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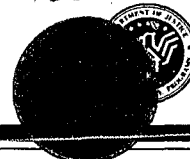
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NATIONAL INSTITUTE OF JUSTICE

Research in Brief

Charles B. DeWitt, Director

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Pretrial Drug Testing

by Christy A. Visher, Ph.D.

In the 1980's, rising public awareness of the drug abuse problem in all sectors of society led to a variety of strategies for reducing and controlling illicit drug consumption. In the workplace, the military, and the criminal justice system, a principal strategy has been an increased emphasis on the *detection* of persons who use illegal drugs. Since drug users may not show any overt symptoms of use and will often deny illegal drug use if asked directly, urinalysis technologies have emerged as a convenient tool for identifying users of illegal drugs.

Drug testing has been used for decades in drug abuse treatment programs to monitor drug use during treatment. Probation and parole agencies in a few States (notably California) and in the Federal system have had drug testing programs in place for more than a decade. In the last several years, drug testing has become a common requirement during probation or parole for

persons convicted of drug offenses or suspected of using drugs.

Drug testing is also gaining the attention of national policymakers. The President's Office of National Drug Control Policy has recommended that State criminal justice programs implement comprehensive drug testing programs from arrest through postconviction supervision.¹

Pretrial drug testing of suspected offenders at arrest and during the period before trial, however, is a relatively new practice. After arrest and arraignment of suspected offenders, judges must make determinations of bail and pretrial release and set any conditions of release. The principal concern in this decision is the defendant's possible flight and potential danger to the community.

The Federal Bail Reform Act of 1984 urged that a defendant's drug involvement

be considered in release assessments. Washington, D.C., has put this suggested policy into practice through one of the most comprehensive pretrial drug-testing programs in the country. Arrestees are asked to submit to a drug test at arrest, and those testing positive for illegal drugs may be released before trial if they enter a monitoring or treatment program involving regular drug testing.

Both State and Federal criminal justice systems are now debating the merits and drawbacks of establishing similar pretrial testing programs. Among the concerns raised about pretrial drug testing are:

- The utility of the program in reducing pretrial rearrests and increasing court appearances.
- The accuracy of the testing procedures.
- Possible constitutional challenges to drug testing at the pretrial stage.

From the Director

In keeping with its congressional mandate, the National Institute of Justice (NIJ) is committed to a broad research agenda involving various means of controlling illicit drug use. For example, as part of its research and demonstration effort, NIJ's Drug Use Forecasting (DUF) program monitors drug use among arrestees in urban sites across the Nation and charts trends that are useful to State and local criminal justice officials.

Pretrial drug testing of arrestees and defendants released pending trial is standard procedure in the Washington, D.C., criminal courts and was implemented for demonstration purposes at six State and local criminal court sites. Federal courts are also

considering implementing pretrial drug testing in some districts.

This *Research in Brief* reviews State and local experiences with pretrial drug testing, discusses NIJ evaluations that have been carried out on certain testing programs, and offers some suggestions for establishing such programs. Some important findings are that:

- Drug testing at arrest can be useful to judges in making decisions regarding probation or pretrial release.
- Drug testing during pretrial release permits the courts to supervise drug-involved defendants more closely and

may reduce the likelihood of pretrial misconduct by some defendants.

- Implementation of pretrial drug testing requires extensive coordination between all justice agencies involved.

NIJ annually conducts evaluations of promising criminal justice programs and assesses the usefulness and effectiveness of advances in technology as part of its mission to control drug abuse and improve the justice system. An important part of the Institute's goal is the publication of documents such as this that inform criminal justice professionals across the Nation.

Charles B. DeWitt
Director
National Institute of Justice

- The costs associated with operating a pretrial testing program.

A series of studies funded by the National Institute of Justice (NIJ) and the Bureau of Justice Assistance (BJA) provide empirical and practical information about the utility of pretrial drug testing. Drawing on these studies, this *Research in Brief* discusses the current research and policy debates on pretrial drug testing.

Pretrial drug testing in Washington, D.C.

Pretrial drug testing has existed in Washington, D.C., since the 1970's. The original program referred suspected drug-involved offenders to a local treatment agency which conducted the tests and delivered the results to the courts. In 1984, this testing program was transferred to the criminal justice system, and the Pretrial Services Agency (PSA) of Washington launched an expanded, comprehensive program for all arrestees and all released drug-involved offenders.²

The new program was based on research that has consistently shown that the most frequent serious offenders are also the heaviest drug users. Moreover, for many drug-involved offenders, criminal activity appears to rise or decline with level of drug use, especially of heroin and cocaine.³ In practical terms, the identification of drug-involved offenders and potential control of their drug use appeared to be a useful approach to managing high-risk defendants at the earliest stage of the criminal justice process.

The pretrial testing program in the District of Columbia has two components: (1) *detection* of drug use by testing arrestees prior to the initial court appearance and release decision, and (2) *monitoring* drug use among released defendants by regular testing as a condition of release. Testing of arrestees in a facility within the courthouse is completed before arraignment, and results are available to the judge before the initial court appearance. PSA uses the EMIT™ (enzyme multiplied immunoassay test) and screens arrestees for five drugs—cocaine, opiates (primarily heroin), PCP, methadone, and amphetamines. The initial drug test is voluntary, but compliance is high because judges will often deny non-

financial release to those who refuse testing. Test results are not used in prosecution or adjudication decisions.

In most State and Federal courts, judges may set release conditions to minimize the safety threat posed by high-risk defendants and to ensure appearance at trial. The second component of the Washington testing program, drug monitoring during release, provided judges with a new option for handling drug-involved offenders in the period before trial. Arrestees who test positive for drugs at arrest are placed in a regular drug testing or treatment program as a condition of release.

Defendants must report at least weekly for testing; all tests are recorded into an automated information system. Violations (positive tests or nonappearance for testing) are met with a system of graduated sanctions, including more frequent testing, detention for 3 to 5 days, and, in extreme cases, incarceration until trial. Some judges use performance in the monitoring program in sentencing convicted defendants.

Evaluations of the Washington testing program

It was hoped that the Washington program would provide D.C. criminal justice officials with objective information about drug use. Such information would then be used in pretrial release decisions as an additional consideration in assessing defendant suitability for release. D.C. officials also hoped that a pretrial monitoring program might help control drug use among released defendants, which in turn might lead to reductions in pretrial misconduct—either rearrest or failure to appear (FTA). One comprehensive evaluation and several other analyses examined whether the program was accomplishing these two objectives in its first 2 years of operation (1984–1986).

Persons who tested positive for drugs at arrest were more likely to be rearrested and miss scheduled court appearances than nondrug users, according to data from the program. Indeed, the likelihood of rearrest in the early weeks after release was about four times higher for drug users than nonusers, even after taking into account defendant attributes usually associated with pretrial rearrest. Moreover, the results

of the drug test at arrest appeared to add significantly to the likelihood of pretrial misconduct, over and above typically collected information on defendant's employment, prior convictions, and pending case status. In particular, *multiple* drug use increased the likelihood of pretrial rearrests and missed court appearances.⁴

Thus in Washington, drug test results seem to improve a judge's ability to assess reliably the likelihood of a defendant's pretrial misconduct. But does regular testing reduce rearrest and FTA rates for all released drug users? An experimental evaluation of the effects of the monitoring program, in which eligible defendants were randomly assigned to either regular drug testing, community drug treatment, or a control group, found no differences among the three groups in rearrest or FTA rates. This type of evaluation is the strongest statistical test of whether regular drug testing during release might reduce pretrial misconduct. However, such experiments are difficult to carry out successfully in an operational criminal justice setting, and implementation problems in carrying out the study in Washington may have compromised the experimental design.

The evaluation did find that about two-thirds of defendants assigned to drug monitoring during release stayed with the program for at least three tests. These defendants had lower rates of rearrest and failure to appear than those who never showed up for testing or who dropped out of the program before the third test. Moreover, another study of the program found that pretrial misconduct was especially high among defendants who did not report for their *first* postrelease test. However, it is difficult to determine whether the monitoring program encouraged good behavior or whether the group of released drug users who showed up for testing would have been low risks without the program.

Overall the study showed that some drug users had a better chance of success than others, and that a monitoring program may help to sort out the good and bad prospects by allowing these drug users to "signal" their cooperation to the court through the testing program. However, a small group of drug users did not comply with the program. Their noncompliance was a strong indicator of their high propensity for pretrial rearrest and FTA.

Research in Manhattan and Miami

Independent research in Manhattan in 1984 and Miami in 1987 provides additional information on whether drug tests at arrest might provide information on defendant potential for pretrial rearrest or FTA. Pretrial testing programs were not operational in these sites, but both jurisdictions were considering the implementation of testing programs and allowed researchers to gather data, including the results of voluntary drug testing at arrest, on defendants being considered for release. Since these were exploratory studies, judges were not informed of the test results, and defendants were assured that the results would only be used for research.

In both sites, released defendants who tested positive for illegal drugs had higher rates of pretrial misconduct than defendants similar in all other respects. In Manhattan, both pretrial rearrest and failure to appear rates were higher among those testing positive, especially for those testing positive for more than two drugs.⁵ But a separate analysis of the Manhattan data concluded that urine testing was not a feasible policy alternative, because drug test results did not measurably improve the ability to assess the likelihood of an individual's failure to appear.⁶

In Miami, drug test results were statistically related to later pretrial rearrest, especially rearrest for serious crimes, but not to failure to appear.⁷ Some drug-specific

Research and Evaluation Study Sites

Original (Prototype) Site
Washington, D.C.

Demonstration Sites

Prince George's County, Maryland
(suburb of Washington, D.C.)
Milwaukee, Wisconsin
Portland, Oregon
Tucson, Arizona
Phoenix, Arizona
Wilmington, Delaware

Other Research Sites

Manhattan, New York
Miami, Florida

Exhibit 1

Common implementation problems encountered in pretrial testing programs

- Inability of sites to test the majority of arrestees for illegal drug use at the time of arrest.
- Lack of support among pretrial staff in recommending eligible defendants for the monitoring program.
- Failure to provide the arraignment judge with initial drug test results before the hearing.
- Low referral rate to the monitoring program for eligible defendants by arraignment judge.
- High rates of noncompliance (no-shows) for testing among the released defendants in the monitoring program.
- Difficulty in maintaining current information about test results, sanctions pending, etc., for defendants in the monitoring program.
- Lack of judicial support for sanctioning plan, which led to high violation rates (no-shows and positive tests) among defendants in the testing program.

results also existed (for example, PCP use affected rearrest in Manhattan, but not FTA), but no clear patterns emerged in the two jurisdictions. However, differences in these studies' results are not surprising given the strong contrasts between the sites and the changing nature of drug use during the years of the studies.⁸

In summary, drug test results appear to help the *classification* of defendants according to potential for pretrial misconduct in three sites—Washington, D.C.; Manhattan; and Miami—but do not necessarily guarantee improvement in *specific predictions*. For example, in the Manhattan study of 100 released defendants testing positive for PCP, 37 could be expected to be rearrested. Analysts comparing 100 non-PCP users, similar in all other characteristics, expected 25 to be rearrested.

Then identifying *which* PCP user would be rearrested is much more difficult. Determining whether drug test results would aid in making such predictions requires different analyses than those used in existing studies.

Replications of the Washington program

In an effort to gain further insight into whether pretrial testing programs would be

useful in other jurisdictions, BJA funded six sites to implement programs modeled on the one in the District of Columbia (see accompanying list). BJA funded evaluations of four of these programs, and NIJ funded evaluations of the two programs in Arizona.⁹

Implementing pretrial drug testing

All six demonstration sites experienced varying levels of difficulty in implementing a pretrial drug testing program (see exhibit 1). In two sites problems could not be resolved in time for the evaluation. In general, the practical problems of implementing pretrial drug testing programs were related to support for the program within the local criminal justice community and the relevant agencies, and logistic capability of the jurisdiction to implement the program.

Legal considerations arose in the planning stage in several demonstration sites, although none seriously impeded the implementation of the programs.

Some sites were able to correct most problems as the programs continued (in some cases, after the evaluation was completed), but the quality of the data collected during

the early phase of the programs was clearly affected by implementation problems.

Issues of system support

Implementation of a pretrial testing program modeled after the Washington, D.C., program demands involvement of all agencies within a local criminal justice system. The pretrial services agency often must coordinate its efforts with the police or sheriff's department that detains the arrestees before testing. In Milwaukee, program implementation was delayed until the police department consented to drug testing of arrestees who were being held until arraignment.

In Prince George's County, Maryland, bail magistrates at local police stations released 40 percent of eligible defendants on cash bail before testing could occur. These defendants were not considered for non-financial supervised release; hence, they

could not be placed in the monitoring program.

Other problems surfaced when private agencies with important roles in the pretrial release system were involved. Initially in Phoenix, few arrestees agreed to be tested; it was later determined that a private agency that was interviewing arrestees was not correctly explaining the nature of the pretrial testing program.

In Portland, one private agency interviewed and tested arrestees before the release hearing, and three other agencies (public and private) supervised released defendants. Difficulties in coordinating the efforts of these organizations led to considerable interagency diversity in implementation and to problems in tracking defendants during release.

Support from the judiciary was particularly crucial to the implementation of the program. Judges were supposed to use drug test results in determining pretrial release, assigning eligible drug users to the drug monitoring program, and imposing sanctions on defendants who failed to comply with the monitoring program. Although the chief judge or magistrate in all demonstration sites had approved the program, individual judges in some sites apparently did not support the program's goals. Thus in some sites, relatively few eligible defendants were referred to the monitoring program, and sanctions for program violations were not consistently carried out.

In Portland, when it became apparent that judges were not using the program as a release condition, the chief judge issued a court order directing referral to the monitoring program as a condition of release for eligible defendants. Program referral rates improved dramatically.

Issues of logistics

Logistic problems in implementing the pretrial testing program in a few sites proved as serious as system support problems. Among the most common problems were (1) integrating the program within an existing structure of pretrial release procedures; (2) creating a computerized information system to allow efficient tracking of defendants and the collection of data for the evaluation; (3) locating a convenient testing facility accessible to defendants during release; (4) informing new and rotating pretrial personnel and judges

about the testing program and its operations; and (5) scheduling court hearings for defendants who did not comply with the testing program. Solving such logistic issues requires the involvement of many different agencies whose actions must be coordinated (see box "Ways of Coping . . .").

In most sites, one or more of these implementation problems seriously affected the collection of data necessary for an adequate evaluation of the pretrial testing program. But in Wilmington, Delaware, the problems encountered in commencing and managing the program were so profound that the program was never fully implemented, and Federal funds for program operation and evaluation were terminated.

In Portland, the program eventually overcame most of the implementation problems, but the data collected were insufficient for a reliable evaluation.

Results of the evaluations

In four of the six sites, the evaluators were able to collect the necessary data for an assessment of whether the program was meeting its stated goals. Recall that the two questions at issue were (1) whether drug abuse detection at arrest (using urinalysis) might provide additional information about the likelihood of pretrial rearrest or FTA for released defendants, and (2) whether drug use monitoring (regular urinalysis) during release might reduce pretrial rearrest and FTA.

In two of these four sites, defendants who tested positive for illegal drugs at arrest were at significantly greater risk of pretrial rearrest or FTA, after taking into account factors usually considered by the arraignment judge. In Milwaukee and Phoenix, positive drug test results increased risk of FTA and rearrest, respectively.

As to the evaluation of the drug monitoring component, again, two of the four sites concluded that the program significantly reduced rearrest (Tucson) or FTA (Phoenix). However, the program's impact was not large, and the evaluators concluded that the program had only modest effects on pretrial misconduct.¹⁰

These evaluation results, however, must be interpreted in light of the operational difficulties experienced. The implementation

Ways of Coping With Implementation of Pretrial Drug Testing Programs

Consider modifications in existing bail release and pretrial screening procedures to expand identification of drug users who could be eligible for pretrial release using the drug monitoring program.

Involve pretrial agency personnel in the development of the program.

Coordinate procedures for drug testing at arrest with police and/or sheriff's department personnel.

Obtain necessary expertise to develop and maintain an information and tracking system for released defendants prior to program implementation.

Involve bail magistrates and arraignment judges in program development, including development of sanctioning plan for violations of pretrial release conditions.

Choose a location convenient to defendants for the drug testing center.

Allow sufficient time for an implementation period before collecting data for program evaluation.

Exhibit 2

Research and evaluation results of pretrial drug testing programs

Site	Drug testing at arrest	Monitoring programs for releasees
Washington, D.C.	Predicted pretrial rearrests and FTA's	Did not reduce rearrests or FTA's
Phoenix	Predicted pretrial rearrests, but not FTA's	Reduced FTA's, but not rearrests
Tucson	Did not predict rearrests or FTA's	Reduced rearrests, but not FTA's
Milwaukee	Predicted FTA's but not pretrial rearrests	Did not reduce rearrests or FTA's
Prince George's County	Did not predict rearrests or FTA's	Did not reduce rearrests or FTA's
Portland	Insufficient data	Insufficient data
Wilmington	Insufficient data	Insufficient data
Miami	Predicted pretrial rearrests, but not FTA's	Not implemented
Manhattan	Predicted pretrial rearrests and FTA's	Not implemented

problems discussed earlier reduced the quality of the evaluation data in several sites. Consider those sites which only tested half of the eligible defendants at arrest. If, for example, the defendants who refused the test were more likely to be at risk for pretrial misconduct than those who agreed to be tested, then the evaluation results were based on a relatively low-risk group; and it is not surprising that the drug test results did not enhance assessment of pretrial misconduct.

As another example, in sites which had low rates of referral to the monitoring program of eligible defendants (who may have differed in important respects from defendants not referred), the experimental evaluation cannot effectively assess the program's impact on pretrial misconduct for the total eligible population.

Moreover, serious anomalies in some of the statistical analyses make valid interpretation of the results highly questionable.¹¹ Small sample sizes, especially for the

experimental evaluation of the monitoring program, also hindered convincing analyses in several of the sites. It is also difficult to compare the evaluation results across sites because of different analytic procedures.

Assessing the utility of pretrial drug testing

Studies from nine jurisdictions (Washington, Miami, Manhattan, and the six demonstration sites) have examined the practical utility of pretrial drug testing for release decisions or pretrial supervision of drug-involved offenders (see exhibit 2). In five of the seven sites that collected data on release decisions, drug test results provided additional information about the defendant's likelihood of rearrest or FTA, but not always about both types of misconduct. Thus, drug tests at arrest are likely to be useful in pretrial release decisionmaking, but drug test results may not be equally

predictive of rearrest and FTA in all jurisdictions.

Less encouraging were the evaluation results of the second component of the pretrial testing program. The drug monitoring program for released drug users only reduced rearrests or FTA's (and these were modest effects) in two (Tucson and Phoenix) of the five jurisdictions that implemented the monitoring experiment.

But the demonstrations showed that even though regular drug testing during release may not decrease pretrial misconduct for all released drug users, some drug-involved offenders may benefit from the program. In three demonstration sites (Tucson, Prince George's County, and Milwaukee), a sizable group of released drug users consistently tested negative while in the monitoring program: *About 30 percent or more of those assigned to regular drug testing during pretrial release did not test positive for drug use during the monitoring program.* For example, in Tucson, 29 percent of defendants in the monitoring program had no positive tests during monitoring. In Prince George's County 36 percent had no positive tests during monitoring, and in Milwaukee 32 percent had no positive tests. This group of drug-involved offenders may simply have been casual, infrequent drug users, or the enforced nature of the program may have deterred them from illegal drug use while awaiting trial.

Other data suggest that compliance with drug monitoring programs may serve as an early warning system for pretrial misconduct among released drug users. This signaling effect described by the evaluators of the Washington program appeared to have some support in three sites that reported detailed data on defendant performance in the monitoring program.

For example, in Tucson, defendants with no more than two positive tests during monitoring were rearrested or missed court appearances less often than defendants with at least three positive tests or those who did not appear for testing at all (see exhibit 3). Similar patterns were found in Milwaukee and Prince George's County.¹²

Thus, a pretrial drug monitoring program can be a useful strategy for supervising some offenders. Pretrial drug testing may reduce drug use, and perhaps related criminal activity, for some released drug-

Exhibit 3

Pretrial misconduct and defendant behavior in drug monitoring program: Tucson, Arizona

Positive test results	Number of cases	Percent with rearrests or FTA's
None	45	8.8
1-2	37	10.8
3-9	35	28.6
10 or more	6	— ^a
Missed all tests	30	50.0
Total of all defendants	153	15.0

Source: Tabulated from data presented in Michael Gottfredson et al., *Evaluation of Arizona Pretrial Services Drug Testing Programs*, Final Report, National Institute of Justice, 1990: 41-42.

^a Too few cases to compute a meaningful percentage.

involved offenders. Moreover, as a supervisory tool the monitoring program provides the courts with reliable information about the behavior of drug-involved offenders during pretrial release.

Future of pretrial drug testing

Expanding in D.C.

Although the pretrial drug testing program in the District of Columbia also faced some of the problems that the demonstration sites experienced, these problems were eventually resolved. Most judges and hearing commissioners in Washington responded in interviews that they use the information generated from the testing program a great deal and that it represents a substantial improvement over previous practices.¹³ Judges in the District of Columbia believe that accurate information about drug use is vital to their decisions regarding pretrial release and supervision of released drug-involved offenders. The Washington program was recently expanded to include testing of juvenile offenders.

Overcoming obstacles elsewhere

Pretrial drug testing programs present many challenges to other jurisdictions considering their implementation. At least two obstacles to such programs, however,

have largely disappeared: concerns about the accuracy of drug tests and associated legal issues.

Despite some claims to the contrary, immunoassay urinalysis technologies are widely regarded as very accurate,¹⁴ and the accuracy of the most commonly used test in criminal justice operations, EMIT, has been upheld in numerous court decisions.¹⁵

A recent study by NIJ and BJA evaluated the accuracy of four commonly used drug testing urinalysis technologies.¹⁶ The study concluded that immunoassays are much more accurate than thin-layer chromatography (commonly used in the 1970's). Drug testing using immunoassay methods correctly identifies 98 to 99 percent of negative urine specimens (i.e., few "false positive" results) and correctly identifies about 80 percent of positive urine specimens (i.e., moderate "false negative" results). The study recommended that positive results be confirmed by a highly accurate method if the test result is contested by the defendant and could be used as the basis for punitive action.

Several legal issues concerning the constitutionality of pretrial drug testing were discussed at length in most of the demonstration sites. Among the issues raised were: do pretrial drug tests violate 4th amendment protections against unreasonable searches, 5th amendment guarantees

against self-incrimination, or 14th amendment protections pertaining to equal protection and substantive and procedural due process requirements? Two recent legal analyses of the existing case law disagree as to whether pretrial drug testing may withstand these constitutional challenges.¹⁷

Nonetheless, the constitutionality of voluntary testing of arrestees before arraignment has not come before the courts during the program's operation in Washington, D.C. As of this writing, there are no pending legal challenges to pretrial drug testing in either State or Federal courts.

More serious potential obstacles to pretrial drug testing are the problems that can arise in the actual implementation of a program. Resolving these problems can spell the difference between a successful program and an unsuccessful one. Internal and external support for pretrial testing is critical to its effectiveness. The introduction of a new operation into an existing system of procedures often meets with resistance, and building support among staff involved in the implementation of a pretrial testing program is essential to its success. Gaining the support of the judiciary is particularly important.

The successful operation of pretrial drug testing programs is also dependent on other local circumstances.

Jurisdictions vary widely in patterns of criminal behavior and drug use, and these differences may affect how such programs are best used. For example, jurisdictions with small criminal caseloads, such as Wilmington, may not benefit as much from program implementation as a jurisdiction with a greater caseload.

As another example, Tucson experienced very low rates of pretrial misconduct during the evaluation phase of the project. If such low rates are typical, then a large-scale drug monitoring program may not be able to improve defendant behavior on release sufficiently to justify its costs.

However, the drug detection component of the program might be useful for tracking drug use in the offender population, identifying drug-involved offenders, and encouraging drug positive arrestees to seek treatment.

Conversely, jurisdictions with high rates of drug use among the arrestee population may find that initial drug test results cannot

significantly help make release decisions inasmuch as the vast majority of arrestees will test positive for drug use. In this situation, the detection component might be used to identify multiple drug users (those at highest risk if released), and a drug monitoring program might help the supervising agency more closely monitor the behavior of drug users who are released before trial. Moreover, as some of the demonstration programs showed, about one-third of those who tested positive for illegal drugs at arrest had no positive tests while in a drug monitoring program.

For many drug-involved offenders, reductions in drug use may lead to reductions in criminal activity. More research is needed on identifying the characteristics of those drug-involved offenders who might benefit from drug monitoring during release.

Costs associated with pretrial drug testing programs also vary with local circumstances. Particular policy and procedural decisions about the program, such as staffing patterns, choice of testing equipment, number of drugs tested, and size of target population, can substantially affect operating costs. For example, these types of factors resulted in more than a threefold difference in estimated first-year costs for operating both components of a pretrial testing program in two jurisdictions with the same annual arrestee population.¹⁸

Future studies

As more jurisdictions implement pretrial drug testing programs, more will be learned about how and under what circumstances pretrial testing can improve the management of drug-involved defendants in the community. A 1990 nationwide survey of State and local pretrial services programs found that 72 programs were conducting pretrial testing at some level, usually selectively, as a condition of release.¹⁹ However, research on their effectiveness is needed.

In 1992, NIJ will be conducting an intensive analysis of pretrial testing programs, including an assessment of programs that have recently become fully operational.

Conclusion

In making decisions about implementation of pretrial drug testing programs, policy-makers and criminal justice officials

must weigh all of these considerations—expected utility, implementation issues, local circumstances, value to the community, and costs.

Information gained from pretrial testing can also be useful for detecting drug use among arrestees, assessing drug treatment needs, tracking local changes in drug use preferences, and documenting need for State and Federal assistance for drug enforcement and treatment programs. Pretrial testing, both at arrest and during release, is also one component of the comprehensive drug testing program recommended by the President's Office of National Drug Control Policy.

Many criminal justice officials are uncertain about whether pretrial drug testing would be useful for their jurisdiction. But much of this uncertainty is based on misinformation or lack of information about the operations, practicality, and utility of pretrial drug testing. This paper attempts to illuminate some of these issues. Nevertheless, it is also apparent that pretrial drug testing will fail when local criminal justice officials have not adequately planned for its implementation. Officials involved in ongoing pretrial testing programs and other experts can provide practical information and technical assistance in designing programs.

As a first step, testing of arrestees can provide valuable information about the nature and extent of drug use among the offender population, which can be used in planning both comprehensive drug testing and treatment programs. This type of approach would probably be a suitable initial stage for most jurisdictions and could be modeled after NIJ's Drug Use Forecasting program. Drug testing as a supervision tool, whether during pretrial release or as a postconviction option, requires considerable additional planning, and favorable outcomes may require a year or more of cooperative effort.

Notes

1. Office of National Drug Control Policy, *National Drug Control Strategy*, Washington, D.C., U.S. Government Printing Office, 1989: 26.

2. John Carver, "Drugs and crime: Controlling use and reducing risk through testing," *NIJ Reports* 199 (September/October 1986).

3. For example, J.C. Ball, L. Rosen, J. Flueck, and D. Nurco, "The criminality of heroin addicts when addicted and when off opiates," in *The Drugs-Crime Connection*, ed. J.A. Inciardi, Beverly Hills, Sage, 1981; Ko-Lin Chin and Jeffrey Fagan (School of Criminal Justice, Rutgers University), "Impact of crack on drug and crime involvement," presented at the American Society of Criminology annual meeting, 1990.

4. Mary Toborg, John Bellasai, Anthony M. Yezer, and Robert P. Trost, *Assessment of Pretrial Urine Testing in the District of Columbia*, Washington, D.C., National Institute of Justice, 1989; Christy A. Visher and Richard L. Linster, "A survival model of pretrial failure," *Journal of Quantitative Criminology* 6(1990):153-84; Christy A. Visher, "Using drug testing to identify high-risk defendants on release: A study in the District of Columbia," *Journal of Criminal Justice* 18(1990):321-32.

5. Douglas A. Smith, Eric Wish, and G. Roger Jarjoura, "Drug use and pretrial misconduct in New York City," *Journal of Quantitative Criminology* 5(1989):101-26.

6. S. Belenko and I. Mara-Drita, "Drug Use and Pretrial Misconduct: The Utility of Prearrest Drug Tests as a Predictor of Failure-to-Appear," unpublished manuscript, Criminal Justice Agency, New York, 1988.

7. John Goldkamp, Michael Gottfredson, and Doris Weiland, "Pretrial drug testing and defendant risk," *Journal of Criminal Law and Criminology* 81(Fall 1990):585-652. It is difficult to interpret the results of the Miami study because of the simultaneous inclusion of four measures of the drug test results (i.e., positive for marijuana, positive for cocaine, positive for either, and positive for both) in the logit analysis (table 7, p. 624; table 9, p. 626). These measures are likely to be highly correlated, which would cause unstable and unreliable coefficient estimates. These problems raise serious doubts about substantive conclusions based on this analysis.

8. Comparisons of empirical studies carried out by different investigators in different jurisdictions are inherently difficult. These two studies had many important differences: they were carried out in different years during a period when illegal drug use was experiencing rapid change; they measured variables differently (especially

the drug test results) and used dissimilar analytic techniques. The overall rearrest rate in Manhattan was 25 percent compared to 15 percent in Miami; the FTA rates were 33 percent and 9 percent in Manhattan and Miami respectively. Opiate use, a characteristic of serious drug use and criminal behavior, was practically nonexistent in Miami, whereas 21 percent of the Manhattan sample tested positive for opiates.

9. The implementation issues and evaluation results of the six sites are discussed in a series of reports to the funding agencies, the Bureau of Justice Assistance (BJA) and the National Institute of Justice (NIJ).

10. In the Tucson experiment, 4 percent of the drug-monitored group were rearrested compared to 12 percent of the control group ($p=.06$). In the Phoenix experiment, the drug-monitored group had a 29 percent FTA rate whereas the control group had a 39 percent FTA rate ($p=.11$). Sample sizes in both analyses were small, which would reduce the likelihood of finding large statistically significant differences between the groups.

11. This applies in particular to the analyses of the release decisions in Prince George's County and Milwaukee. The simultaneous inclusion of multiple measures of drug test results in the multivariate analysis confounds substantive interpretation of the results.

12. Christy A. Visher, "Pretrial drug testing: Panacea or Pandora's Box?" *The Annals*, May 1992, table 2. This *Research in Brief* is excerpted from this article.

13. Mary A. Toborg and John P. Bellassai, "Assessment of Pretrial Urine Testing in the District of Columbia: The Views of Judicial Officers," unpublished final report, National Institute of Justice, Washington, D.C., 1988: 4, 10.

14. See, for example, Kenneth Davis and Richard Hawks, *Urine Testing for Drugs of Abuse*, Research Monograph 73, National Institute on Drug Abuse, 1973.

15. See review of drug testing case law in Bureau of Justice Assistance, *American Probation and Parole Association's Drug Testing Guidelines and Practices for Adult Probation and Parole Agencies*, Washington, D.C., 1991: 87-108.

16. Christy A. Visher, "A Comparison of Urinalysis Technologies for Drug Testing in Criminal Justice," *National Institute of Justice Research Report*, Washington, D.C., 1991.

17. Cathryn Jo Rosen and John S. Goldkamp, "The constitutionality of drug testing at the bail stage," *Journal of Criminal Law and Criminology* 80(1989):114-76; Reggie B. Walton, Gary J. Peters, and J. Anthony Towns, "Pretrial drug testing—An essential component of the National Drug Control Strategy," *Brigham Young*

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18. Bureau of Justice Assistance, *Estimating the Costs of Drug Testing for a Pretrial Services Program*, Washington, D.C., 1989: 17.

19. Discussed in Walton et al., "Pretrial Drug Testing . . .," n. 17 above.

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