

**Checklist for Drug or Alcohol Testing  
In Custody or Visitation Proceeding  
[FC §3041.5]**

**Who Can Be Ordered to Be Tested**

- Either or both parents, or
- Legal custodian

**Required Finding After Court Hearing**

- Habitual, frequent, or continual illegal use of controlled substance by parent or legal custodian, or
- Habitual or continual abuse of alcohol by parent or legal custodian

**What's a Controlled Substance?**

- See California Uniform Controlled Substances Act (H&SC §§11000 et seq., 11007)

**Standard of Proof**

- Preponderance of evidence (use/abuse more likely than not)

**Evidence**

- Includes, but is not limited to, conviction within last five years for illegal use or possession of controlled substance

**Drug Testing**

- Must be performed by least intrusive means
- Only urine testing is approved at this time under procedures and standards established by U.S. Department of Health and Human Services for drug testing of federal employees\*
- Court may order either or both parties to pay costs of testing

**Right to Challenge Results**

- Parent or legal custodian has right to hearing to challenge positive test results

**Use of Results**

- Positive result, even if challenged and upheld, is not by itself grounds for adverse custody decision
- Results must be weighed with all other relevant factors in determining child's best interest
- Results may not otherwise be used in any other criminal, civil, or administrative proceeding

**Confidentiality of Results**

- Results are confidential and must be kept as sealed record in court file
- Results may only be released to court, parties, their attorneys, the Judicial Council (reporting purposes), and anyone authorized by written court order after notice to all parties
- No disclosure except to other authorized persons
- Civil sanctions for breach of confidentiality

\* Certified labs use the Mandatory Guidelines for Federal Workplace Drug Testing Programs, published by the Substance Abuse and Mental Health Services Administration (SAMHSA), or a modification of them (e.g., U.S. Department of Transportation procedures). See <http://workplace.samhsa.gov/home.asp>.