



QUESTIONS AND ANSWERS

ABOUT

DRUG TESTING

AS A PROBATION AND PAROLE COMPONENT

144282

The Council of
State Governments



The
American Probation
and
Parole Association

144282

**U.S. Department of Justice
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INTRODUCTION

Prison populations have increased dramatically over the past decade, resulting in crowded prisons primarily composed of drug-involved offenders. Drug testing (urinalysis) has a vital role to play in the future of this nation's war on drugs.

[In 1990, there were] more than 1,000,000 Americans aged 18 and over in prison and jail and more than 2,500,000 on parole or probation. If one adds those on bail or released awaiting trial or appeal and those serving other punishments such as community service orders, the grand total under the control of the criminal justice system exceeds four million, [which is] nearly two percent of the nation's adult population (Morris & Tonry, 1990).

As the drug war rhetoric escalates on a daily basis, the public becomes increasingly impatient for answers and solutions to this country's drug problems. If society does not find a way to win some battles in this war on drugs, prisons might as well replace their doors with turnstiles; it will only be a matter of time before the offender is returned to prison or jail and the perpetual cycle of drugs and crime. A recent study prepared by The Center on Juvenile and Criminal Justice referred to a *Sacramento News and Review* interview with a "former burglar whose expensive drug habit netted him five parole violations and more revocation time in prison than his original sentence. He bluntly stated: 'Prison is designed for people to come back. Period. That's the end'" (Schiraldi, Costello and Garnett). This fatalistic thinking is indicative of a system that is in trouble. Effective drug testing programs provide an interruption in this cycle.

The 1990 Drug Control Strategy states that:

Drug testing through urinalysis is the only practical, reliable way to determine whether offenders have abstained from drugs while incarcerated or under correctional supervision, on parole, or on probation.

The federal government stands behind this policy. "The National Drug Control Strategy endorses a comprehensive drug testing program for criminal offenders and recommends that it be a part of every stage of the criminal justice process, from the time of arrest through parole" (ONDCP 1991).

WHAT ROLE CAN LEGISLATORS PLAY?

The driving force behind the implementation of drug testing and correctional alternatives is state legislatures. Without legislative support for drug testing and correctional alternatives,

our immediate problem of prison and jail crowding would increase. This would create the potential for federal court mandates which force the release of criminal offenders with *no* supervision. Without laws, the judges would have little authority to impose an order of drug testing or an alternative to prison.

Legislators need to be armed with the most accurate and current information available about these issues. The entire national body of lawmakers needs to recognize the significance of drug testing and effective correctional alternatives. It is well known that many bills often provoke heated discussion and debate. This is certainly often the case with bills involving criminal justice issues. Effective legislators will have comprehensive information about the issues at their immediate disposal. It is the purpose of this brief to provide legislators with relevant data about drug testing in an accessible question and answer format.

In the context of the *Drug Testing Throughout the Criminal Justice System: Probation and Parole Component* Project, APPA staff have been asked a number of questions regarding urinalysis. The following information provides an overview of drug testing issues which are relevant to the legislative process. If you would like more information about any given response, feel free to contact the Drug Testing Project Manager, Ed Tedder (see Project Information).

Question: Are there any drawbacks or limitations to the use of urinalysis as a drug testing method?

Historically, probation and parole agencies have had limited funding means for drug testing programs. Urinalysis is the most cost effective tool available when testing a large number of individuals. The primary weakness of urinalysis may be the limits posed by the body's metabolic and elimination factors. Some drugs are contained within the molecular structure of the urine for longer periods of time, thus, are identified through screening urinalysis. Some drugs, such as cocaine, remain in the body for a relatively short time; cocaine may be metabolized in just 2 or 3 days. At times, drug testing may not alert probation and parole officers to drug use through random testing. Daily testing would identify drug abuse but would also be counterproductive.

Question: Should drug testing be legislatively dictated or is a judicial order sufficient? (i.e., program with policies and procedures vs. legislation which mandates programs with policies and procedures)

The majority of the states define the role of judges to administer justice by following the law. If the law does not provide sentencing options or programs, technically the judge has no

authority to order sanctions. It is therefore imperative that legislators enact laws addressing drug testing programs so that judges may order a drug testing stipulation to coincide with a probationary sentence.

States such as Georgia, Missouri and Oklahoma have no statutes that address drug testing directly for probationers and parolees. Each department includes the drug testing clause in their policies and procedures. The judge sentences the offender to abide by the rules of supervision. Offender management can then be tailored to fit the needs of each client. A common concern among states that do not have drug testing statutes is that if their state was to enact laws for drug testing, the main objective of using drug testing for identification and assessment of drug use may be overlooked and become grounds for revocation and the offender's loss of liberty. The Kansas statute addressed that concern directly by stating a positive drug test would not be the sole grounds for revocation.

Most judges who want an offender to be tested for illegal controlled substances do so by their own authority when there is no statute to follow. In Pennsylvania, offenders that have been on parole for a number of years without violation are being randomly screened. The offenders see this as a violation of their privacy and presently the state is researching this possible dilemma.

Most legislation addressing drug testing is general, allowing specific policies and procedures to be developed by the agency coordinating drug testing programs. Many states have amended excellent pieces of enacted legislation by adding drug testing as a sentencing consideration.

Once state legislatures create the drug testing law, agencies then begin to develop goals and objectives pertaining to their agency's mission. Each agency varies, however, the main goal of probation and parole agencies is to deter drug use and promote a drug free environment. Urinalysis is an effective method of identifying offenders in need of drug treatment.

Question: How are other states legislatively dealing with drug testing?

Many states merely have judicial authority to order drug testing for probationers and parolees. Without state legislation, many local jurisdictions authorize drug testing as a standard condition of supervision by the Chief Judge in that district. A common condition may read as follows: "As a condition of supervision, you may be required to give a urine sample to be tested for illegal controlled substances." Colorado adds that "...You will be assessed \$5.00 for each scan, and if the results are positive for an illegal drug, you will be assessed an additional \$10.00."

Several jurisdictions have held that probation and parole officers do not have the authority to order probationers and parolees to submit to urinalysis tests without prior court order. This issue has become problematic within the criminal justice system in that drug testing offenders previously considered a standard component available to probation and parole officers in the case management of offenders is being challenged in the courts.

The American Probation and Parole Association (APPA) strongly encourages all states to develop and implement drug testing programs by enacting legislation. When a drug-involved offender has been sentenced to probation or released on parole, a common condition of supervision imposed is to remain drug and alcohol free, i.e., abstinence from illegal controlled substances is required. Drug testing is the most reliable method of monitoring compliance with the imposed condition of abstinence.

Drug testing evaluations will provide valuable information for judges and parole boards to make better informed decisions and will assist probation and parole officers in monitoring the offender's drug use.

The following is a sample of enacted state legislation. For more complete information about a particular bill or act, contact APPA's legislative liaison (see Project Information).

ALABAMA's Regular 1990 Legislative Session enacted a comprehensive Act entitled "the Mandatory Treatment Act of 1990." A part of the drug abuse offender treatment program provides for drug testing and treatment for probationers and parolees including specific appropriations.

ARIZONA has several statutes that address drug testing for probationers and parolees. Section 13-914 discusses intensive probation, evaluation, sentence, criteria, limit, and conditions. One of the conditions specifies that drug and alcohol tests are administered if one of the supervising probation officers makes such a request. Further, § 13-3408 addresses possession, use, administration, acquisition, sale, manufacture or transporting of narcotic drugs, and classification. Basically, this law requires that for any offender convicted of certain drug-related crimes, an imposed condition of probation or release shall be that the offender submit to drug testing administered under the supervision of the probation department prior to the expiration of the offender's sentence.

CALIFORNIA statutes devote a separate section to drug testing located within the Uniform Controlled Substances, § 11551 entitled Tests to determine use of controlled substances as condition of probation or parole; cost of administration; regulations. This piece of legislation directs the state department overseeing the drug testing program, in conjunction with the Attorney General to develop regulations regarding the administration of the tests. It further

defines what county or state agency is responsible for the cost of each test.

California Penal Code § 1203.1ab defines the use of drug testing as a condition to probation.

COLORADO enacted legislation mandating that all offenders submit to substance abuse testing and treatment in accordance with the recommendations made in the required substance abuse assessment. Further, the legislation creates a Drug Offender Public Service and Rehabilitation Program which establishes parameters for such program. Drug-involved offenders are assessed a certain amount upon conviction and sets up a system for the distribution of moneys received pursuant to such an assessment.

Colorado Revised Statutes (CRS) 16-11-209 outlines the duties of probation officers which includes a condition of drug testing. This statute is very specific regarding sanctions an officer must use when offenders have tested positive.

CRS 16-11-213 authorizes the Intensive Supervision Program which has a component of drug testing.

CRS 16-11-102.5 authorizes a Specialized Drug Program which also includes a condition of drug testing.

CRS 17-27-81-02(3) authorizes the Home Detention program which also includes a condition of drug testing.

CONNECTICUT General Statutes (CGS) § 54-105(b) establishes an intensive supervision program within the Office of Adult Probation with a condition providing for urinalysis or some other form of drug testing.

CGS § 54-105(c) & 53a-39c establishes a community service program within Adult Probation as a condition of probation for various substance abusers excluding sellers. This program also has a special condition of drug testing.

CGS § 17-649-658 provides for treatment and/or probation for cases where prosecution may be suspended, or upon conviction for violation of various illegal uses of drugs. Again, this clause specifically lists drug testing as a condition for supervision.

FLORIDA HB 3711 requires that "If a person's conviction was for a controlled substance violation, the conditions of supervision shall include a requirement that the person submit to random substance abuse testing intermittently throughout the term of supervision, upon the direction of the correctional probation officer as defined in s. 943.10(3)." The statute has incorporated the same language regarding the conditions for parole release.

INDIANA has added a condition to their statute pertaining to parole. The parole board may require a parolee to periodically undergo a laboratory chemical test or series of tests to detect and confirm the presence of a controlled substance. Further, the parolee is responsible for any charges resulting from a test required under this subsection. However, a person's parole may not be revoked based solely on his inability to pay for a test.

IOWA indirectly addresses drug testing in the Judgment and Sentencing Procedures, § 901.4A Substance Abuse Evaluation which reads: "Upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, the court may order the defendant to submit to and complete a substance abuse evaluation, if the court determines that there is reason to believe that the defendant regularly abuses alcohol or other controlled substances and may be in need of treatment. An order made pursuant to this section may be made in addition to any other sentence or order of the court. 90 Acts, ch 1251, § 64.

The **KANSAS** legislature has enacted legislation (Kansas Statute Annotated (KSA) § 65-1,108) that says "urinalysis tests for controlled substances performed only for management purposes on inmates, parolees and probationers by personnel of the Department of Corrections or Office of Judicial Administration and which shall not be used for revoking or denying parole or probation; urinalysis tests approved by the Secretary of Corrections for controlled substances performed by the community corrections programs; treatment programs which are licensed or certified by the Secretary of Social Rehabilitation Services."

KENTUCKY Revised Statutes 439.480 (3) gives Probation and Parole Officers the authority to use "suitable methods" to benefit offenders under their supervision. Random drug testing is interpreted in Kentucky as a suitable method of supervision.

MONTANA enacted legislation providing additional alternative sentencing authority for felony offenses related to dangerous drugs. § 45-9-202 MCA was amended to include the following condition: "... (v) remain drug free and submit to drug and alcohol tests administered randomly NOT LESS THAN once each month by or under supervision of the probation officer."

NEVADA Revised Statutes directly addresses drug testing as a condition of parole. Section 213.123 of the Pardons and Parole statute is as follows: Imposition of tests to determine use of controlled substance as condition of parole. 1. Upon the granting of parole to a prisoner, the board may, when the circumstances warrant require as a condition of parole that the parolee submit to periodic tests to determine whether the parolee is using any controlled substance. Any such use or any failure or refusal to submit to a test is a ground for revocation of parole. 2. Any expense incurred as a result of any test is a charge against the

department.

The **NEW JERSEY** Code of Criminal Justice Statute § 2C:45-1 reads that "suspension of sentence, Conditions of Suspension or Probation; Item #12: "to satisfy any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liability or incompatible with his freedom of conscience." This statute seems to be the catch all, similar to that of Kentucky. However, § 2C:35-14 of the same code is entitled "Rehabilitation program for drug dependent persons; mandatory commitment to residential treatment facilities; revocation. This section includes the following order: "...shall include periodic urine testing for drug usage throughout the period of probation.

NEW YORK has enacted legislation giving courts the authority to impose drug testing as a condition of probation for a defendant convicted of an alcohol or drug related offense. Specific language may be found in the New York Penal Law, § 410 and the Criminal Procedure Law of the State of New York, § 420. Further, the court may require a convicted defendant to pay for all or a portion of the costs incurred for the alcohol or drug testing.

New York State Executive Law, Article 12-B, § 259-c(1)(2) grants statutory authority to the Board of Parole "the power and duty of determining" the conditions of release for all persons "released on parole" or "conditionally released" from an indeterminate sentence. In addition to the legislation, there are regulations that also address the procedure of imposing special conditions. Periodic drug testing falls into these categories.

OREGON's House Bill 2199 "permits Department of Corrections personnel to operate drug testing field test kits for urinalysis tests of inmates and certain offenders without meeting clinical laboratory licensing requirements.

Oregon's Parole Board has set omnibus conditions, Oregon Revised Statutes (ORS) 144.270 and probation conditions allowing drug testing/urinalysis by statute, ORS 137.540.

PENNSYLVANIA Statute § 1690.106 71 authorizes drug testing of offenders on probation and parole. Act 201 was enacted 12/19/90 and took effect 7/1/91. Act 201 amended Title 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for burglary; for intermediate punishment; and penalties. Under intermediate punishments, § 14 states that one of the conditions the court may impose on an offender is participation "...in drug or alcohol screening and treatment programs, including outpatient and inpatient programs."

SB 620/Act 1989-97 created a uniform and exclusive administration of parole providing for random screening tests to be performed at the Parole Board's discretion and the parolee undergoing the tests shall be responsible for the costs of the tests.

In **TEXAS**, persons placed on probation or released on parole or mandatory supervision submit to testing for controlled substances. The bill requiring drug testing for probationers and parolees is SB 29 and as of May 1991 is the only bill that has passed the 71st Legislature. It is brief and to the point. House Bill 2335 enacted by the 71st legislature can be found in the Texas Code of Criminal Procedures, Article 42.12. § 11 cites the Basic Conditions of Probation. (15) Submit to testing for controlled substances; and (16) Attend counseling sessions for substance abusers or participate in substance abuse treatment services in a program or facility approved or licensed by the Texas Commission on Alcohol and Drug Abuse, if the person was sentenced for an offense involving controlled substances or the court determines that the defendant's use of controlled substances was connected to the commission of the offense. § 18. (g) On any evidence of the presence of a controlled substance in the defendant's body, or on any evidence the defendant has used a controlled substance or on evidence that controlled substance use is related to the offense for which the defendant was placed on probation, the court shall require as a condition of probation that the defendant submit to testing for controlled substances in the defendant's body.

Under the authority of **WEST VIRGINIA** Code (WVC) § 25-1-5 the Commissioner of Corrections is authorized to develop and implement rules and regulations for those individuals who are on parole. Also, under the WVC § 29A-2-1 the West Virginia Board of Probation and Parole has the authority to mandate treatment programs as a condition of parole. Additionally, some sentencing courts have mandated drug/alcohol treatment programs for a subject as a condition of his/her probation.

In **WISCONSIN**, drug testing statutes for probationers and parolees are found in the Administrative Code. Within the list of conditions a probationer or parolee must agree to abide is a condition stating they (probationers/parolees) must make themselves available for searches or tests ordered by the agent which may include urinalysis, breathalyzer and blood samples as well as agreeing to a search of their property and residence.

Question: **What components should be included in drug testing legislation to most effectively assist the courts and probation and parole officers?**

Legislation listing drug testing specifically as a condition of probation and/or parole ideally should address such components as fees, funding, and may even include sentencing guidelines in some instances. Judicial responsibility can also be assigned in legislation. Whether or not on-site testing (as opposed to laboratory-contracted testing) is to be allowed may also be legislatively addressed.

The following sample of legislation has been enacted regarding fees:

CALIFORNIA enacted legislation authorizing any county, other than Contra Costa County, to impose an additional assessment up to \$50 for convictions of DUI offenses to be used for chemical testing purposes. In addition, the bill authorizes fines and assessments allocated for drug and alcohol testing to be deposited with a special district as well as with a city or county. Within the California Uniform Controlled Substances § 11551 which orders probationers and parolees to submit to periodic tests to determine use of controlled substances, condition (d) provides for the cost of administering the tests to a probationer shall be a charge against the county and a test for a parolee shall be charged to the state.

NEW YORK laws address the cost of drug testing by requiring the convicted defendant to pay all or any portions of the cost or costs incurred from drug testing. This provision can be found in § 390.30 (2) of the criminal procedure code.

The **PENNSYLVANIA** statute Act 1990-114 was amended to include a provision for the cost of pre-parole drug screening test to become the responsibility of the Board; however, parolees undergoing random drug screening shall be responsible for the costs of the tests.

Question: What are creative funding sources for drug testing?

Most jurisdictions assume full responsibility for the funding of drug testing programs. Other options are available, however. Several states have required the offender to assume full responsibility of all positive urine tests including the follow-up confirmation test. Some states even require the offender to pay for negative tests. A grant was issued to APPA to provide drug testing training and technical assistance (TA) to probation and parole. The training encompasses the material found in the guidelines but also provides individual guidance and assistance to agencies in their actual implementation of the guidelines.

Twelve training sessions are being held around the country. In addition to the training, funds were also made available to provide individual agencies with technical assistance in implementing drug testing programs. Twenty-two long term technical assistance events and 15 short term technical assistance events were funded. Twenty of the technical assistance sites also received an additional \$5,000 to augment or enhance drug testing services. The technical assistance includes assistance in all aspects of an agency's drug testing program.

In addition, there are many drug testing training and technical assistance opportunities available at no cost to individual jurisdictions. For example, the National Institute of Corrections (NIC) also offers drug testing training and technical assistance on a regular basis.

Drug testing monies are also available from Bureau of Justice Assistance formula grants. The

Administration has proposed a new condition for states regarding eligibility for BJA formula grants. "Each state would be required to formulate and implement a comprehensive drug testing program for targeted classes of defendants arrested, confined, or on probation or parole." Additionally, no state would be required to spend an amount more than 10% of its BJA formula grant (ONDCP, 1991).

Question: How do drug tests work and what do they show?

Drug tests are performed to determine if an individual has ingested drugs. Drug tests can be performed on a number of substances, including: urine, blood, hair, and saliva. The most common substance, however, is urine. Drug tests are usually divided into two categories. The first are the initial or preliminary drug tests. These tests are used to separate specimens into two groups: positive and negative specimens. Negative specimens are then disposed of while positive specimens either are reported to the agency or proceed to the second round of testing.

The initial tests commonly use a technique called immunoassay to identify the drug in the specimens. This is the most common, efficient, accurate and cost-effective means of screening samples for the presence or absence of drugs. The purpose of initial tests is to identify "classes" of drugs rather than specific drugs. For example, an initial test would tell you if barbiturates were consumed but would not identify the specific barbiturate. It is also important to know that the initial tests do not identify the actual drug; rather they identify substances produced when drugs are consumed called "drug metabolites."

The immunoassay tests use the same process the human body uses to identify germs. Antibodies, produced to respond to a particular drug, are used to locate and identify whether the drug in question is present. The antibodies are combined with the sample in question. If the drug is present, the antibodies will attach themselves to the drug. The level and rate of attachment is then observed either visually as with on-site tests or automatically as with instrument tests.

The second type of test commonly used is the confirmation test. Confirmation tests use chemical methods to identify the presence or absence of drugs. The tests are more specific than initial tests and are able to identify the specific drug that is present. Drug tests that are used to screen for and/or confirm illegal drug use, are extremely accurate in identifying whether drugs were consumed. However, it is important for users to understand that these drug tests are not capable of determining the amount of a drug consumed; when it was consumed; or if the person was impaired due to drug use. Drug tests are only able to determine *if* drugs were consumed, and then only for specified lengths of time after consumption.

The "window" of time to identify use varies from 48 hours to 30 days. Detection times vary for many reasons including: amount of drug consumed; length of time of use; route of administration; quality of drug consumed; user's physical condition; diet; fluid intake; or activity level.

Drug test results are not absolute as to the total presence or absence of drugs. Tests use cut-off levels to determine positive or negative. The cutoff level is the amount of drug that must be present to achieve a positive result. The cutoff levels are set to eliminate the potential for false positive results to occur.

Question: What is on-site drug testing and how accurate is it?

Traditionally, drug testing has always been performed in a laboratory setting. In this traditional setting, drug testing was performed using complicated instrumentation which had to be operated by highly trained personnel. On-site testing refers to drug testing that is performed outside the traditional laboratory environment. The testing is done either in a quasi-lab within the criminal justice agency or in the agency office. The testing can be done using instruments or through the use of simple disposable test kits. On-site drug testing incorporates the same technologies that are found in a drug testing laboratory. Like laboratory testing, they are very accurate and reliable.

The scientific and legal communities have always regarded gas chromatography/mass spectrometry (GC/MS) testing to be the "gold standard" in drug testing. When the results of tests performed by GC/MS are compared to the results of on-site testing there is little if any difference. Laboratory tests performed using initial test methods tend to be approximately 90 to 95% accurate. On-site tests range from 90% to 95% in accuracy. This level of accuracy has been supported by manufacturers' research, as well as independent laboratory analysis. Unlike laboratory testing though, complicated instruments and extensive training are not required to perform on-site tests. The tests have been designed to be used by any personnel, with or without, laboratory experience. They are simple and require few steps. Laboratories often take up to 10 days to report results back to an agency. When on-site tests are incorporated, results can be available in as little as 10 minutes.

Use of the tests by non-laboratory personnel does not reduce the accuracy and reliability of the tests. Manufacturers provide extensive training to the personnel who will use the tests. Operators are then certified in the operation of the tests. The simple nature of the tests have led many in the laboratory field to worry about the possibility of inaccuracy; however, it is this very simplicity that makes the tests so accurate. Operator contact is kept to a minimum to allow the tests to work on their own. Court challenges to this type of testing have resulted

in the tests being upheld and the results being valid. Manufacturers have shown the courts that the on-site test results are equal in accuracy to those produced in a laboratory. The widespread court acceptance has led to a substantial increase in the use of on-site drug tests. At many agencies the use of these tests have resulted in more accurate and effective drug testing programs being established.

Question: Are there guidelines for drug testing and sources for training and technical assistance?

The use and acceptance of drug testing in criminal justice has grown substantially in the past several years. While more and more agencies are implementing the use of drug tests in their supervision strategies, often they do so without having proper policies and procedures in place. To assist agencies with this problem, the U.S. Justice Department awarded a grant to the American Probation and Parole Association (APPA) to develop and write a set of guidelines which would provide agencies implementing drug testing the necessary background. In June 1991, the U.S. Justice Department released those guidelines. They are entitled Drug Testing Guidelines and Practices for Probation and Parole. These guidelines provide direction to agencies in formulating sound policies to run their drug testing programs, from developing initial policies through selecting methodologies and obtaining funding.

These guidelines give criminal justice drug testing a set of standards, similar to the National Institute of Drug Abuse (NIDA) standards which have been established for workplace drug testing. They allow for fair, accurate and consistent testing to be performed throughout community-based corrections.

In addition to the training and technical assistance being provided to adult probation and parole, the U.S. Justice Department has also awarded a grant to APPA to develop and write guidelines for juvenile probation. This project will also provide training to agencies through regional workshops, and will provide technical assistance to individual agencies.

A similar grant was also awarded to provide drug testing guidelines, training and technical assistance for the entire criminal justice system, from pretrial services through community supervision. In addition to these projects funded and supported through the U.S. Justice Department, training and technical assistance can be obtained by contacting National Institute of Corrections (NIC). Funding from them in development and implementation of drug testing programs is available.

Question: What is a confirmation test and when is it required?

Confirmation tests are performed on specimens that have tested positive for a particular drug on an initial test. The definition of what constitutes a confirmation may vary. The scientific

standard for a confirmation test states that it is a test performed on the same specimen that produced the initial positive and specifies that it must be conducted by a scientific method different from that used in the initial test. The most widely accepted confirmation method is gas chromatography/mass spectrometry (GC/MS). When a true confirmation test is performed the level of accuracy and reliability of the test results is virtually 100%. The initial tests are capable of achieving an accuracy rate of 90-95%.

To give specific criteria on when it is necessary to confirm a result and how to confirm a result, several important factors need to be considered. Agencies should first consider the purpose and use of the drug test. In the criminal justice setting, many different actions may be taken in response to a positive drug test. These actions can range from minor administrative sanctions to incarceration. Due to the wide range of actions which can be taken in response to a test, agencies must determine whether the need exists for a confirmation test, or are the initial results adequate. For example, a positive test will result in only an administrative warning, is it necessary to confirm a result which already is 95% accurate? Conversely, if the offender is going to be incarcerated, is a 95% accuracy rate sufficient?

After determining the use of the test results, the agency must consider the financial issues surrounding the confirmation question. Confirmation tests can be very costly to a criminal justice agency. Average prices can range from \$20-30 per test. In an environment of diminishing financial resources, agencies need to determine if the actions to be taken will justify the expense of the test. Again, if only minor actions will be taken based on the results, is the agency justified in devoting limited resources to the tests?

The final consideration for an agency involves the legal requirements within the local jurisdiction as well as at the state and federal level. The agency needs to determine if the results of the initial test will be upheld or if the courts and parole board require a confirmation test. In many jurisdictions these questions have been answered. Many courts have said that in a criminal justice population, an accuracy rate of 95% is sufficient to take action against an offender and that a confirmation test is not needed. If the courts are willing to accept the results of an initial test, should an agency use additional limited resources to confirm a test?

In guidelines developed by APPA for the U.S. Justice Department, APPA has provided agencies with alternatives to the confirmation response. They take into account the individual needs of an agency and provide flexibility to consider these points. The guidelines provide agencies with four options, including: use of admissions; retesting the sample; retesting the sample with a second initial test; and testing the sample using GC/MS. Only the option of testing the specimen by GC/MS provides a true confirmation of the results. However, an agency considering all the factors affecting their testing program has other options which

increase the confidence of the result.

APPA guidelines allow for agency flexibility in choosing the confirmation method and when it will be performed. However, standards are established, such as requiring that a GC/MS confirmation be used whenever the test result will be used to incarcerate the offender. Establishing flexible guidelines allows agencies to have efficient programs while protecting offenders' rights.

Question: Are there health risks in handling urine specimens and how can they be minimized?

When dealing with bodily fluids, safety is always a concern. Guidelines are provided by Occupational Safety and Health Administration (OSHA) and the Center for Disease Control (CDC) on safety measures to follow when handling these fluids. OSHA and CDC provide a list of safety precautions which should be followed when handling certain bodily fluids and medically related materials. The term used to describe these safety measures is *universal precautions*. Universal precautions include the use of gloves, masks, gowns, and as minimal contact as possible.

Drug testing performed in probation and parole agencies primarily use the method of urinalysis. According to OSHA and CDC, universal precautions do not apply to urine. The primary concerns of probation and parole is the risk of contracting Human Immunodeficiency Virus (HIV) and Hepatitis B Virus (HBV). In a report released by OSHA and CDC in February 1990, they state that " ... universal precautions do not apply to... urine..." and "... risk of transmission of HIV and HBV from these fluids and materials is extremely low or non-existent." However, even though the risk is low, it is still important that precautions are taken to eliminate officers' fears when using drug testing, and to protect against other infections.

Safety measures that should be implemented include the use of gloves during collection and testing of specimens. Drug testing programs in community-based correctional agencies invariably require probation and parole officers to collect specimens from the offenders under supervision. In the collection process, the potential for contact with contaminated specimens always exist.

In addition, if on-site drug tests are used, the officer will certainly have more chances to have contact with the specimen. By implementing rules which minimize direct officer contact with the offender's specimen you can minimize the risk further. Procedures can be implemented so that specimens can be collected, marked and sealed without the officer handling the bottle. It can then be placed in sealed bags for transport to the laboratory. Virtually all the procedures involved in the collection can be done by the offender; the officer is only required

to observe. By requiring officers to wear gloves during the collection, no direct contact will occur between the officer and the specimen.

If on-site testing is being conducted, use of lab coats, gloves and following proper testing procedures will reduce contact with specimens. Again, often offenders can be the only person handling the specimen even during the testing. Officers should follow safe collection procedures, minimize contact with the sample, and let the offender be the primary handler of the specimen. When these steps are combined with education about the low risk factors, many health fears can be eliminated.

Question: What are some sanctioning options available in response to positive urinalysis tests?

The dilemma of prison crowding, the continued rise in crime, the necessity for alternatives to incarceration and the demand to provide intermediate sanctions for supervised offenders in the community has created frustration, controversy and consternation among criminal justice constituents as well as citizens from all communities throughout the United States. The presumable perpetual cycle of offenders alternating from community supervision to jails and prisons, and jails and prisons back to community supervision, constantly fuels the continuing argument between proponents of either side.

The options are few and the burden to alleviate the dilemma appears to remain with agencies commissioned to provide community supervision. In recent years probation departments have struggled with the task of providing supervision for offenders whose criminal offenses ranged from petty theft to second degree murder. Parole departments (often probation and parole are combined) are charged with supervising paroled offenders whose crimes encompass offenses at all levels. If that is not enough, probation and parole officers must be adept at recognizing offenders' needs, acknowledging disparity, and yet strive to demonstrate equity in administering such responsibilities.

These are the difficulties that probation and parole agencies are confronted with every day. Consequently, the appropriate use and management of intermediate sanctions has become a mandated challenge. Since drug-involved offenders or offenders charged with drug related offenses make up a large percentage of the supervised offender community, the need for an appropriate continuum of sanctions is needed.

Individual agencies will need to determine how much latitude can be permitted for the various offender risk categories. For example, should the same sanction be imposed for an identified addict who tests positive after establishing a continuous pattern for negative drug screens as the offender who tests positive the first time screened? Another variable in administering

sanctions may be to consider the felony class of the offender. These are questions that must be addressed, as well as the various components of the justice system support mechanisms.

The following design is presented as an example of how an agency may establish a continuum of sanctions that would make the offender accountable for any increase in sanctioning that must be imposed. This is a model only, flexibility in its application must be developed according to parameters established by governing authorities within each state and municipality.

There is a multitude of possible sanctions that may be used. Possibilities are only limited by restrictions created by prohibitive laws, willingness and ability to follow through with enforcement and available staffing, funding and resources to ensure they are properly employed.

Examples of Possible Sanctions:

- Verbal Reprimand;
- Written Reprimand/Warning;
- Increased Supervision (includes face-to-face contacts);
- Out-patient Treatment;
- Residential Treatment;
- Day Reporting Center (facility staffed to provide numerous offender services including drug counseling and urinalysis screening);
- Fines;
- Curfew;
- Electronic Monitoring;
- House Arrest (with or without electronic monitoring);
- Community Service*;
- Shock Jail Therapy (confining offender to short period incarceration i.e., weekend or longer); and
- Notification of Employer**.

Sanctions can be used in combination as well. An important feature of a sanction must be that it becomes a deterrent to continued drug use. It must also be made clear to the offender that such intermediate sanctions are just that, intermediate; failure to comply with the final established sanction level will result in incarceration.

* An example of community service other than picking up trash at a local park or mowing grass may be having the offender speak to various groups about the dangers of drug abuse.

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An employer should first know that his/her employee is on probation or parole prior to notification about drug test results. Some states may not permit notifying employers of parole or probationary status. There certainly could be a liability issue here that individual jurisdictions will have to address. For example, what happens when supervision agencies are attempting to work with an offender after the first, second or third positive drug screen and the employer is not aware of the potential dangers in employing such an individual? What if the employee causes physical harm to himself or someone where he is employed?

The impact and legal authorization of each sanction will have to be considered. Often, the supervising official will need to return the offender to court for the purpose of obtaining a court-ordered modification allowing for the imposition of sanctions.

Continuum of Sanctions (Example)

- | | |
|-----------------------|--|
| 1st Positive - | issue verbal reprimand and increase testing to 3 random tests per month. |
| 2nd Positive - | issue written reprimand; recommend outpatient treatment, increase testing to one random test per week and impose limited sanction, i.e., curfew. |
| 3rd Positive - | direct offender into outpatient treatment, increase random testing to twice per week and impose stronger appropriate sanction. |
| 4th Positive - | return offender to sentencing court; recommend to court either residential treatment (if amenable) or incarceration with treatment (if available). Period of incarceration should be long enough to allow appropriate treatment and/or to motivate offender to compliance. |

Note: The above example is a basic guide. Each jurisdiction will need to adjust the manner in which it is applied. Some considerations in imposing the listed sanctions are: level of risk; elapsed time and number of negative results between positives, court-ordered conditions, and offender's willingness to acquiesce.

Question: What research is available to show that drug testing works?

Eric A. Wish and Bernard A. Gropper (1990) identified four purposes for the drug testing of offenders in the criminal justice system. The four purposes included: "to deter persons who have recently ingested an illicit substance; to identify chronic drug users; to monitor and deter drug use among persons under the authority of criminal justice officials; and to estimate national and local drug-use trends among criminal justice system populations" (Wish and Gropper, 1990, p. 324).

How extensive is drug testing of offenders in the criminal justice system? How effective is drug testing of offenders in achieving the four purposes outlined by Wish and Gropper?

In an evaluation of the "Applying Drug Testing in Probation and Parole Supervision Strategies" Seminars sponsored by the American Probation and Parole Association, ninety percent (90%) of the participants indicated their agency was conducting some form of a drug testing program on the offender population. Seventy-five percent (75%) of the participants also indicated that their agency did not have an evaluation process in place to study the effects of the drug testing program on their offender populations.

Research information documenting the effectiveness of drug testing offenders in the criminal justice system is also limited. Many of the studies that have been published only studied pretrial drug testing programs. Torborg and associates (1989) studied rearrest and failure-to-appear (FTA) rates of a group of 3,000 defendants randomly assigned to one of three groups between June of 1984 and January of 1985. Belenko and Mara-Drita (1988) focused on a group of 2645 felony and misdemeanor defendants processed through Manhattan Central Booking between April and October of 1984. Goldkemp, Gottfredson, and Weiland (1988) studied 2019 felony defendants in Dade County, Florida to examine the extent to which drug tests increased judges' ability to predict pretrial misconduct.

There are a few studies that have been conducted that examine the effectiveness of drug testing in probation and parole settings. Tedder (1990) reported the results of a study that examined the effectiveness of drug testing in reducing drug use among several categories of offenders in the Miami (Dade County), Florida area. The study examined the number of positive cocaine and marijuana drug screens that P.A.C. (Program Against Cocaine), Community Control (House Arrest), Standard Probation, Parole, and Supervised Community Release (Early Release) program offenders had between October 1988 and September 1989. The study found an overall decline in the number of positive marijuana and cocaine screens among the P.A.C., Community Control, and Standard Probation populations. The population size of the other groups was insufficient for an accurate examination of drug use trends.

Wheeler and Rudolph (1990) examined the relationship between drug testing and recidivism rates for 658 felony probationers processed through the Harris County Criminal District

Courts (Houston, TX) between May 12 and July 17 of 1989. They found that 83.7% of the probationers that had no positive drug tests successfully completed their conditions of probation. This compared to a 62.4% success rate for probationers with one or more positive tests and 60.8% success rate for probationers who were not tested.

Clayton, Walden, and Bennett (1990) examined the relationship between positive urine tests and rearrests percentage of 176 Surveillance and Treatment on Probation (STOP) Program offenders in Lexington, Kentucky. The researchers found that 54% of the offenders who had no probation violations or rearrest charges also had no positive urine tests. This compares with 18% with one or two positive urine tests and 28% with three or more positive urine tests. When the group that had new arrest charges was examined: 20% had no positive urine tests; 27% had one or two positive urine tests; and 54% had three or more positive urine tests.

Vito, Wilson, and Keil (1990) studied 860 probationers and parolees in the Louisville-Jefferson County, Kentucky area. The findings showed a definite decline in drug use by the offender population. Sixty-seven percent of the offenders were "dirty" on the first test. This figure declined to 2% by the fifth test.

The limited amount of research available indicates some of the potential effects of drug testing in the criminal justice population. These studies are limited in the population size and geographic scope. The American Probation and Parole Association has begun a national study to examine the effects of drug testing on probation and/or parole populations. The study will review the effects of drug testing on a population of more than 3000 offenders in twenty locations nationwide. The study will track the number of positive urine specimens as well as technical violations, and new arrests. The study will also look at the actions that the agency takes for each positive urine specimen. The evaluation will focus on a number of outcome measures including: the effect of testing on drug use rates; the effect of various intermediate sanctions on reducing the number of positive drug tests; the effect of drug testing on treatment and/or counseling progress; and the effect of drug testing on technical violations and rearrests.

Question: **What are the benefits of drug testing without treatment or a range of intermediate sanctions?**

The great majority of offenders are seriously drug-involved. These offenders use drugs on a regular basis. Their entire life is devoted to securing the drug; they live in a subculture in which drug use is not only acceptable but the norm. This is the offender who requires drug testing not only to monitor behavior, but also to maintain accountability and intervene when necessary and when continued drug use or a relapse to drug use occurs.

These offenders usually are either high risk or high need individuals. Many times they are both high risk and high need. Drug testing without a continuum of sanctions for these offenders is *useless* as a tool. This drug-involved offender is usually unemployed or under employed; has little formal education; has multiple life problems and needs a structured supervision plan if any degree of acceptable behavior change is to occur.

A positive drug test without a response of some sort is positive reinforcement for this offender to continue to use drugs. These offenders do not respond the same to any one sanction which is why the criminal justice system must have a continuum of sanctions available for application after following a proper assessment of the offender.

There exists within the criminal justice system a small, select group of offenders who may benefit from drug testing as a means of controlling their drug use. A review of information on psychological stressors with respect to drug-involved offenders places these offenders in the low psychological stressor category. Research indicates that these drug-involved offenders will probably do well and control their drug use without any intervention from an outside source. These offenders are a very small percentage of the offender population. They usually have very pro-social attitudes and values. They tend to be employed and educated. They also do not abuse drugs, but, instead, they may use the drugs occasionally if the situation warrants the use. Intermediate sanctions usually are not required with these offenders because they are usually low risk, low need offenders. Their supervision requirements are minimal.

Question: How can drug testing help probation and parole officers in my State?

Drug testing is a useful and important tool for probation and parole officers. Not only can drug testing assist officers with individual case management, but administrators can use information obtained from drug testing to make important management decision.

First and foremost, drug testing can be used to identify individual drug use. This additional piece of information alerts officers of a potential drug abuse problem. Responses to an initial positive drug test may include drug and alcohol education and continued testing to assess the extent of the problem. Awareness of an offender's drug of choice will help officers look for accompanying symptoms of continued use.

Beyond identification, drug testing is particularly helpful in assessing the extent of an offender's drug problem. The advantages of drug testing as an assessment tool include:

- its objectivity;
- scientifically reliable results;

-
- its therapeutic value;
 - the documentation it provides; and
 - its usefulness for indicating relapses.

Consistent drug testing can help officers ascertain the amount of control an offender has over his/her drug use. An offender who continuously tests positive knowing that s/he will be drug tested and that a positive test could result in incarceration, shows signs of addiction.

Once the extent of the problem is assessed, officers can use this information to develop appropriate case plans. Effective case planning depends on complete and reliable information. Treatment matching is imperative, particularly in times of fiscal restraints. Once an offender is involved in treatment, drug testing can then be used to monitor his/her progress.

In addition to providing information regarding the offenders' needs, drug test results can also serve as an indication of the offender's risk to the community. Drug testing serves as a valuable surveillance tool for probation and parole officers. Through drug testing, officers can monitor offenders' compliance with the conditions of their release. The correlation between drug use and crime is well substantiated. By detecting those offenders who continue to use drugs, probation and parole officers can enhance public safety by providing a more intense level of supervision or incarceration if necessary.

Drug testing alone can serve as a deterrent for a certain group of offenders, while others may require intensive treatment. To be truly effective, however, drug testing must be used in conjunction with other assessment, case management and enforcement strategies. Failure to respond appropriately to a positive result diminishes the value of drug testing. An automatic response should be an increased level of drug testing.

On a larger scale, the compilation of drug test results can help keep officers abreast of drug use trends among the offender population. Chief probation and parole officers can use drug test results as a determining factor in case assignment. In addition, awareness of drug use trends can assist administrators in developing programs that will meet the needs of the offender population. Documentation of the type and extent of drug abuse is useful when competing for limited funding.

As can be seen, drug testing is an invaluable tool for probation and officers. It confirms suspicions of use, facilitates case management and assists in identifying those offenders who pose a risk to the public.

CONCLUSION

In the future, a successful national corrections strategy will likely encompass a marriage between the two goals of rehabilitation and punishment. Drug testing has an important role to play in such a partnership: it imposes restrictions on the offender's behavior and therefore contains a punitive element; the identification aspect is also a critical part of treatment and rehabilitation of the offender.

There are numerous advantages to drug testing. Urinalysis has the effect of deterring drug use. It provides an objective, scientific tool to identify drug involvement from the moment of an offender's first appearance in the criminal justice system. As a component of correctional alternatives, it is one of the most successful methods available for reducing prison crowding.

If the "war on drugs" is to become more than just empty rhetoric, lawmakers must get serious about providing weapons to those in the trenches. In community-based corrections, urinalysis is the best weapon available.

REFERENCES

- Belenko, S. and Mara-Drita, I. (1988). Drug use and pretrial Misconduct: The utility of pre-arraignment drug tests as a predictor of failure to appear. New York City Criminal Justice Agency.
- Clayton, R. R., Walden, K. P., and Bennett, G. T. (1990, June). Surveillance and treatment on probation in Lexington: An evaluation. Unpublished manuscript.
- Goldkemp, J. S., Gottfredson, M. R., and Weiland, P. (1990). The utility of drug testing in the assessment of defendant risk at the pretrial release decision. Unpublished manuscript.
- Office of National Drug Control Policy, Bulletin No. 3, August, 1991.
- Tedder, E. (1990). Drug testing report for Department of Corrections Probation and Parole Services: October 1988 - September 1989. Unpublished manuscript.
- Toborg, M. A., Bellassai, J. P., Yezer, A. M. J., and Trost, R. P. (1989, December). Assessment of Pretrial Urine-Testing in the District of Columbia. Washington, D.C.: National Institute of Justice.
- Vito, G. F., Wilson, D. G., and Keil, T. J. (1990, September). Drug testing, treatment, and

revocation: A review of program findings. *Federal Probation*, 37-43.

Wheeler, G. R. and Rudolph, A. S. (1990, Fall). Drug testing and recidivism of Houston felony probationers. *Perspectives*, 14(4), 36-43.

Wish, E. D. and Gropper, B. A. (1990). Drug testing by the Criminal Justice System: Methods, Research, and Applications. In M. Tonry and J. Q. Wilson (Eds.). *Drugs and Crime* (pp. 321-392). Chicago: University of Chicago Press.

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