIENT CARE MONITORING TO ENSURE THAT QUALITY SERVICES ARE DELIVERED. CLIENT CARE MONITORING SHALL CONSIST OF REGULAR REVIEWS OF THE INDIVIDUALIZED DRUG PUNISHMENT PLANS OF DRUG OFFENDERS, APPROPRIATE REVIEWS OF DIFFICULT CASES, AND TIMELY AND APPROPRIATE CRISIS MANAGEMENT. CRISIS MANAGEMENT IS APPROPRIATE WHERE:

(A) THE DRUG OFFENDER IS DETERMINED TO BE A DANGER TO HIMSELF OR OTHERS;

(B) THE DRUG OFFENDER IS AT HIGH RISK FOR RELAPSE; OR

(C) THE DRUG OFFENDER HAS DIFFICULTY CARRYING OUT HIS DRUG PUNISHMENT PLAN.

3. CONDUCT ONGOING QUALITY MONITORING AND EVALUATION OF THE APPROPRIATENESS OF TREATMENT PROVIDED TO DRUG OFFENDERS, FOCUSING ON STAFF PERFORMANCE RATHER THAN ON THE OFFENDERS.

4. PROVIDE STAFF DEVELOPMENT PROGRAMS FOR DRUG PUNISHMENT PROGRAM ASSESSMENT AND TREATMENT PROVIDERS, INCLUDING INITIAL TRAINING AND ORIENTATION.

5. PROVIDE TREATMENT COMMUNITY DESIGN ASSISTANCE PURSUANT TO CONTRACTUAL AUTHORIZATION AS PROVIDED IN PARAGRAPH (D) OF SUBDIVISION TWO OF SECTION 435.25 OF THIS ARTICLE.

S 435.80 DRUG PUNISHMENT PROGRAM EVALUATION.

IN ORDER TO DETERMINE THE EFFECTIVENESS OF THE DRUG PUNISHMENT PROGRAM, THE DEPARTMENT SHALL CONTRACT WITH A PROGRAM EVALUATOR OF THE STATEWIDE DRUG PUNISHMENT PROGRAM TO CONDUCT AN ONGOING COMPREHENSIVE EVALUATION PROGRAM PURSUANT TO THIS PART.

1. THE GOALS OF THE EVALUATION PROGRAM ARE:

(A) TO DETERMINE THE EFFECTIVENESS OF THE DRUG PUNISHMENT PROGRAM IN REDUCING CRIMINAL BEHAVIOR, ARRESTS, AND COMMITMENTS TO THE STATE CORRECTIONAL SYSTEM.

(B) TO EVALUATE THE POST-TREATMENT COMMUNITY ADJUSTMENT OF DRUG OFFENDERS IN THE AREAS OF DRUG ABUSE, EMPLOYMENT, INVOLVEMENT IN TREATMENT SERVICES, AND USE OF OTHER COMMUNITY SERVICES.

(C) TO EXAMINE THE COST EFFECTIVENESS OF THE DRUG PUNISHMENT PROGRAM RELATIVE TO THE COSTS OF TRADITIONAL INSTITUTIONAL COMMITMENT AND COMMUNITY SUPERVISION.

(D) TO ASSESS IMPROVEMENTS MADE BY DRUG OFFENDERS THROUGHOUT THE PHASES OF THE DRUG PUNISHMENT PROGRAM IN THE AREAS OF SKILLS DEVELOPMENT, EMOTIONAL FUNCTIONING, AND MOTIVATION.

(E) TO DETERMINE WHETHER DRUG PUNISHMENT PROGRAM ASSESSMENT AND TREATMENT ARE PROVIDED AS INTENDED AND IN ACCORDANCE WITH CURRICULA MANUALS AND OTHER PROVIDER GUIDELINES. THE EVALUATION PROGRAM SHALL DETERMINE DRUG PUNISHMENT PROGRAM EFFECTIVENESS THROUGH THE USE OF MEASURABLE OUTCOMES THAT INCLUDE ANALYSIS, USING ACCEPTABLE TESTING STANDARDS, OF THE PATTERNS OF DRUG OFFENDERS' AVOIDANCE OF OR RELAPSE INTO CRIMINAL BEHAVIOR, THE PATTERNS OF DRUG OFFENDERS' EMPLOYMENT PROGRESS, THE PAYMENT OF VICTIM RESTITUTION BY DRUG OFFENDERS, AND OTHER INDICES OF THE PROGRESS OR FAILURE OF DRUG OFFENDERS DURING AND AFTER THEIR TERMS IN THE DRUG PUNISHMENT PROGRAM. EVALUATION DATA SHALL BE COLLECTED AT EACH PHASE OF THE DRUG PUNISHMENT PROGRAM, INCLUDING INITIAL SCREENING, ASSESSMENT, INTAKE, PHASES I, II, AND III OF TREATMENT, AND FOLLOWING THE RELEASE OR TERMINATION OF DRUG OFFENDERS FROM THE DRUG PUNISHMENT PROGRAM.

2. EVALUATION PROGRAM STAFF SHALL CONDUCT THREE PRIMARY ACTIVITIES:

(A) EVALUATION OF POST-TREATMENT OUTCOMES TO EXAMINE THE EFFECTS OF TREATMENT ON DRUG OFFENDER OUTCOMES FOLLOWING COMPLETION OF THE DRUG PUNISHMENT PROGRAM. MAJOR AREAS TO BE ADDRESSED INCLUDE THE IMPACT OF THE PROGRAM'S TREATMENT INTERVENTIONS ON POST TREATMENT CRIMINAL BEHAVIOR, DRUG ABUSE, EMPLOYMENT, AND SOCIAL FUNCTIONING. THIS EVALUATION COMPONENT SHALL IDENTIFY PATTERNS OF RECIDIVISM AND SHALL ALSO ANALYZE THE COST EFFECTIVENESS OF THE DRUG PUNISHMENT PROGRAM.

(B) ANALYSIS OF PRETREATMENT DRUG OFFENDER CHARACTERISTICS AND BEHAVIORS TO ESTABLISH A BASELINE OF CRIMINAL BEHAVIOR, DRUG ABUSE, MENTAL HEALTH STATUS, EMPLOYMENT, AND IMPAIRMENT IN PSYCHOSOCIAL FUNCTIONING OF SUCH PRETREATMENT DRUG OFFENDERS, TO ASSIST IN EVALUATING THE PROGRESS MADE BY DRUG OFFENDERS DURING THE DRUG PUNISHMENT PROGRAM AND IN IDENTIFYING FACTORS THAT INFLUENCE DRUG PUNISHMENT PROGRAM OUTCOME.

(C) EVALUATION OF PROGRESS BY DRUG OFFENDERS, AND EVALUATION OF TREATMENT INTEGRITY, TO EXAMINE EVIDENCE OF PROGRESS BY DRUG OFFENDERS AT PREDETERMINED MARKERS DURING THE ENTIRE PERIOD OF THEIR INVOLVEMENT IN THE DRUG PUNISHMENT PROGRAM. EVALUATION SHALL ASSESS WHETHER TREATMENT INTERVENTIONS ARE PROVIDED AS INTENDED AND ARE OF SUFFICIENT QUALITY AND INTENSITY TO MEET THE DRUG PUNISHMENT PROGRAM GOALS.

S 435.85 FINANCIAL CONSIDERATIONS FOR ASSESSMENT, TREATMENT, AND TRANSPORTATION OF DRUG OFFENDERS.

1. PROVIDERS OF ASSESSMENT, TREATMENT, AND TRANSPORTATION SERVICES TO DRUG OFFENDERS PURSUANT TO THIS ARTICLE SHALL SEEK REIMBURSEMENT FOR THE EXPENSES INCURRED IN PROVIDING ASSESSMENT, TREATMENT, OR TRANSPORTATION FROM AN INSURANCE COMPANY, HEALTH CARE CORPORATION, OR OTHER SOURCE AS TO ANY DRUG OFFENDER WHO IS COVERED BY AN INSURANCE POLICY OR SUBSCRIBES TO A HEALTH CARE CORPORATION OR OTHER SOURCE FOR SUCH EXPENSES.

2. UPON A SHOWING THAT REIMBURSEMENT UNDER SUBDIVISION ONE OF THIS SECTION IS NOT AVAILABLE, THE COSTS OF ASSESSMENT, TREATMENT, AND TRANSPORTATION SHALL BE COMPENSATED IN ACCORDANCE WITH THE CONTRACT PROVISIONS MUTUALLY AGREED UPON BY THE DEPARTMENT AND THE PROVIDER, WHICH MAY INCLUDE PROSPECTIVE PAYMENTS PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

3. A DRUG OFFENDER WHO HAS HEALTH INSURANCE, SUBSCRIBES TO A HEALTH CARE CORPORATION, OR RECEIVES HEALTH CARE BENEFITS FROM ANY OTHER SOURCE SHALL ASSIGN SUCH BENEFITS TO THE SERVICE PROVIDER, AS APPROPRIATE.

4. IN ORDER TO CONTAIN COSTS WHILE ENHANCING ADEQUACY AND ACCESSIBILITY OF TREATMENT FOR DRUG OFFENDERS, THE DEPARTMENT SHALL NEGOTIATE WITH

DRUG PUNISHMENT PROGRAM ASSESSMENT, TREATMENT, AND TRANSPORTATION PROVIDERS TO ESTABLISH PROSPECTIVE PAYMENT ARRANGEMENTS THAT PROVIDE FINANCIAL INCENTIVES FOR THE CONTAINMENT OF THE COSTS OF THE PROGRAM.

5. THE PROSPECTIVE PAYMENT SYSTEM ESTABLISHED PURSUANT TO THIS SECTION SHALL INCLUDE, AT A MINIMUM, THE FOLLOWING ELEMENTS:

(A) A MAXIMUM ALLOWABLE PAYMENT AMOUNT ESTABLISHED FOR INDIVIDUAL PROVIDER SERVICES, WHICH IS PRESET AT THE BEGINNING OF THE BUDGET YEAR OF THE PROVIDER AND FIXED FOR THE ENTIRETY OF THAT BUDGET YEAR, EXCEPT WHEN EXTENUATING AND UNUSUAL CIRCUMSTANCES WARRANT RENEGOTIATION.

(B) TIMELY PAYMENT TO THE PROVIDER OF THE NEGOTIATED PAYMENT AMOUNT.

(C) ACCEPTANCE BY THE PROVIDER OF THE NEGOTIATED PAYMENT AMOUNT AS PAYMENT IN FULL, WHICH SHALL INCLUDE ANY DEDUCTIBLE OR COINSURANCE PROVIDED FOR.

(D) UTILIZATION REVIEWS FOR APPROPRIATENESS OF THE PROVIDER'S SERVICES.

6. NOTHING CONTAINED IN THIS SECTION PROHIBITS THE INCLUSION OF ANY OTHER COST-EFFECTIVE FUNDING FORMULA.

S 4. This act shall take effect on January 1, 2010; provided, however, that any rules and regulations necessary to implement the provisions of this act on its effective date are authorized and directed to be promulgated, amended or repealed on or before such effective date.