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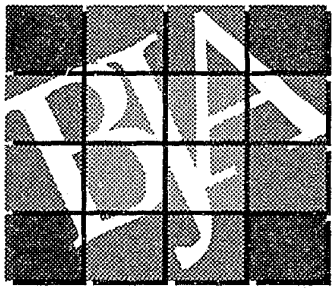

Bureau of Justice Assistance

American Probation and Parole Association's Drug Testing Guidelines and Practices for Adult Probation and Parole Agencies

MONOGRAPH

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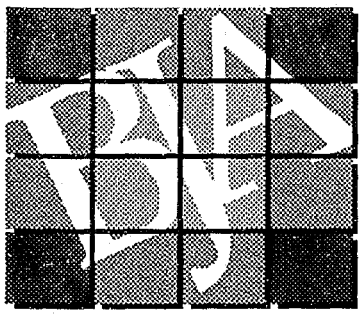

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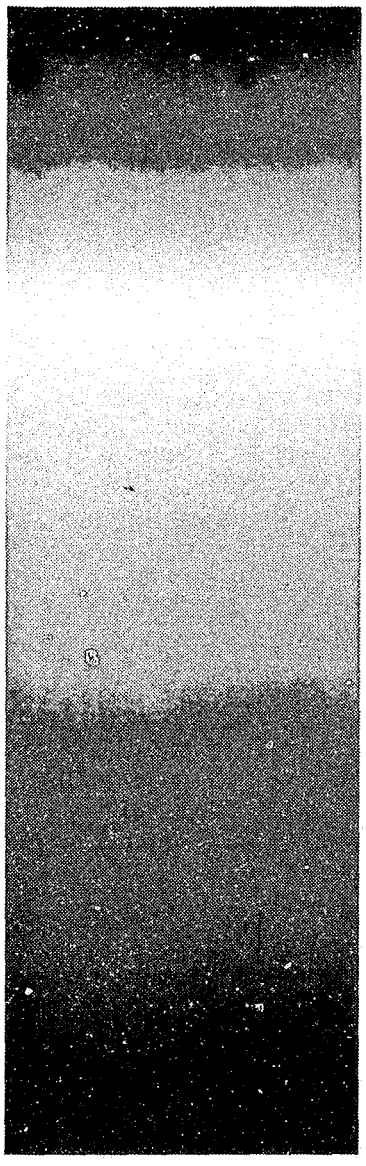

American Probation and Parole Association's Drug Testing Guidelines and Practices for Adult Probation and Parole Agencies

Prepared by:
American Probation and Parole Association
in Cooperation with The Council of
State Governments

MONOGRAPH

July 1991
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DRUG TESTING GUIDELINES PROJECT

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These drug testing guidelines have been developed by the American Probation and Parole Association, and are not the individual act of any member, individual, or legal entity of or association. These guidelines should not be construed so as to create any personal liability on the part of any member, individual, or legal entity of or associated with the American Probation and Parole Association.

U.S. Department of Justice
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Bureau of Justice Assistance

Office of the Director

Washington, D.C. 20531

On behalf of the Bureau of Justice Assistance, I am pleased to present the "American Probation and Parole Association's Drug Testing Guidelines and Practices for Adult Probation and Parole Agencies." This document was developed over many months by numerous experts in the fields of drug testing and community corrections. It captures the best and most current information on how to employ urinalysis as a tool for offender management in a community corrections setting.

Identifying offender drug use is a key ingredient in an array of community corrections techniques now being employed under the heading "intermediate sanctions". Intermediate sanctions permit flexibility in surveillance and supervision of offenders released into the community.

This document establishes the state-of-the-art for drug testing programs as an integral part of community supervision. I hope you will find it useful.

Sincerely,

Gerald (Jerry) P. Regier
Acting Director

Dear Colleagues:

On behalf of the American Probation and Parole Association (APPA), we are pleased to present the APPA ***DRUG TESTING GUIDELINES AND PRACTICES FOR ADULT PROBATION AND PAROLE AGENCIES.***

Testing probationers and parolees for drug use may well be the most fluid part of an already dynamic service system. Monthly, we learn new techniques and modalities that can serve as a tool in the supervision process. Many of us have had to learn a new vocabulary with terms such as chain of custody, confirmatory testing, and cutoff levels just to be reasonably literate with the practices associated with drug testing. The need for help was clear.

The American Probation and Parole Association began in 1988 a research project to explore drug testing and develop guidelines to assist adult probation and parole administrators, managers, and field staff. Aided by the support of the Bureau of Justice Assistance, APPA canvassed field supervision agencies to gather information pertaining to drug testing policies and procedures and then developed guidelines for probation and parole. We emphasize the term "guidelines." The project advisory board, staff, and consultants have sought to identify the "best practices" of the field for drug testing. Our goal is to help probation and parole departments develop and operate the most effective drug testing programs possible. The guidelines reflect the effort of probation and parole to provide a direction for field activities and support for progressive movement. Our intent is to help everyone prepare more effective, defensible, and credible operations.

APPA wishes you success in developing or upgrading your drug testing programs as an integral part of your supervision efforts.

Sincerely yours,

Harvey M. Goldstein
Chair, Project Advisory Board
APPA President-Elect

Donald G. Evans
APPA President

Nancy Lick
APPA Past President

ACKNOWLEDGMENTS

These guidelines were developed over many months of research in which numerous people were asked to contribute their knowledge and expertise. The American Probation and Parole Association gratefully acknowledges the professional contributions and support of the following advisory committee members who generously gave their time to this effort: Harvey M. Goldstein (Chairman), Rolando V. del Carmen, Melody Heaps, Thomas E. Perras, Barry Nidorf, Judge Roy B. Willett, Annette Z. Henderson, Eric Wish, Ernie Garcia, and Rosalyn Williams.

Special thanks are extended to Rolando del Carmen, whose legal research serves as the foundation for these guidelines. His extensive work in incorporating leading principles of drug testing case law into the guidelines will save administrators time and provide them with legal "peace of mind" in proceeding with a drug testing program. Specifically, most of the guidelines on Authority to Test, Offender Instructions, and Confidentiality were written by Professor del Carmen. Additionally, he was responsible for the excellent compilations of case law included in the appendix of this document.

Special thanks also go to Annette Z. Henderson, who contributed a tremendous amount of "volunteer" time to drafting, reviewing and revising key sections of the guidelines. As the Director of Community Programs for the Georgia Department of Corrections, Probation Division, Annette provided keen insight into the everyday world of drug testing. By virtue of her broad experience and research in this area, her work was invaluable in providing a set of guidelines that are realistic, practical, and transferrable to other agencies.

The APPA staff provided by the Council of State Governments should also be credited with the many hours of diligent research that they devoted to this project. Specifically, Tim Matthews has been with the project since its inception and served as Project Director. Tim provided the leadership and support to the project staff essential for the production of a quality document. Edward Garner devoted 16 months of work to studying a myriad of drug testing documents; reviewing agencies' policies and procedures; and discussing issues with administrators and line staff across the United States. Ed drafted the majority of the guidelines and collaborated with the advisory committee members and staff in producing this final document. He is to be commended for his excellent communication, organization, and research skills, as well as his perseverance, which helped him in synthesizing the information received from other principals. Also, Amy Hensel deserves credit for the many hours spent typing and editing the manuscript. Her cheerful disposition and expert production skills contributed immensely to the quality of the final product.

These guidelines would not have been possible without the funding support provided by the Bureau of Justice Assistance (BJA) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP). The commitment of these agencies to assisting State and local community corrections agencies to develop successful and responsible drug testing programs will no doubt move the field toward more professionalism and lead to more efficient and effective drug testing operations. In particular, Jody Forman of BJA and Doug Thomas of OJJDP maintained a high degree of interest and involvement throughout the project period, and provided timely and critical information to the development of the guidelines. Also deserving of special recognition is Karen McFadden who initiated the development of the guidelines and has promulgated drug testing practices that are consistent with the missions of criminal justice agencies. Karen recognized the need for guidance and spearheaded several Federal efforts which will contribute to enhanced knowledge of drug testing issues.

We especially wish to thank directors and office supervisors of the probation and parole agencies from Canada and the United States who contributed drug testing materials from their policy manuals. Without their contributions the production of the drug testing guidelines would have been extremely difficult.

Finally, the Association expresses its appreciation to the many dedicated probation and parole professionals who generously contributed their knowledge and expertise in the development of these guidelines.

PREFACE

These drug testing guidelines have been developed at a point in history when our Nation is engulfed in a struggle against illegal drug use. The magnitude of the problem extends beyond the control of the criminal justice system and strikes at the core of our society. The pervasive influence of drug use has touched every level of society, from working men and women in factories, to the executive officers of corporations and government agencies. Private and public sector organizations are addressing the problems associated with drugs by designing programs that will ensure a drug free workplace.

The criminal justice system has been struggling with the problems associated with drug use in the criminal population long before the problem received the media attention it is getting today. Probation and parole agencies in every State have been forced to recognize the advantage drug-using offenders have over agencies' personnel in disguising drug use.

The American Probation and Parole Association has developed drug testing guidelines that will assist agencies across the country in developing judicially acceptable programs that will provide the information needed to confirm or deny offender drug use. Furthermore, drug testing policies and procedures developed according to these guidelines will enable agencies to approach the courts with the confidence that their programs can withstand legal challenges of drug test results. This can be accomplished by developing the rigorous chain of custody procedures outlined in the guidelines and by working closely with the courts in developing the guidelines prior to the implementation of a drug testing program. The development of rigorous collection, identification, and chain of custody procedures is absolutely essential because an agency determined to establish a successful drug testing program must win court challenges. Any loss in the courts could not only damage the credibility of the program and the agency, but could also lead to lengthy and costly litigation.

These guidelines represent an amalgamation of the best drug testing practices currently being conducted successfully by probation and parole agencies in the United States. These guidelines are the result of considerable research and analysis, based on the drug testing policies and procedures from more than 125 probation and parole agencies across the Nation. They have been reviewed by an advisory committee composed of probation and parole practitioners, legal consultants, and academicians knowledgeable about drug testing; manufacturers of drug testing equipment; drug testing laboratory personnel; and the American Probation and Parole Association's Board of Directors.

The use of the term drug testing in this document refers to urinalysis. This is because urinalysis offers, at the present time, the most inexpensive and least intrusive method and is considered the technique of choice in the field of corrections for identifying illegal drug use. Other methods of analysis are available, notably blood, hair, saliva, and voice recognition, but for reasons of cost or accuracy are not widely used at this time. Furthermore, alternative methods to urine will require additional scientific validation, as it has not yet been demonstrated that all drugs of interest are either deposited in hair or secreted into saliva. These measurement techniques and collection practices need to be validated and standardized, while passive exposure remains an issue for hair analysis.

Drug testing technology is a rapidly evolving industry. Although these guidelines advocate the use of urinalysis, it is recognized that this may not be the method of choice in 3 years or less. Saliva and hair analysis are two techniques that are currently available, technically competent, and may become the preferred alternatives in the very near future.

Blood specimens have been analyzed for decades to identify the existence of illicit drugs in an offender's body. The major weaknesses are that blood analysis is complicated and more personally invasive than collecting urine specimens. Blood analysis is also costly, requires skilled laboratory personnel, and sophisticated equipment.

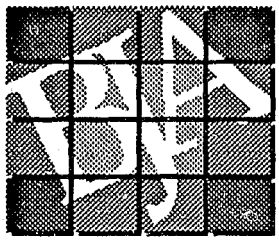
Hair radioimmunoassay (RIAH) technology has been used successfully to determine the presence of drugs in the human body. It is capable of determining illegal drug use that ranges from months to years, depending upon the length of hair. RIAH is a process where small amounts of radioactive particles are used in analyzing a hair sample. The noninvasive attribute of hair sampling is offset by its cost, the lack of any kind of standard or precedent measures, and may be influenced by passive participation (e.g., smoke residue from being in a room where marijuana is being smoked) or environmental precipitation (contaminants from the air).

Saliva testing may be the technology of the future for monitoring drug use. It is very easy to collect although it is not any more accurate than urinalysis. The major drawback of this method at this time is that it can detect drug use for only a few hours after consumption.

There are other technologies which are under development, notably voice inflection, which may have some potential in the future for identifying drug use.

Self-reporting of drug use by the offender often proves unreliable due to underreporting, lying, or denial. Self-reporting remains an option for any drug testing program.

The implementation of a drug testing program should be considered after a thorough analysis of the program issues described in these guidelines. A careful study will reveal how and why an agency should proceed in developing policies and procedures which will maximize positive program outcomes. It will minimize negative publicity and the prospects of court challenges.



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EXECUTIVE SUMMARY

The American Probation and Parole Association Drug Testing Guidelines have been developed expressly for probation and parole drug testing programs. They are based, in part, on the policies and procedures provided by over 125 State and local probation and parole agencies from 46 States who successfully conduct drug testing programs. The APPA Drug Testing Guidelines are a composite of and a guide to the best practices available for agencies developing a new program or upgrading an already existing program.

Every effort has been made to conduct a comprehensive and thorough review of the existing literature during the course of this project. An analysis of this literature identified sound drug testing policy and procedural operations currently being practiced by adult probation and parole agencies across the United States.

The ***Drug Testing Guidelines and Practices for Adult Probation and Parole Agencies*** identify the major components that should comprise every probation and parole drug testing policy and procedure operations manual. The components of this system are:

Agency Mission

An agency developing or upgrading a drug testing program should make certain that the goals and objectives being developed or upgraded are consistent with and supportive of the probation or parole agency's mission. Program developers should determine the intent of legislative, judicial, or parole board, and administrative authorizations for drug testing.

Purpose of Testing

Drug testing should be implemented only after the need for such a program has been established. Documentation of the nature and extent of illegal drug use within the jurisdiction will substantiate the illegal drug use problem. A plan outlining the goals and objectives of the proposed program should be prepared detailing how such a program will alleviate the problem with an acceptable outcome within a specified period of time.

Drug Testing Policies and Procedures

An important element of a drug testing program for probation and parole agencies is a succinctly written statement of the formal policy goals and objectives. Legislative statutes, judicial orders, administrative rules, and policy directives originating from within the agency usually supply the impetus for developing program policy.

Written policy will help formalize drug testing goals and objectives while providing the general framework for policy implementation. It will ensure program direction, understanding, and unity of purpose. Written policy will promote consistency and continuity during program implementation and periods of personnel changes.

Written drug testing policies and procedures will assist the parent government agency in embracing the long-term goals and objectives of this program. Agency policymakers should incorporate mechanisms that will allow for policy revision and the objective and neutral evaluation of policy effectiveness by outside consultants.

Authority To Test

In most jurisdictions the authorization for drug testing will be found in State statutes, judicial or parole board orders, or administrative agency decree. Agencies conducting drug testing should acknowledge the legal mandates for such authorization in their policies and

procedures. Ideally, a program should contain three legal authorizations:

- mandated by State statute,
- ordered by the court or parole board as a specific condition of probation or parole, and
- written as administrative policies which carry the weight of law.

Those agencies which have this kind of legal authorization will reduce the probability of a successful court challenge based on the authority to test.

Selecting Drug Testing Methodologies

Once an agency has determined its authority to test and purpose of testing, it should begin an indepth study of the existing technology to evaluate which methodologies will best allow the drug testing program to meet its needs. These needs should be identified and prioritized before comparing methodologies.

The selection of methodologies should be made by using a rating system based upon some form of measurement. The lowest bid may not always be the wisest long-term selection. By using a system of measurement the agency will be able to track the performance of the potential methodologies being studied over time. Keeping records of this nature will help justify whatever selection if finally made.

Confirmation

A "clinically approved" confirmation is a second test by an alternate chemical method to positively identify a drug or metabolite and is carried out on presumptive positives from initial screens. Written admissions of drug use and other testing protocols may be used by an agency in place of the second alternate chemical method. The basic question regarding the issue is whether to confirm or not and, if so, under what conditions. If testing is to be conducted only to make confrontations, then the initial testing methodology should be sufficient. However, if testing is to be conducted as part of a scheme of progressive sanctions which lead to revocation proceedings, then a more thorough approach to confirmations should be considered.

Several options are available to those agencies which need to confirm initial results. The requirements within probation and parole jurisdictions vary from State to State. Some courts or parole boards will require confirmations while others will not. If confirmation is required, then the agency will have to determine if the results are worth the cost.

These guidelines recommend that agencies attempt to get offenders to admit verbally to drug use and in writing during the confrontations following each positive test. Confirmation tests should be done only if an officer is unable to obtain an admission of drug use from the offender. An offender who does not admit to drug use after being informed of testing positive should be allowed to challenge the test results within 30 days. If the offender does not challenge within 30 days, then the positive test result should stand as an admission of use. A confirmation test may be conducted by any qualified laboratory approved by the agency. The offender should pay for a positive confirmation, and the agency should pay for a negative confirmation.

Offender Selection

Every agency should have specific procedures which delineate the criteria to be used in selecting offenders for a drug testing program. Information provided by assessment instruments will assist judges and parole boards to determine who should be tested as a condition of probation or parole.

Drug Testing Protocol

Protocol relates to specimen collection, scheduling, notification of results, transporting specimens, full and partial drug screens. Specimen collection should focus on site preparation and the verification of specimen integrity at the collection site.

Instructions to Offenders

The guidelines require that offenders selected for testing be furnished with appropriate information

necessary for them to comply with the rules of the drug testing program. This information should be supplied during an interview with the offender's officer and through the provision of a drug testing handbook which should contain the information necessary for the offender to complete the program.

The information furnished to the offender should include the consequences of a refusal to cooperate, a positive test result, and the requirements concerning the offender's medical history.

Agency Collection Sites

Each agency should designate a specific collection site to ensure the integrity of the entire specimen collection process. Strict regulations should govern who has access to this area.

Chain of Custody

Rigorous chain of custody procedures should be implemented as part of an agency drug testing program. Records should document who has handled each specimen from the time it was provided until the test results are introduced as evidence into court and ending with disposition of the specimen. A vital component of every program should require each specimen to be provided under direct and continuous observation in order to ensure specimen integrity.

Reporting of Results

The agency should designate which agency official is to receive the drug test results from the laboratory or onsite facility and should develop stringent controls over how drug testing results are to be transmitted within the agency and which agency personnel shall be designated to receive them. Standard turn-around time should be 72 hours or less (preferably 48 hours) from the time the specimen reaches the laboratory until test results are received by the agency submitting the specimen. A certified copy of the original chain of custody form for all confirmed positive specimens should be signed by the laboratory director or certifying official and sent to the office submitting the urine specimen.

Use of Results

For any such program to deter drug use, released offenders must be held accountable for any violations of the conditions of probation or parole. Probation and parole agencies, the courts, and parole boards should demonstrate an intolerance toward drug use during a release period. Unscheduled drug testing should be established with escalating sanctions imposed when drug use continues.

An offender who tests positive should be confronted with test results within 72 hours of the agency obtaining the results, and the period for confrontation should never exceed 7 days.

An admission of drug use may be used as a confirmation. There may be certain judicial districts where a signed confession will not be sufficient for court proceedings. The legality of admission statements and their admissibility in court should be explored with judicial personnel prior to program implementation.

Confidentiality

The issue of confidentiality is governed by rules which vary from State to State. There are also Federal and State laws which may govern disclosure and nondisclosure that may or may not apply to probation and parole. There is not as yet any case law addressing the issue of to whom drug test results can be disclosed.

Nevertheless, the agency should determine what governs confidentiality and make certain that the drug testing policies and procedures adhere to disclosure laws. Strict adherence to confidentiality regulations should be maintained. If disclosure laws do not exist, then the agency should draft its own policy.

Contracting for Drug Testing Services

Agencies electing to contract for laboratory services should make the best possible selection based on agency needs. Each agency should develop criteria prior to entering into a contractual arrangement with an outside laboratory. The criteria should include the selection of laboratory personnel, analysis proce-

dures, quality assurance and quality control, reporting and review of results, initial and confirmatory testing capability, the ability to provide expert witness testimony if needed, courier services, and which classes of drugs to test.

Establishing Onsite Instrument-Based Drug Testing

Most drug screening for the detection of drugs in bodily fluids is conducted by an analytical methodology known as immunoassay, of which there are two types: radioimmunoassay (RIA) and enzyme immunoassay (EIA). EIA, the most frequently used by probation and parole agencies, is based on the principle of competition between labeled and unlabeled antigen (drug) for binding sites on a specific antibody. Antibodies are protein substances with sites on their surfaces to which specific drugs or drug metabolites will bind. The Abbott ADx and Syva ETS are product examples of immunoassay methodologies that are instrument-based.

There are many similarities between the criteria for establishing onsite instrument-based testing and contracting for drug testing services. Onsite instrument testing, however, will be almost exclusively initial testing. Equipment is now on the market in a variety of methodologies which will allow agencies to train personnel to conduct the tests. The major concern for onsite instrument-based testing is to produce results that are reliable, accurate, valid, and defensible in legal proceedings.

Establishing Onsite Non-Instrument-Based Drug Testing

Non-instrument-based drug testing refers to the use of any portable immunoassay testing capability (e.g., Roche Diagnostics' On-track or Environmental Diagnostics' EZ Screen) which is simple, accurate, and cost-effective that does not require onsite instrument analysis. A non-instrument test may be used any place inside or outside of a probation or parole office or drug testing facility. Several issues need to be considered when conducting defensible non-instrument-based drug testing.

Drug Testing Costs

There are a number of critical elements which have cost implications that agency planners should consider when developing a drug testing program. Options that are both cost-effective and responsive to the agency's drug testing goals and objectives should be considered.

The decision to conduct onsite drug testing or to contract with an outside laboratory is perhaps the major factor affecting program costs. It is impossible to recommend a direction that is applicable to every jurisdiction. There are considerations, however, which are germane to most agencies that can be used to project program costs. These considerations should be used in conjunction with the agency drug testing goals and objectives. The overriding concern in considering which testing approach to use should be that the reliability and accuracy of the test results must never be in question.

Management Information Systems

Agencies should develop an organized information retrieval and review system which complements general research capabilities. Information produced by electronic systems coupled with a research capacity will greatly strengthen any drug testing program. The interpretations of data it can provide when program reports are needed might ensure a drug testing program's survival.

Agencies should regularly monitor and evaluate the utility and effectiveness of their drug testing program. Mechanisms should be established so that agency officials may conduct performance measures and audit recording practices whenever test results are challenged.

An agency should consider a system capable of delivering two basic kinds of information.

- standard information which consists of the data needed for management control, and
- information needed to generate reports for agency directors, researchers, and legislators.

One of the most important steps a probation and parole agency can take to improve its drug testing program and make it more cost-effective is to keep detailed statistical data on positive rates and corresponding drug use trends and redirect its drug testing based on these data. Many probation and parole programs continue to test for specific drugs long after they have ceased to be a substance abuse problem. Many test for specific drugs which are not substance abuse problems in their area.

Conclusion

Each jurisdiction will have unique conditions which will require selecting or modifying the guidelines to its needs. The guidelines are prescriptive, but not binding, and are to be used by adult probation and parole agencies as deemed appropriate. They are not standards; however, the guidelines do represent goals for agencies to continually strive to achieve and maintain.

National Institute on Drug Abuse Guidelines Applicability

In April of 1988 the National Institute on Drug Abuse (NIDA) established Guidelines For Federal Workplace Testing Programs. These guidelines specifically stated that they did NOT apply to drug testing in the criminal justice setting. Therefore, it became necessary for guidelines to be established which specifically applied to criminal justice testing for probation and parole agencies. There is a clear and distinct difference between an employee workplace testing program and a criminal justice testing program. For agencies which become involved in both programs, separation of program policies and procedures must be maintained for the testing purposes to be achieved and for the assurance of the credibility of each program.

The current exemption of criminal justice drug testing programs from the NIDA guidelines should be maintained. However, many of the specific provisions of the NIDA guidelines represent the best drug testing practices regardless of the type of testing program. The APPA Advisory Committee thoroughly reviewed the NIDA guidelines to determine which guidelines were applicable to a probation and parole drug testing program and has incorporated those guidelines into this document.

There are more similarities than differences between the two sets of guidelines, however the differences are significant in the following areas:

- Probation and parole agencies should not be limited to testing only for the five drug classes specified by NIDA which included cocaine, opiates, amphetamines, cannabinoids, and phencyclidine (PCP).
- Drug test results in probation and parole programs need not be verified by a licensed physician or medical review officer.
- Certain drugs which probation and parole agencies may need tested cannot be screened using an immunoassay testing methodology. Therefore, only in the event that an immunoassay testing methodology does not exist for a particular drug class may another initial screening methodology be used.
- Confirmation requirements, cutoff levels, specimen collection procedures, and onsite drug testing are the other main areas where the APPA guidelines have been specifically developed for the criminal justice testing program and differ from the NIDA guidelines.

To assure the full reliability and accuracy of drug testing operations, the precise reporting of test results, and the integrity and efficiency of probation and parole drug testing programs, APPA will make every effort to update this document to reflect advancement in methodology.

INTRODUCTION

Crime associated with drug use and drug trafficking has increased significantly in our society. Most research now indicates a direct correlation between drug use and criminal behavior. Drug addicts commit more crimes during episodes when they are using drugs, particularly when they are using expensive dependence-producing drugs like cocaine and heroin, than during periods of decreased drug use. It is also important to note that illicit drug use, in and of itself, is a criminal act and needs to be intensely monitored if we are to preserve the public order.

Indicative of a general social problem, the abuse of legal and illegal drugs has permeated every level of society. The effects of this societal drug problem upon probation and parole agencies are overwhelming. Many agencies, strapped for resources, are unprepared to deal forcefully with the problem in a way that will assure protection of the community and rehabilitation of the offender.

Nevertheless, many probation and parole agencies are attempting innovative responses to the drug abuse problem by instituting drug testing programs. There are several purposes for conducting drug testing. It can be used to identify drug use; to assist in the daily management of offenders during treatment; to aid in detection and intervention; and to provide a history of drug abstinence or use. When adult and juvenile offenders are tested for drug use prior to being released into the community, the court or parole board may intervene by employing drug testing as a condition of probation or parole.

In many cases judges and parole boards use scientifically reliable drug test results to set probation and parole conditions. Where appropriate, conditions typically include counseling, treatment, and the use of drug testing to detect and deter continued drug use. With the availability of drug testing, judges are more likely to release the drug using offender to the community since drug testing of released offenders is an effective means of monitoring drug use and reducing criminal risk.

There are other arguments to be made in favor of developing or extending the drug testing capability within an agency's jurisdiction. The Nation's jails and prisons are full of drug involved offenders. Drug testing can reduce the strain on these institutions by placing low-risk drug abusing offenders in residential treatment or urine monitoring programs. This could result in a decrease in jail and prison populations and a reduction in drug abuse and crime. A capability for conducting random drug screens on released offenders will enhance an agency's efforts to intervene in an offender's inappropriate behavior.

Some individuals will remain drug free only for the duration of their probation or parole period. However, exposing these individuals to an alternative lifestyle may motivate them to become productive citizens rather than pursuing a drug using lifestyle supported by crime. A drug testing program will enable agency personnel to determine who will comply with conditions of probation or parole prohibiting drug use and who will not. With the use of scientifically reliable drug tests, agencies and the courts may initiate appropriate sanctions for continued drug use by an offender.

The magnitude of the drug problem has necessitated innovative responses in order to detect the actual substances being abused. State-of-the-art technologies are available to be used effectively as diagnostic and therapeutic instruments. Drug testing technology is used by probation and parole agencies as a diagnostic instrument to detect accurately and reliably the presence of illegal drugs in an offender's system. If this capability is in-house, results can be received within a very short time. A court order for an immediate test could produce accurate results within minutes. This capacity allows the agency to make accurate determinations of drug use very quickly. It enables the agency to inform the court of violations as well as to confront an offender more expeditiously.

Drug testing is therapeutic in that it can detect and confirm drug use, which accelerates breaking through the denial period. Often it will lead to an admission of

drug use by an offender, which sometimes produces the initial rewards essential for many offenders to regain control of their lives. Admissions of drug use coupled with an accurate summary of the extent of drug use will assist the sentencing judge or parole board in setting the conditions of probation or parole, which may include referral to a treatment program. This information will also help the officer develop a case management plan directed toward rehabilitation.

Rehabilitation of the drug abusing offender is very often facilitated by sobriety, which is a necessary condition for successful treatment. Sobriety can be induced in the probation and parole setting by using drug testing to deter drug use. Drug testing is a deterrent because positive test results can be presented to the court for consideration before sentencing. This information can be used in conjunction with a system of graduated sanctions. The provision of assistance and services directed toward holding the offender accountable is possibly the best guarantee against future criminal activity.

Finally drug testing is not a panacea for resolving drug problems for any jurisdiction. Drug testing is only a tool which should be used to complement other probation and parole operations.

Legal Issues. Legal issues encompass every aspect of drug testing programs. Probationers and parolees have challenged drug testing procedures in courts on various legal and constitutional grounds, alleging violations of the right against unreasonable search and seizure, the right to due process, the right to confrontation and cross-examination, and the right against self-incrimination.

While these legal challenges have generally been unsuccessful, it is necessary to determine what practices and procedures are legally defensible. Many of the guidelines in this document are aimed at providing protection in case legal challenges are raised against agencies that conduct drug testing. The guidelines are based on statutes or drug testing case law. The guidelines are generic, meaning that they may be preempted by specific laws or cases decided in a particular State. There is need to consult State legislation and court decisions, if any, relative to drug testing in a particular State. If these are contrary to the recommended guidelines, State legislation and court decisions must be followed.

Drug Testing in the Probation and Parole Setting. The *Drug Testing Guidelines and Practices for Adult Probation and Parole Agencies* apply only to testing of probationers and parolees and are not intended to be used for drug testing in any other context. The law governing testing of probationers and parolees differs from testing of employees in the workplace.[1] Because probationers and parolees have been convicted of a crime, they are not entitled to the full constitutional protection given to law-abiding citizens. The United States Supreme Court, in *Morrissey v. Brewer*, 408 U.S. 471, 494, 92 S.Ct. 2593 (1972), stated that the revocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations. . . . Revocation deprives an individual, not of the absolute liberty to which every citizen is entitled, but only of the conditional liberty properly dependent on observance of special parole restrictions.

Similarly, probation is a penal alternative to incarceration, with the objectives to foster the offender's reformation and to preserve the public's safety. A sentencing court is given broad discretion to fashion the conditions of probation it deems necessary to ensure the individual successfully completes his term of probation, and may impose conditions that would impinge on the ordinary citizen's constitutional rights.[2]

As stated by the Supreme Court in *Griffin v. Wisconsin*, 483 U.S. 868, 107 S.Ct. 3164, 3168, 97 L.Ed. 2d 709 (1987):

A State's operation of a probation system, like its operation of a school, government office or prison, or its supervision of a regulated industry, likewise presents "special needs" beyond normal law enforcement that may justify departures from the usual warrant and probable cause requirements.

The courts have wide discretion in imposing conditions upon parolees and probationers. Such restric-

1. *Gagnon v. Scarpelli*, 411 U.S. 778, 93 S. Ct. 1756, 1759–60 (1973) ("there is no difference relevant to the guarantee of due process between the revocation of parole and the revocation of probation").

2. *United States v. Williams*, 787 F.2d 1182, 1185 (7th Cir. 1986).

tions are meant to assure both that a period of rehabilitation occurs and that society is not harmed by the probationer's or parolee's presence in the community. These goals "require and justify the exercise of supervision to assure that the restrictions are in fact observed." *Id.* Requiring a probationer or parolee to submit to urine tests has been held by the courts to be a constitutionally acceptable condition.[3]

The *Drug Testing Guidelines and Practices for Adult Probation and Parole Agencies* have been carefully tailored to satisfy Federal and State constitutional requirements relating specifically to probationers and parolees. Because of the diminished constitutional protection afforded to probationers and parolees, the application of the guidelines in contexts such as the workplace, where employees enjoy full constitutional protection, is inappropriate. Specifically, these guidelines and practices have been developed for postadjudication purposes only. Pre-trial services agencies should refer to the drug testing standards developed by the National Association of Pre-Trial Services Agencies.

3. *See, e.g., People v. Roth,* 397 N.W.2d 196 (Mich. Ct. App. 1986); *Creel v. Texas aff'd,* 754 S.W.2d 205 (Tex. Crim. App. 1988).

How To Use This Document

This document is organized so that the reader can easily find the information needed and discern the significance ascribed to each section by the order in which it appears. It is not necessary for agency administrators to read the entire document to benefit from its contents. The document is intended as a resource manual in which staff may review only those sections of interest. Some sections are more policy-specific, whereas others are more technical in nature. Sections placed near the beginning of the document should be read first because they are either so important as to be placed there ahead of the others or because they need to be regarded as part of a sequence of considerations.

The Executive Summary highlights the principal focus and the main conclusions of each of the major sections of the document. The sections within the summary appear in exactly the same order as they do in the document. One should read this summary to get a basic understanding of what is included in each section. This should allow the reader to determine whether it is necessary to read and comprehend certain sections or to be merely cognizant of what material is in the document without knowing the detail. However, for those subjects which the reader needs to know, the summary will direct the reader's attention to that particular section.

The Table of Contents has been annotated so that every subtopic is referenced as it appears in the sections of the text. This will allow the reader to have a considerable reference capability with the contents of the guidelines. The guidelines in each section are arranged so that there is either a weight attributed to them or because they appear as a sequence of actions to be performed.

A few of the guidelines are by nature self-explanatory, but the majority require explanations. For these, commentary immediately follows the end of each guideline. The commentary provides the details covering the guideline which cannot be included or easily understood from reading it. Often the commentary includes the reasoning for its inclusion, or explains how it might be implemented as well as why and when it should be.

Each guideline is numbered consecutively, starting with the number 1–1. For example, the first guideline in the first section is number 1–1, the first guideline in the second section is number 2–1, and the second guideline in section six is number 6–2.

The appendix is separated into three parts consisting of case law review and abstracts, forms, and drug testing methodologies. The case law is arranged in several different formats to allow for easy access to both particular cases (alphabetical) and constitutional issues or by topics. The section on case abstracts provides more detail than the others, but all are properly referenced.

The section on forms is presented in order to give agencies some examples of what is currently being used. They may be used as guides to develop forms for a drug testing program or they may be reproduced as they are should they be appropriate to a particular agency's needs.

AGENCY MISSION

The mission of a probation or parole agency usually includes the surveillance of offenders to protect the community, the deterrence of future criminal behavior and the provision of some type of professional guidance to offenders.

1–1. DRUG TESTING SHOULD BE IMPLEMENTED SO AS TO ENHANCE THE LEGITIMATE MISSION OF THE PROBATION AND PAROLE AGENCY.

Commentary: Drug testing goals and objectives should be derived from and supportive of the established mission of the parent government agency. Public sector agencies generally derive their formal mission statements either from enabling legislation or other legal directives that mandate policy objectives which are clear and consistent. Such legal mandates typically identify the principal factors supporting the overlying policy objectives. The implementing agency is then granted sufficient jurisdiction to attain the desired goals. Mission statements are usually broad, thus allowing an environment conducive to organizational decision-making. The task for a probation or parole agency implementing a drug testing program is to develop a mission statement which will reflect legislative and judicial intent.

If an agency plans to develop a drug testing program, the goals and objectives of the program should be derived from the overall agency mission.

The extent to which an agency uses drug testing may be determined in part by the:

- agency mission statement;
- availability of agency resources;
- drug use patterns of the probation and parole population; and
- sentencing patterns in the jurisdiction.

PURPOSE OF TESTING

2–1. PROBATION AND PAROLE PERSONNEL SHOULD PRESENT DOCUMENTATION TO THE AGENCY ADMINISTRATORS WHICH WILL CONFIRM THAT A DRUG PROBLEM EXISTS AND THAT THERE IS A NEED FOR A DRUG TESTING PROGRAM.

2–2. AGENCY POLICYMAKERS SHOULD PREPARE A PLAN SPECIFYING THE GOALS AND OBJECTIVES OF THE PROPOSED PROGRAM AND SUBMIT IT TO THE AGENCY ADMINISTRATORS.

Commentary: Succinctly written drug testing goals and objectives are vital for:

- implementing the drug testing program;
- ensuring staff comprehension, acceptance and cooperation essential for program success; and
- establishing the operational framework upon which drug testing policies and procedures should be implemented.

Each jurisdiction will have unique conditions which will require selecting or modifying the following guidelines to their needs. An agency's drug testing goals may include any combination of the following:

- identification;
- assessment;
- deterrence;
- surveillance; and
- treatment.

2–3. THE PLAN SHOULD PROVIDE DETAIL TO SHOW HOW SUCH AN APPROACH WILL ADDRESS THE PROBLEM WITH AN ACCEPTABLE OUTCOME WITHIN A GIVEN TIME FRAME.

Commentary: Constructing a foundation in this way is the first essential step in developing a harmonious relationship among the drug testing unit's personnel, the parent agency's leadership, the judiciary, and community-based treatment agencies. Specifically, detail should be provided on how the program will:

- work with the courts;
- operate within the corrections agency;
- use the capabilities of existing community-based counseling and treatment programs; and
- affect the courts, the corrections agency and the community-based counseling and treatment programs.

Drug testing in the criminal justice system should be one component within a continuum of services designed to hold criminals accountable, while meeting the individual treatment needs of each offender.

DRUG TESTING POLICIES AND PROCEDURES

Administration

3–1. PROBATION AND PAROLE AGENCIES SHOULD IMPLEMENT DRUG TESTING PROGRAMS ONLY AFTER ESTABLISHING RELEVANT POLICIES AND PROCEDURES.

Commentary: An important element of a drug testing program for probation and parole agencies is a succinctly written statement of the formal policy goals and objectives. Legislative statutes, judicial orders and policy directives originating from within the agency usually supply the impetus for developing program policy.

Written policy will help formalize drug testing goals and objectives while providing the general framework for policy implementation. It will ensure program direction, understanding, and unity of purpose. Written policy will promote consistency and continuity during program implementation and periods of personnel changes.

Written drug testing policies and procedures will assist the parent government agency in embracing the long-term goals and objectives of this program. Agency policymakers should incorporate mechanisms that will allow for policy revision and the objective and neutral evaluation of policy effectiveness by outside consultants.

3–2. DRUG TESTING POLICY FOR PROBATION AND PAROLE AGENCIES SHOULD BE CONSISTENT WITH THE APPA DRUG TESTING GUIDELINES EXCEPT WHERE THESE GUIDELINES ARE INCONSISTENT WITH STATE OR LOCAL LAW, CASE PRECEDENT OR OTHER RECOGNIZED AUTHORITY.

Commentary: In case there is a conflict, State or local law should prevail.

3–3. PROBATION AND PAROLE AGENCIES SHOULD SEEK CLARIFICATION OF THE SPECIFIC ROLES OF GOVERNMENT AND COMMUNITY-BASED ORGANIZATIONS INVOLVED IN DRUG TESTING.

Commentary: Clarification will make the entire process more efficient and ensure that all parties agree on the basic tenets of the program and the responsibilities of each party.

3–4. PROBATION AND PAROLE AGENCIES SHOULD DEFINE THE RESPONSIBILITIES AND FUNCTIONS OF THE DRUG TESTING PROGRAM, UNLESS THESE HAVE BEEN DEFINED BY STATE LAW.

3–5. THE AGENCY SHOULD SUBMIT THE DRUG TESTING POLICIES AND PROCEDURES TO THE APPROPRIATE JUDICIAL OR PAROLE BOARD PERSONNEL FOR REVIEW AND COMMENT PRIOR TO PROGRAM IMPLEMENTATION.

Commentary: Appropriate updates or changes to the policies and procedures should be distributed to the appropriate judicial or parole board personnel as they become effective.

3–6. THE POLICIES AND PROCEDURES SHOULD BE REVIEWED BY AN APPROPRIATE LEGAL AUTHORITY OR BY A KNOWLEDGEABLE ATTORNEY TO ENSURE THAT IT COMPLIES WITH STATE LAW.

Commentary: In view of statutory and case law variations from State to State, it is necessary that the manual be reviewed by persons with legal expertise. In some cases it may be appropriate for the State Attorney General's office to review the policies and procedures to ensure that they comply with State law.

3–7. POLICIES AND PROCEDURES SHOULD BE DISSEMINATED IN A CLEARLY AND CONCISELY WRITTEN DOCUMENT.

Commentary: A drug testing manual is a must if both the agency and its officers are to institute an effective and legally defensible testing program. The provisions of this manual are a fertile source of information.

3–8. THE AGENCY SHOULD DEVELOP RELEVANT AND NECESSARY FORMS NEEDED TO ADMINISTER EFFECTIVELY AND EFFICIENTLY THE DRUG TESTING PROGRAM'S POLICIES AND PROCEDURES.

3–9. WRITTEN DRUG TESTING POLICIES AND PROCEDURES SHOULD BE DATED AND REVIEWED ANNUALLY.

3–10. AGENCY PERSONNEL INVOLVED IN DRUG TESTING SHOULD PARTICIPATE IN THE CONTINUING REVIEW OF THE DRUG TESTING GOALS, POLICIES, PROCEDURES, RULES AND REGULATIONS.

Commentary: Although the director has ultimate responsibility for the agency, staff at every level can contribute to the development of a drug testing policy. Staff participation in decision-making process helps to ensure that the attitudes and values of the individual members are synonymous with those of the agency.

3–11. THE AGENCY SHOULD MAINTAIN A DIRECTORY OF COMMUNITY RESOURCE AGENCIES FOR REFERRAL AND TREATMENT PURPOSES.

Commentary: Probation and parole have a direct effect on the community. Every effort should be made to establish and promote the utilization of community resources that will have a positive effect on the offender from the rehabilitation point of view.

3–12. THE AUTHORITY, RESPONSIBILITY AND ACCOUNTABILITY OF DRUG TESTING PERSONNEL SHOULD BE CLEARLY IDENTIFIED IN THE POLICIES AND PROCEDURES MANUAL.

Commentary: An organization chart may be used. It should be signed, dated and amended as necessary at least once a year.

3–13. THE AGENCY SHOULD APPOINT A DRUG TESTING PROGRAM COORDINATOR TO BE RESPONSIBLE FOR THE COORDINATION OF THE AGENCY'S DRUG TESTING ACTIVITIES IN ACCORDANCE WITH ESTABLISHED POLICIES AND PROCEDURES.

Commentary: A coordinator should be identified for any agency having drug testing capability of some kind whether it be onsite instrument drug testing or contracted services.

Training

3–14. AGENCY STAFF SHOULD BE PROVIDED TRAINING COVERING THE GOALS, OBJECTIVES, POLICIES AND PROCEDURES OF THE DRUG TESTING PROGRAM.

Commentary: Each staff member should possess a copy of the *Drug Testing Policies and Procedures.* They should read and understand them, and be familiar with the duties required. Staff should be sufficiently trained so as to achieve the agency's drug testing goals and objectives. Feedback and dialogue from staff should always be encouraged during agency training sessions and staff meetings.

The agency should establish a training program which will ensure that appropriate agency personnel understand the intent of the drug testing policies and procedures. The agency drug testing coordinator should review and be involved in the training program. A specific period of time or number of hours for the training program is not recommended because each agency will have different variables to consider: size, available resources, offender population, selection of methodology, and the choice of laboratory settings, etc. The basic training concerning drug testing policies and procedures should be comprehensive and may be handled as part of a new employee orientation or inservice orientation.

Additional training subjects should include, but are not limited to: hygiene and safety precautions, onsite instrument maintenance and clean-up procedures, and preparation for court testimony.

3–15. AGENCIES SHOULD NOT COLLECT URINE SPECIMENS UNLESS THE INTENDED PURPOSE IS TO HAVE THE SPECIMEN TESTED FOR THE PRESENCE OF DRUGS OR DRUG METABOLITES.

Commentary: Some agencies in the past have engaged in the practice of collecting specimens without submitting these to a laboratory for analysis. The reason for this practice is to deter drug use with the threat of sanctions without actually incurring costs. This practice represents extremely bad policy, since offenders will learn that they can "beat" the system because positives will go undetected. When this occurs offenders will begin to question the drug testing methodology and the credibility of the program will be in jeopardy. Additionally, this practice violates the trust between the officer and offender and wastes staff time in collecting specimens needlessly.

AUTHORITY TO TEST

Authorization

4–1. PRIOR TO REQUESTING A DRUG TEST AGENCY OFFICIALS SHOULD DETERMINE WHETHER PROPER AUTHORIZATION EXISTS.

Commentary: In most jurisdictions the authorization for drug testing will be found in State statutes, judicial or parole board orders, or departmental decrees. Agencies conducting drug testing should acknowledge the legal mandates for such authorization in their policies and procedures.

e.g.: The Department of Corrections, Probation and Parole Services has the authority to test (for drugs) according to Florida Statute 948.03 and as stated in the standard Probation order issued by the courts.

4–2. THE AUTHORITY TO CONDUCT DRUG TESTING AS A CONDITION OF PROBATION OR PAROLE SHOULD BE DEFINED BY STATE STATUTE, COURT OR PAROLE BOARD ORDER, AND ADMINISTRATIVELY BY THE PARENT GOVERNMENT ORGANIZATION (e.g., Department of Corrections).

Commentary: This guideline should be mandatory during the pre-sentence and post-sentencing phase. This standard may be augmented when a presiding judge or parole board orders drug testing as a specific condition of probation or parole for an individual case. A court order for drug testing should reduce the probability of a successful legal challenge.

4–3. DRUG TESTING SHOULD BE AUTHORIZED BY STATE LAW INSTEAD OF BEING MERELY A CONDITION IMPOSED BY THE JUDGE OR PAROLE BOARD.

Commentary: Although courts have generally considered drug testing imposed by the judge or parole board without legislative authorization as valid, the passage of such legislation ensures a more successful defense against potential legal challenges. Whenever possible, such a condition should be authorized by law.

An agency which adopts the above standard to conduct drug testing can be confident that the probability of a successful court challenge based on the authority to test will be greatly diminished. However, agencies must remain cognizant of the many other areas where successful court challenges may originate.

4–4. AGENCIES SHOULD ENCOURAGE THE ENACTMENT OF LEGISLATION WHICH AUTHORIZES DRUG TESTING AS A CONDITION OF PROBATION AND PAROLE AND EXEMPTS OFFICERS AND AGENCIES FROM CIVIL LIABILITIES UNDER STATE LAW, BUT NOT FROM FEDERAL LAW, ARISING FROM THE IMPOSITION AND IMPLEMENTATION OF DRUG TESTING.

Commentary: The United States Supreme Court has held that such a law is valid when used to defeat claims under State tort law, although not for claims based on Federal law, *Martinez v. California*, 444 U.S. 277 (1980). An immunity provision enables officers to perform the task of drug testing more effectively, knowing that the legal risks in this intensifying field of supervision are removed through legislation.

4–5. IN THE ABSENCE OF A STATE STATUTE TO CONDUCT DRUG TESTING, AGENCIES SHOULD SEEK A COURT OR PAROLE ORDER TO AUTHORIZE TESTING AS A CONDITION OF PROBATION OR PAROLE.

Commentary: Whether authorized by statute or not, drug testing is better imposed by the judge or board as a routine condition of probation and parole in cases where it is reasonably related to the rehabilitation of the offender. Court decisions indicate that drug tests are valid anyway despite the absence of law or court order, but officers and the agency are better protected from possible civil liabilities if the condition is imposed by law, the judge, or the parole board. To assure flexibility based on individual needs,

the agency must be given the discretion to determine when or how often the test may be conducted.

When To Test

4–6. THE FREQUENCY OF DRUG TESTS SHOULD BE LEFT TO THE DISCRETION OF THE AGENCY UNLESS SPECIFIED BY COURT OR PAROLE BOARD ORDER.

Commentary: Drug testing should be unscheduled, unless otherwise specified by a court order, depending upon individual needs as determined by the agency. Drug testing "for cause" based on "reasonable suspicion" is clearly valid. The same is true of periodic or scheduled testing. Unscheduled testing (meaning testing without cause or prior warning) in probation and parole has not, however, been addressed directly by the courts, although it has been upheld by at least one court in a prison setting. Inasmuch as prisoners, probationers, and parolees have diminished constitutional rights, there are strong reasons to think that unexpected testing, as long as it has been imposed as a condition, will most likely be upheld as well by the courts, provided it does not constitute harassment.

4–7. DRUG TESTING SHOULD BE IMPOSED AS A CONDITION OF PROBATION OR PAROLE IN CASES WHERE:

- the offender has a history of drug use;
- it is reasonably related to the rehabilitation of the offender; or
- it is needed to identify users who have no outward appearance or history of drug use.

Commentary: A defendant's status and criminal record could likely be attributed to drug use. Given the correlation between drug use and crime, it is reasonable to impose drug testing for both public safety and rehabilitation purposes. From a public safety point of view, it is the responsibility of probation and parole agencies to ensure that everyone under their jurisdiction is drug free. Since it is impossible to determine who has or has not used drugs by offense categories or status at assessment, submission of a sample upon request could reasonably be a condition for every offender.

From the rehabilitation point of view, drug testing results can be a positive part of treatment if the results are presented appropriately to the offender. For example, should an offender who continues drug use during treatment deny such use, a positive can be used to confront the denial. Even occasional use can be spotted before the offender falls back into a pattern of regular use. Drug testing often provides a positive reinforcement for offenders who remain drug free. It may help them to resist peer pressure to use drugs, and if an unscheduled (random) collecting and testing program is used, a daily phone call to determine whether a specimen is required reminds them that they are part of the program every day.

4–8. IF AN OFFICER HAS A REASONABLE INDICATOR THAT AN OFFENDER NOT REQUIRED TO SUBMIT TO DRUG TESTING IS USING DRUGS, THE OFFICER SHOULD ATTEMPT TO OBTAIN A COURT MODIFICATION OF THE CONDITIONS ALLOWING THE TEST TO BE PERFORMED.

Commentary: Although courts have generally accepted drug testing as a means of monitoring the offender, at least one court has expressed a preference for such modification, and another court upheld testing when such a modification was made. This is a better approach than simply imposing the test without a judicial order or condition modification.

Unusual circumstances may arise in which requiring offenders to be tested without a court order is justified. Officers should be allowed the discretion to order drug tests when, in their professional opinion and within budgetary limits, it is in the best interests of the offender, the supervising agency, and public safety to do so.

4–9. STATE STATUTES AND COURT OR PAROLE BOARD ORDERS SHOULD PROVIDE PROBATION AND PAROLE AGENCIES WITH THE AUTHORIZATION TO USE DISCRETION IN DETERMINING WHEN AND WHERE TO REQUIRE A DRUG TEST.

SELECTING DRUG TESTING METHODOLOGIES

Methodology Selection

Prior to selecting a methodology, agency needs related to drug testing should be identified and assessed. The purpose of testing and how it relates to the mission of the agency should be determined. This review should be done in the form of a formal needs assessment that could be sent to field staff and agency authorities. Also, it could be achieved by a thorough examination of relevant data accessible to the agency.

Once the needs of the agency have been defined, it will become necessary to prioritize those needs. This is necessary when selecting a proposal because often an agency will have to justify its choice. This choice should be made based on which proposal best meets the identified priority needs of the agency. If this work is done thoroughly and is well documented from the beginning, it will help ensure an effective and satisfactory selection process.

When developing a drug testing program, the agency should select a methodology that will provide a program which is consistent with the agency mission. Probation and parole agencies will become involved in selecting the drug testing methodology, or a combination of methodologies for use in their programs. An agency implementing a drug testing program will use primarily an immunoassay as the initial test. The four types of immunoassays presently available are radioimmunoassay (RIA), latex agglutination inhibition immunoassay, fluorescein polarization immunoassay (FPIA), and enzyme immunoassay. Occasionally an agency may need to test for a drug which cannot be screened using an immunoassay. In such a case other screening methodologies are appropriate only when an immunoassay is not available for a particular drug.

Agency authorities examining methodology issues also will be involved in determining the most appropriate location for their drug testing operations, i.e., onsite versus contracted. The following guidelines should be examined by the agency before moving into the selection process.

5–1. THE TARGET POPULATION AND FREQUENCY OF TESTING SHOULD BE IDENTIFIED IN ORDER TO DETERMINE THE EXTENT OF TESTING TO BE CONDUCTED.

5–2. THE AVAILABILITY OF FUNDS FOR IMPLEMENTING A DRUG TESTING PROGRAM SHOULD BE DETERMINED PRIOR TO SELECTING A METHODOLOGY.

Commentary: The cost-effectiveness of each methodology should be considered. Nothing will affect an agency's drug testing program or selection of methodology any more than availability of resources. Sufficient funding is a necessity for even the smallest testing program. These resources can come from a variety of sources such as State and Federal funding and/or grants. It is critical that an agency clearly outline and justify its testing needs in order to obtain sufficient funding.

5–3. CURRENT TESTING PRACTICES SHOULD BE REVIEWED AS PART OF THE PROCESS IN CHANGING METHODOLOGIES OR CONSIDERING A CHANGE IN METHODOLOGY.

Commentary: Agencies may already be involved in drug testing. Changes in the program format may be sought due to new technologies, change in resource allocations, dissatisfaction with current practices, etc. If agencies are involved in some form of testing it is essential they analyze current practices to identify what is good and what needs changing in order to implement an effective plan of action.

5–4. THE AVAILABILITY OF A TRACKING SYSTEM SHOULD BE CONSIDERED WHEN SELECTING A METHODOLOGY.

Commentary: Agencies may already have developed a method for tracking test results. However, if changes are being contemplated, the most advanced

method for tracking testing should also be considered. This may involve the utilization of a computer software program developed specifically for tracking testing results. Tracking can also provide long-term measurement of treatment program effectiveness.

5–5. PROJECTIONS IN REGARDS TO THE ANTICIPATED EFFECT OF TESTING, e.g., DETERRENCE OR REVOCATIONS, SHOULD BE MADE FOR EACH METHODOLOGY BEING CONSIDERED.

5–6. THE DESIRED LOCATION FOR TESTING, (I.e., CONTRACTING OUT, ONSITE SYSTEMS) SHOULD BE DETERMINED.

5–7. THE IMPORTANCE OF TESTING ACCURACY SHOULD BE CLEARLY ESTABLISHED.

Commentary: Some methodologies are more accurate than others. The need to use the most accurate and reliable methodology should be balanced against the costs associated with each methodology.

5–8. INFORMATION FROM FIELD STAFF RESPONSIBLE FOR IMPLEMENTING DRUG TESTING SHOULD BE ACQUIRED AND INCORPORATED INTO THE DECISION-MAKING PROCESS.

Methodology Review

A degree in toxicology is not required to select an effective methodology. However, it is important that an agency become familiar with the advantages and disadvantages of each methodology, and avoid basing its decision solely on the information provided by a single supplier. Agencies should consider several sources of information including:

- suppliers;
- literature reviews;
- established programs; and
- professional organizations.

A careful review may uncover hidden costs in a testing system which would not be evident unless an agency questioned the very methodology the system uses. During this time an agency should become familiar with the different definitions involved in testing, such as reliability, accuracy, cutoff, sensitivity, validity, etc. Only by having a basic understanding of this terminology will an agency be able to see how different manufacturers may manipulate these definitions to support their systems.

Reliability and Accuracy

Reliability and accuracy are of utmost importance in drug testing. They relate to the issue of fairness and focus mainly on technology used for the test. If given due attention they spare the agency the expense and trouble of having to defend constitutional challenges in court.

The twin dangers associated with reliability and accuracy are false positives and false negatives. In general terms, false positive means that a test result shows that an offender used drugs when in fact he or she did not. A false negative, on the other hand, means that the test result shows that the offender has not used drugs when in fact he or she did. No legal issues are raised in false negative results, but they do create serious problems such as reduced management effectiveness, increased community risk, and the erosion of program credibility. False positives do create a constitutional due process (fundamental fairness) issue. A reliable drug test must minimize, if not completely eliminate, false positives and false negatives.

One-hundred percent certainty is not required in drug tests. Neither is it required in any phase of the criminal justice process. What is required, however, is that the test be highly reliable and accurate. The degree of certainty required for admissibility of technical evidence varies from court to court, even within a State. Whether or not a particular type of drug testing is reliable enough for the results to be admissible is up to the court and is a matter of expert testimony.

If an agency is having a difficult time determining the best methodology, it should contact other agencies using the various testing systems for information. However, it is important to keep in mind that everyone has their biases concerning testing methodologies. Information obtained through the suppliers or other outside agencies should be carefully scrutinized before basing any decisions on this information.

Another approach to compare methodologies accurately could include an inhouse comparison study between the methodologies being considered. This can be set up usually with the cooperation of the competing suppliers so that an agency can determine for itself which system is most compatible with the needs and mission of the agency.

5–9. THE AGENCY SHOULD REVIEW AND HAVE A BASIC UNDERSTANDING OF CURRENT METHODOLOGIES AVAILABLE FOR THEIR TESTING NEEDS. (SEE APPENDIX C FOR BRIEF DESCRIPTIONS).

Commentary: During this pre-selection phase, the agency should study each of the methodologies being considered, and challenge the methodologies and their appropriateness to the agency's drug testing needs. This education process can be assisted by the different suppliers, who are usually very willing to set up formal or informal training sessions to explain the methodology they represent. It should be set up with suppliers representing each of the methodologies being considered.

5–10. INFORMATION ON THE METHODOLOGIES SHOULD BE OBTAINED THROUGH INTERVIEWS WITH VARIOUS SUPPLIERS, AS WELL AS DISCUSSIONS WITH OTHER AGENCIES USING THE VARIOUS METHODOLOGIES, i.e., OTHER PROBATION OR PAROLE AGENCIES, STATE CRIME LABORATORIES, ETC.

5–11. A REVIEW OF THE SUPPLIERS' PACKAGE INSERTS SHOULD BE MADE IN ORDER TO IDENTIFY WHAT CONDITIONS ARE REQUIRED FOR TESTING PRACTICES.

5–12. AGENCIES SHOULD REVIEW THE BENEFITS AND DETRIMENTS OF EACH METHODOLOGY FOR ITS COMPATIBILITY WITH THE AGENCY'S DRUG TESTING NEEDS AND PURPOSES, POLICIES, BUDGET AND THE TESTING SERVICES LOCATION, i.e., ONSITE, CONTRACTED, OR BOTH.

Commentary: Reviewing the methodologies involves looking into the systems which utilize a particular methodology. Determining which methodology to use and where the system will be used is one of the most important steps involved with establishing a testing program, second only to developing succinctly written policies regarding the testing program and its purpose. In making these decisions an agency must clearly delineate the advantages and disadvantages of each methodology/system being considered. This will include resource allocations which are discussed in the budget costs section of this document. In addition to the budget implications, there are several other issues which need to be examined closely by the agency. Agencies need to examine the benefits and detriments of each methodology/system proposal in conjunction with the following issues:

- Required length of chain of custody. (For example, does onsite testing reduce the need for drawn out and potentially more expensive chain of custody requirements, at least for the majority of initial testing?)
- Cutoff levels. (For example, does the cutoff levels of the methodologies/systems being considered adapt to the APPA recommendation for cutoffs, or would an agency be locked into set cutoffs which are contrary to levels established for criminal justice testing?)
- Flexibility in handling initial and confirmatory testing based on how an agency will be using the results. (For example, is onsite testing more adaptable to taking advantage of flexibility in APPA confirmatory practices? A contracted laboratory may be locked into a more expensive and timely practice to meet other certification requirements, which do not necessarily apply to criminal justice drug testing.)
- Reliability of systems used. (For example, does a more formal contracted laboratory setting offer more reliable results than an onsite instrument-based drug testing system being considered, as some laboratory professionals contend?)
- Ability to develop drug trend analysis based on test results of target population.
- Potential dichotomy of drug tester also being case supervisor. (For example, does onsite testing have a greater potential for misuse of results because the tester also may be involved with imposing sanctions on the offender when a positive result occurs?)
- Ease in obtaining expert testimony when needed.

- Operational requirements which have financial implications. (For example, all potential budget items required for each system must be examined including personnel needed, training, equipment and supplies, etc.).

Each of these issues must be thoroughly examined by the agency before making a decision on which methodology/system(s) to select.

Relationship With Suppliers

5–13. AUTHORITIES REPRESENTING THE AGENCY'S INTERESTS SHOULD MAINTAIN AN INFORMED, PROFESSIONAL AND UNBIASED WORKING RELATIONSHIP WITH THE SUPPLIER REPRESENTATIVES.

Commentary: Suppliers can offer an agency much needed information in the development of their testing programs and policies. They are very often an excellent training and informational resource. However, some of the suppliers can become very assertive and overwhelming. It is important that agency authorities do not become intimidated by the suppliers. Agency authorities must make it clear that the agency has established what its testing needs are and does not necessarily want to rely on the supplier interpretation of what the agency needs should be.

Selection Process

5–14. AN AGENCY SHOULD PREPARE AND DISSEMINATE A REQUEST FOR PROPOSAL (RFP) IN ACCORDANCE WITH AGENCY POLICY.

5–15. THE REQUEST FOR PROPOSAL (RFP) SHOULD BE SPECIFIC TO THE AGENCY'S DRUG TESTING NEEDS.

5–16. MINIMALLY, THE REQUEST FOR PROPOSAL (RFP) SHOULD SPECIFY:

- how the methodology will meet agency needs;
- other customers using the methodology or product;
- information regarding the reliability and accuracy of the methodology or product;
- the testing equipment and supplies needed to run the testing system;
- identification of every type of drug to be tested;
- product specifications, including cutoffs;
- the training to be provided by the supplier, both initial and inservice;
- the maintenance and replacement of equipment;
- the details of purchasing or leasing arrangements;
- a computer package for tracking results that may be included;
- the delivery arrangements;
- other services suppliers may supply, i.e., troubleshooting services, 800 numbers, etc.; and
- testifying in the event of court challenges.

Commentary: This guideline also applies to contracting for laboratory services.

5–17. THE AGENCY SHOULD ENSURE THAT THE REQUEST FOR PROPOSAL (RFP) IS WIDELY DISSEMINATED TO AS MANY ELIGIBLE SUPPLIERS AS POSSIBLE.

5–18. PERSONNEL RESPONSIBLE FOR IMPLEMENTING THE DRUG TESTING PROGRAM SHOULD WORK CLOSELY WITH PURCHASING AUTHORITIES THROUGHOUT THE REQUEST FOR PROPOSAL (RFP) PROCESS.

Commentary: The purchasing process is usually controlled by a separate division. However, in an effort to maintain control of this process, an agency probation or parole authority should be in contact with purchasing authorities in order to assure costly delays are avoided.

5–19. THE AGENCY SHOULD ESTABLISH A REVIEW PROCESS AND ENSURE THAT THIS PROCESS IS UNDERSTOOD BY THE SUPPLIERS.

Commentary: It is important to review carefully the proposals that are received in order to determine

which is most appropriate. Ideally, a review panel should be established that could identify major methodological considerations and could then initiate an objective scale or point system to measure every consideration. A review panel could substantiate its objectivity if decisions were based on a heretofore agreed upon objective scale or measurement. Typical questions may be as follows:

- Do the prices fall within the agency's allotted resources?
- Will the supplier furnish the training needed and provide a support system for the testing sites?
- Is the agency able to supply a needed tracking system?
- Are the delivery schedule and costs satisfactory?
- Does the methodology used by the supplier adequately meet the testing needs of the agency?
- Are additional investments needed to implement the methodology?

These are some of the basic considerations to be made when reviewing the proposals. The agency will have to carefully justify the reasons for selecting a certain proposal, particularly if it is not the lowest bid received.

In order to justify its selection, an agency can support its choice by providing previously identified priorities of testing needs and matching them with the services provided by the supplier that best meet these needs. In addition, the agency may support its methodology choice through the results of its own inhouse study and/or referenced studies from outside sources which support its preferred methodology.

CONFIRMATION

To confirm or not to confirm, that is the question. The issue is whether it is sufficient to rely on the results of one positive test or have the specimen retested so the results can be better defended in court. This question is closely akin to reliability and sufficiency of evidence.

The bottom line is that the question of whether to confirm is a choice between expense and legal defensibility of the test results as sufficient for agency action. Confirmation means additional expense, but it strengthens agency claim to reliability of results, and in some jurisdictions, is a necessity for revocation. Not obtaining a confirmation might lead to a successful legal challenge, although most courts uphold probation or parole revocation and other legal sanctions based on a single test.

At the present time there is a problem concerning positive initial screens of amphetamines. It is recommended that confirmation testing be made on all specimens that screen positive for amphetamines. This is particularly critical now that methamphetamine abuse is increasing so rapidly in many areas of the country.

6–1. AN AGENCY SHOULD DEVELOP AND IMPLEMENT A CONFIRMATION POLICY BASED ON COURT DECISIONS AND BUDGETARY CONSIDERATIONS.

Commentary: Both State and Federal courts have been lenient in the area of confirmatory requirements for drug testing in a criminal justice setting involving probation or parole. The courts do not require that criminal justice testing meet clinical laboratory confirmatory standards. This is due to a combination of factors including:

- the advancements in initial testing accuracy;
- the diminished constitutional rights of the offender; and
- the high cost associated with Gas Chromatography/Mass Spectrometry (GC/MS) confirmations.

Some courts only require an initial test result for consideration as evidence in a hearing. However, other courts may require some type of confirmation of the initial positive result. Therefore, several confirmatory options have been used in criminal justice settings. These may include acceptance of one or more of the following as confirmatory methods:

Option 1. A positive result on an initial test plus a signed admission from the offender is the recommended and least costly confirmation for any type of action.

Option 2. Re-testing the positive specimen using the same methodology may be an acceptable option when the result will be used for confrontation, treatment monitoring or minor inhouse disciplinary actions.

Some courts have accepted double EMIT™ test results in the prison setting as sufficient for confirmation. There are no cases of other tests explicitly addressing the same issue. It is safe to assume, however, that reliability claims are enhanced by a second test and that the EMIT™ test decision may apply to other forms of testing as well. This method would not be considered good practice when attempting to revoke an offender to some form of incarceration based solely on a positive test result, where the offender denies drug use.

Option 3. Testing the positive specimen on a different immunoassay test than the initial screen, and one that is at least equal in sensitivity, reliability and accuracy as the initial test may be an acceptable option when the result will be used for confrontation actions, and progressive sanctions

short of removal from a community-based setting. However, in the event that a discrepancy occurs between the two test results, a GC/MS confirmation must be obtained or the test results should not be used as evidence in court.

CAUTION - If initial positive tests are handled by the above confirmation options #2 and #3, they cannot be used in the future as sole evidence in a revocation proceeding which may result in some form of incarceration.

Option 4. Arranging for specimens to be sent to a GC/MS laboratory site for a "clinically approved" confirmation, in the event of a denial of use or discrepancy between two initial results, or there is a court requirement for GC/MS confirmations. Where funds are limited, GC/MS confirmations may be arranged at the defendant's expense.

The above options can apply to both onsite testing as well as contracted offsite testing. Contract laboratories may use confirmation techniques such as GC, HPTL and HPLC for test results which will NOT be used in legal revocation proceedings, but will be used for the inhouse management of the offender only. However, these methods may only be used when an agency clearly identifies for the contracted laboratory site the limited actions for how the results will be used; otherwise GC/MS is the only acceptable confirmation alternative. In all cases of confirmation testing, if a sample is held for more than 24 hours, the sample must be frozen.

The decision to confirm should be based upon two considerations:

1. Whether the courts in the jurisdiction will accept positive test results without confirmation.

2. Whether, assuming that the courts in that jurisdiction require confirmation, the expense is worth the results. If the courts in the jurisdiction do not require confirmation, then obviously no legal problem arises, at least for the moment. The decision may be appealed to a higher court, but unless the higher court decides otherwise, the decision of the trial court prevails. In these cases, a consideration might be whether or not the agency feels it has a moral obligation not to take action until the possibility of error is largely eliminated through confirmation. On the other hand, if the courts in that jurisdiction require confirmation, then confirmation is a must unless the agency is prepared to take the chance that its initial decision, if taken to court, will not be sustained. In these jurisdictions, the agency might decide that budgetary constraints dictate that taking that chance is the better option.

Admissions

6–2. THE OFFICER SHOULD, WHERE FEASIBLE, ATTEMPT TO OBTAIN AN ADMISSION OF DRUG USE FROM THE OFFENDER FOLLOWING AN INITIAL SCREEN WHICH REVEALS A POSITIVE RESULT.

Commentary: An admission from the offender after confrontation with a positive test result should be considered an "offender confirmation." The admission of drug use by the offender is one of the pivotal points on which the entire confirmation issue rests. An admission simplifies the entire process and saves time, effort and resources.

Unconfirmed positive results may be used to confront an offender. Care should be given to review the prescription or over-the-counter medication the offender may have acknowledged in writing when given the opportunity to do so, prior to the drug test. This is important to review before confrontation occurs since initial screening tests identify classes of drugs, such as opiates, and not the specific drugs within the class such as codeine, morphine or hydromorphine. When an officer questions the potential cross-reactivity of a certain legal or legally prescribed substance, he should consult with the testing system manufacturer or certified laboratory personnel. By reviewing this information an officer can eliminate the possibility of confronting an offender for the wrong reasons.

6–3. IF THE OFFENDER ADMITS TO THE USE OF ILLEGAL DRUGS FOLLOWING ANY POSITIVE DRUG TEST WHILE UNDER AGENCY SUPERVISION, THE OFFICER SHOULD REQUEST A SIGNED, WRITTEN ADMISSION, PREFERABLY IN THE PRESENCE OF WITNESSES.

Commentary: If an admission is received, otherwise known as an "offender confirmation," it may not be necessary to proceed with a confirmatory drug test. The admission is sufficient confirmation, unless the use of additional substances is questioned or the offender is suspected admitting to the use of a "soft" drug to mask the use of a "hard" drug or unless the offender proves that such an admission was coerced. The presence of witnesses makes it more difficult for the offender to allege coercion. The witnesses can include agency staff.

6–4. IF THE OFFENDER DOES NOT CONFESS AFTER BEING INFORMED OF TESTING POSITIVE ON AN INITIAL TEST, THE OFFENDER SHOULD HAVE THE OPTION TO CHALLENGE THE TEST RESULT WITH A GC/MS CONFIRMATORY TEST AT HIS OR HER EXPENSE WITHIN 30 DAYS OF TESTING POSITIVE.

Commentary: The officer should inform the offender, upon an initial positive test result, that he has 30 days to request a confirmation test, after which he will be presumed to be guilty of drug use. (See Positive Drug Test Statement Form Appendix B, Attachment 9.) If the offender requests a confirmation test, specimens should be submitted by the agency to an agency-approved laboratory. Should the test result be negative the agency should pay for the confirmatory test. If the offender is unable to pay for the test due to indigence, then the agency should pay. This guideline is particularly relevant whenever agency policy concerning the use of sanctions is involved. It may be irrelevant to confirm if the agency does not apply sanctions for a particular positive.

If the agency is conducting initial screens, it must make certain that whenever a specimen is sent for confirmation, the tests conducted by the confirmation laboratory must use a cutoff level which is consistent with or below the cutoff level of the initial test. In all cases of confirmation testing, if a sample is held for more than 24 hours, the sample must be frozen.

6–5. WHETHER CONFIRMATION IS REQUIRED BY THE COURTS IN THAT JURISDICTION OR NOT, THE SPECIMEN SHOULD BE DIRECTED TO AN INDEPENDENT LABORATORY WHICH THE PROBATIONER OR PAROLEE WISHES TO VERIFY THE INITIAL TEST BY GC/MS.

Commentary: Current case law gives probationers and parolees the right to verify test results if they so choose. In one case, the court said that when a timely request is made by defense counsel for the production of an existing specimen for an independent test, the request must be honored. Failure to do so might violate the offender's right to due process, *State v. Quelnan*, 767 P.2d 243 (Hawaii 1989.) This guideline should not be interpreted to mean that the agency should freely hand the specimen over to the offender. The agency is responsible for ensuring the integrity and chain of custody of the specimen.

6–6. PROBATION AND PAROLE AGENCIES SHOULD PREPARE A LIST OF APPROVED INDEPENDENT LABORATORIES FOR THOSE OFFENDERS ELECTING TO CHALLENGE POSITIVE TEST RESULTS WITH GC/MS CONFIRMATION.

Commentary: The agency should have a list of independent laboratories where the specimen can be retested for the offender. This eliminates the problem of the offender having the specimen retested by laboratories whose practices and procedures may not come up to standards. The expense for the test verification should be paid by the offender; however, expenses of indigent offenders may be paid by the agency. There are no decided cases on the issue of who pays for confirmation tests that are requested by the offender. Confirmation tests initiated by the agency are, of course, at agency expense. This information should be included in the materials reviewed with the offender.

6–7. THE AGENCY SHOULD USE GC/MS CONFIRMATION WHEN AN OFFENDER DENIES USE OR THERE IS A DISCREPANCY BETWEEN INITIAL TEST RESULTS, AND IT IS BEING USED AS THE PRIMARY EVIDENCE IN A REVOCATION HEARING WHICH COULD RESULT IN REMOVAL OF THE OFFENDER FROM THE COMMUNITY SETTING.

Commentary: It is recognized by APPA that GC/MS is the most reliable and defensible method of confirmation. As described earlier other confirmatory options are acceptable when using test results for identification, treatment monitoring, and/or minor inhouse disciplinary actions. Furthermore, it is seen as being the ethical responsibility of an agency to provide GC/MS certainty when loss of freedom of the offender is at stake.

6–8. WHEN A POSITIVE AMPHETAMINE RESULT IS BEING USED FOR DISCIPLINARY ACTION OF

ANY KIND, A GC/MS CONFIRMATION IS NEEDED IF THE OFFENDER DENIES USE.

Commentary: Because cross-reactivity has traditionally been a problem when testing for amphetamines, it is recognized that a GC/MS confirmation is needed in order to take disciplinary action of any kind. Some testing methodologies are more prone to experience this problem and agencies should have an understanding of the weaknesses of their system.

6–9. CONFIRMATORY TEST CUTOFF LEVELS SHOULD COMPLY WITH THE RECOMMENDED CUTOFF LEVELS OF THESE GUIDELINES (see section on cutoff levels, 7–6).

6–10. AN ONSITE POSITIVE TEST RESULT WHICH IS SENT TO AN OFFSITE LABORATORY FOR A GC/MS CONFIRMATION SHOULD HAVE UNDISPUTED ACCESS TO GC/MS CONFIRMATION AT CUTOFF LEVELS LOWER THAN THE INITIAL ONSITE TEST, REGARDLESS OF THE RESULTS OF ANY INITIAL SCREEN PERFORMED BY THE OFFSITE LABORATORY.

Commentary: It is a common practice among offsite laboratories to rescreen positive specimens which have been identified through agency onsite testing. This practice frequently occurs when an agency requests a GC/MS confirmation for a positive screen identified by agency onsite testing. The positive specimen has been tested onsite and the GC/MS is requested to confirm this onsite positive. The practice of rescreening may increase the cost of the contracted services. However, many laboratories will insist on this practice because of certification requirements or legal defensibility that they must rescreen on their initial instrument.

In such a case the agency should insist on the specimen being confirmed on GC/MS even if the laboratory's initial screen was negative. The reason is because the onsite instrument's initial test may have been more sensitive than the offsite laboratory's initial test and an agency needs the GC/MS confirmation to better establish the credibility of its testing program.

6–11. ALL SPECIMENS THAT SCREEN POSITIVE ON AN INITIAL SCREEN BUT FAIL TO CONFIRM BY GC/MS SHOULD BE DECLARED NEGATIVE AND SHOULD BE TREATED THE SAME AS SPECIMENS THAT SCREEN NEGATIVE.

Confirmation Methods

6–12. IF CONFIRMATION IS REQUIRED OR IF THE AGENCY DECIDES TO CONFIRM, THE AGENCY SHOULD USE THE MOST RELIABLE AND DEFENSIBLE METHOD OF CONFIRMATION.

Commentary: An article in the *Journal of the American Medical Association* reports as follows:

Two multiple-procedure test methods, EMIT™-GC/MS and RIA-GC/MS, are rated as fully defensible against legal challenge, with TLC-GC/MS falling just slightly below defensible.

When asked to rate the most defensible single-procedure method, 24 (out of 25) respondents chose GC/MS. Several respondents cited GC/MS when used in modes of operation other than monitoring, e.g., the full scan mode. Enzyme multiplied immunoassay technique was chosen as the least defensible single-procedure method by 16 of the respondents, with TLC and RIA each chosen by six. Gas chromatography and "any single procedure method" were also cited as "least defensible." (Directly quoted from David W. Hoyt, et. al., "Drug Testing in the Workplace—Are Methods Legally Defensible? A Survey of Experts, Arbitrators, and Testing Laboratories," *The Journal of the American Medical Association*, July 24/31, 1987, at 506–507.)

Some courts have accepted double EMIT™ test results in the prison setting as sufficient for confirmation. There are no cases on other tests explicitly addressing the same issue. However, whenever an offender's freedom is involved, as in a violation hearing, GC/MS should be the method of choice.

6–13. PROBATION AND PAROLE AGENCIES SHOULD NOT ALLOW POSITIVE SPECIMENS TO BE CONFIRMED WITH METHODOLOGIES WHERE DRUG TESTING CUTOFF LEVELS ARE ABOVE THOSE OF THE INITIAL TESTING METHODOLOGY.

CUTOFF LEVELS

Probation and parole agencies are currently using a variety of cutoff levels in their drug testing programs. The lack of a consistent set of recommended cutoff levels makes them more difficult to defend in court. Several considerations had to be undertaken in determining the most appropriate cutoff levels to recommend for criminal justice testing.

It is important that probation and parole agencies involved with testing understand what cutoff levels are and their significance for a drug testing program. The cutoff level is the value chosen for the determination of a positive or negative in a drug screen. This is not the same as the sensitivity of the drug testing methodology, which refers to the range in which a methodology can detect the presence of a drug or drug metabolite. The manufacturer makes the determination at what value(s) the cutoff level can be set for a particular methodology. Extreme care must be used in setting these values in order to prevent pushing the technology beyond its capability to detect drugs or drug metabolites accurately and reliably.

There is substantial controversy within the drug testing community regarding the best cutoff levels to use for certain drugs. Because this issue is so critical, NIDA spent considerable time in determining what it concluded was the most suitable and defensible cutoff levels for workplace testing. NIDA will continue to evaluate these levels based upon research findings and/or technological advances which support lower cutoff levels for certain drugs.

To determine the best cutoff levels to use in criminal justice drug testing, attention must be given to the following items:

- legal precedence;
- existing clinical standards;
- the purpose and use of test results;
- the relatively uneducated nature of criminal justice field personnel and the courts concerning drug testing technology;
- the ethical responsibility in preventing misuse of results because of discretion in some jurisdictions for using single results; and
- a reliance by some jurisdictions on using drug testing as a primary revocation aid rather than a management tool.

A primary goal for criminal justice drug testing is to establish a credible system. The safest levels to adopt to organize a defensible and credible system are those in use by NIDA. Although these levels were set for workplace testing, they are currently the most appropriate standards which are applicable to criminal justice drug testing. Nevertheless, several technologies are available to the criminal justice market which use cutoff levels lower than the NIDA limits. It is important that probation and parole agencies understand the risks involved and possible trade-offs which accompany either choice.

In order to fully appreciate a comparison of these different cutoff level systems, authorities need to understand what is meant by false positives, false negatives, true positives and true negatives. A false positive occurs when a test result reports that a drug or drug metabolite has been detected when it is in fact NOT present in the specimen. A false negative occurs when a test result reports that no drug or drug metabolite has been detected when it is in fact present in the specimen. Accuracy in drug testing presumes that a urine specimen provided by an offender is an unadulterated specimen actually voided by that offender. The following chart is presented for clarification:

Drug *was* consumed.
Urine specimen tests positive.*TRUE POSITIVE

Drug *was not* consumed.
Urine specimen tests negative.*TRUE NEGATIVE

Drug *was* consumed.
Urine specimen tests negative.*FALSE NEGATIVE

Drug *was not* consumed.
Urine specimen tests positive.*FALSE POSITIVE

Agencies inevitably must decide to either accept the NIDA cutoff levels or to use levels lower or more stringent than the NIDA guidelines advocate. The justification for using cutoff levels that are lower than those adopted by NIDA is that only with the lower levels can there be an accurate identification of the true extent of the drug abuse from a selected population. More true positives will be reported with systems using cutoff levels below NIDA's. This increase in true positives would have been reported as negative (FALSE NEGATIVE) by systems using NIDA cutoff levels. The emphasis is on the potential of such a system to eliminate false negatives, which they feel would provide more credibility to a criminal justice drug testing program.

Agencies which use a drug testing system with NIDA cutoff levels maintain that while there may be an increase in the number of true positives detected when using lower cutoff levels, there is an increase in the occurrence of false positives. NIDA cutoff levels will err more on the side of false negatives than on false positives. Advocates of this approach contend that the majority of drug users eventually will be apprehended at these levels and that increasing the frequency of testing is a safer approach to determining drug use than lowering cutoff levels. Additionally, there are other indicators of drug use which an officer may notice while supervising the offender.

APPA has evaluated all of these factors before endorsing the following guidelines. While the debate surrounding cutoff levels will probably continue for as long as this market continues, it was necessary to decide on the best practices which will provide consistency for drug testing within the criminal justice system. The following guidelines on cutoff levels apply to all criminal justice testing sites, i.e., contracted laboratories, onsite testing, etc.

7–1. NO CUTOFF LEVELS HIGHER THAN NIDA SHOULD BE USED FOR THE FIVE DRUG CLASSES IDENTIFIED BY NIDA FOR EITHER INITIAL OR CONFIRMATORY TESTS.

Commentary: Some probation or parole agencies may have decided to use higher cutoffs than those recommended due to costs. Many agencies currently use inadvisably high cutoff levels. This results in failure to detect drug use and also leads to severe problems when results are challenged in administrative or judicial proceedings. Use of high cutoffs invariably results in a series of positive and negative results for a single offender. This gives the incorrect impression that the testing is unreliable or inaccurate. When cost constraints preclude testing at the recommended cutoff levels, the agency should explore such alternatives as less frequent or more random testing before using inadvisably high cutoff levels.

7–2. THE NIDA CUTOFF LEVELS ARE PREFERRED FOR INITIAL TESTING AT ANY SITE FOR THE FIVE DRUG CLASSES ADDRESSED BY NIDA.

Commentary: APPA primarily supports the NIDA cutoff levels because these levels have been set to avoid false positives. In using drug testing in the criminal justice field, no legal issues are raised in false negative results. A constitutional due process (fundamental fairness) issue arises in false positives. In the criminal justice setting there exists a heavy reliance on the use of initial results for offender management purposes. Therefore, there is a greater potential for misuse or mistreatment of an offender in the event of a false positive. The following initial cutoff levels shall be used when screening specimens for these five drugs or classes of drugs:

initial test levels (ng/ml)

Marijuana metabolites	100
Cocaine metabolites	300
Opiate metabolites	300*
Phencyclidine	25
Amphetamines	1,000

*25 ng/ml if immunoassay specific for free morphine.

7–3. WHEN USING NIDA CUTOFF LEVELS ON AN INITIAL SCREEN, ALL CONFIRMATORY OPTIONS DISCUSSED IN GUIDELINE 6–1 ARE APPLICABLE.

Commentary: One of the main reasons for preferring NIDA cutoff levels is because probation and parole agencies often have some discretion regarding confirmatory practices.

7–4. WHEN USING TESTING SYSTEMS WITH CUTOFF LEVELS LOWER THAN NIDA ON AN INITIAL SCREEN, CUTOFFS MUST BE USED OR SET AT LEVELS WHICH THE MANUFACTURER WILL LEGALLY DEFEND FOR THE FIVE DRUG CLASSES ADDRESSED BY NIDA.

Commentary: In this circumstance the following conditions should apply:

- Confirmatory options # 2 and # 3 of Guideline 6–1 are not acceptable options for these systems;
- GC/MS confirmation of positives must be done before any punitive action against the offender is taken; and
- An agency must provide an explanation of the reason for their decision to use lower cutoffs in their agency's drug testing policy.

It is recognized that systems using lower cutoff levels than NIDA have certain benefits, i.e., increase in true positives identified, treatment monitoring use versus revocation aid, etc. Probation and parole agencies should only use these systems if they are used correctly, and an agency's program can take advantage of their benefits. However, because of the potential increase for misuse of these results, the agency will be more limited in leniency regarding confirmatory practices. The agency must be certain the manufacturer will defend their use of cutoff levels in the event of court proceedings.

7–5. CUTOFF LEVELS FOR CANNABINOIDS SHOULD NEVER BE SET LOWER THAN 50 NG/ML ON THE INITIAL TEST AND 15 NG/ML ON THE GC/MS CONFIRMATION TEST.

Commentary: Current data indicate that lowering the above cutoffs for cannabinoids will increase the number of positives identified by less than 10 percent. If detecting this additional 10 percent of drug use is considered critical, the agency should explore the alternatives of more frequent or random testing before using inadvisably low cutoffs.

7–6. THE GC/MS CONFIRMATION CUTOFF LEVEL SHOULD BE LOWER THAN THE INITIAL SCREENING CUTOFF LEVEL AND THE RECOMMENDED LEVELS INCLUDE THE FOLLOWING:

- COCAINE - 150 NG/ML
- OPIATES - 150 NG/ML
- AMPHETAMINES - 250 NG/ML
- CANNABINOIDS - 15 NG/ML
- PCP - 25 NG/ML
- BENZODIAZEPINES - 250 NG/ML
- BARBITURATES - 250 NG/ML
- METHADONE - 250 NG/ML

Commentary: The sensitivity of the GC/MS should be compatible with the initial test because if the initial immunoassay is more sensitive, it is often lost because it will not get GC/MS consideration. The lower limits for the GC/MS are needed because certain initial screening instruments will identify several different metabolites in detecting drug use, whereas the GC/MS will be specific for one metabolite. In addition, even when the specimen is handled and stored correctly, metabolites will deteriorate over time. The above guideline provides support to systems that use either the NIDA initial cutoffs or those using lower cutoffs.

7–7. SHOULD NIDA OFFICIALLY CHANGE ITS CUTOFF LEVELS, THE APPA GUIDELINES' PREFERRED CUTOFF LEVELS WILL ALSO ADOPT THE NEW LEVELS.

Commentary: Due to current research findings and/or advanced technologies, NIDA may decide it can safely adjust its levels to more accurately identify drug use. Because of NIDA's thoroughness in examining all of the issues surrounding cutoff levels, APPA is supportive of making adjustments to reflect any future NIDA changes in the cutoff level area.

7–8. CUTOFF LEVELS FOR THE INITIAL IMMUNOASSAY TEST FOR DRUG CLASSES NOT ADDRESSED BY NIDA SHOULD BE SET AS FOLLOWS:

- BENZODIAZEPINES - 300 NG/ML
- BARBITURATES - 300 NG/ML
- METHADONE - 300 NG/ML

7–9. CUTOFF LEVELS FOR ANY OTHER DRUG CLASS NOT ADDRESSED IN THESE GUIDELINES SHOULD BE SET AT LEVELS WHICH ARE LEGALLY DEFENSIBLE.

7–10. THE PRACTICE OF USING UNCONFIRMED SCREEN RESULTS TO INDICATE THE PRESENCE OF A DRUG BELOW THE CUTOFF LEVEL IS PRECARIOUS AND SHOULD NOT BE ALLOWED.

Commentary: All drugs that screen negative on an initial screen should be declared negative and should never be treated differently based on any characteristic of the screening test results, such as semi-quantitative numeric information.

OFFENDER SELECTION

The process for selecting offenders for drug testing may begin during a pre-sentence investigation, intake, or agency assessment phase. A risk/needs assessment, coupled with other evaluation instruments, will furnish the court or decision-making authority with pertinent background material about the offender. A comprehensive evaluation will provide an agency with the appropriate requisites for developing a case management plan. This information can be made available for the discretionary use of the presiding judge or parole board to help determine the conditions of probation or parole, and placement into a drug testing program. Offense category alone should not determine the necessity for testing. Non-drug offenses may, in fact, be drug related.

A well-developed pre-sentence investigation, intake, or agency assessment phase will help to ensure that only individuals who are prone to drug use are selected for testing. Additionally, it will reduce the overall cost associated with drug testing by eliminating offenders who are unlikely to abuse drugs.

There may be circumstances in which offenders are ordered by judges to participate in a drug testing program without the benefit of a formal evaluation process. A judge will often consider the offender's drug history, documented current drug habits, and criminal record when evaluating the potential risk an offender poses to the community. It should also be acknowledged that assessments or reassessments may occur at any time during the supervision period. Such reassessments may lead to the modification of drug testing requirements.

Pre-Sentence Investigation, Intake, or Agency Assessment Phase

8–1. A WRITTEN POLICY SHOULD ESTABLISH THE CRITERIA FOR SELECTION OF OFFENDERS FOR DRUG TESTING.

8–2. DRUG TESTING SHOULD BE CONDUCTED DURING THE PRE-SENTENCE INVESTIGATION, INTAKE, OR AGENCY ASSESSMENT PHASE WHEN THERE IS A HISTORY OF INVOLVEMENT WITH DRUGS.

Commentary: The argument may also be made that assessment testing on those with no known history of drug abuse might be a good use of agency drug testing resources.

8–3. DURING THIS PHASE A FULL DRUG SCREEN SHOULD BE CONDUCTED TO DETERMINE THE OFFENDER'S DRUG(S) OF CHOICE.

Commentary: This initial test should be a full drug screen reflecting the primary drugs of choice currently used by the offender population within the agency's jurisdiction. It is incumbent upon each agency to determine which drugs to include in the full drug screen. When testing is conducted following sentencing, it should be done within 30 days to establish a baseline for additional testing.

Results of the initial full drug screen should be used to determine which categories of illegal drugs an offender is most likely to use. For example, if the individual tests positive for amphetamines and negative for the other categories of drugs, then future random drug screens may be limited to amphetamine type drugs, especially if acquiring resources is a problem. However, offenders will switch drugs in an attempt to avoid detection, or the drug of choice may not be locally available, so periodically the full drug screen will need to be used. Limiting the number of different categories of drugs to be tested is an important means of controlling costs, but should not be the dominant consideration for testing. Full drug screens can be reduced if one or two drugs are overwhelmingly the drugs of choice in a particular area.

8–4. RESULTS OBTAINED FROM AN INITIAL FULL SCREEN SHOULD BE USED TO ASSIST IN DEVELOPING AN APPROPRIATE LEVEL OF SUPERVISION (HIGH, MEDIUM, LOW CONTACT,

ETC.), AND AN APPROPRIATE DRUG TESTING SCHEDULE.

Commentary: Subsequent partial drug screens, conducted on a random schedule, should be performed on every offender who has tested positive on the initial tests.

The frequency of screening should be based on the offender's drug use history and the offender's potential criminal affect on the community. If the offender is found to have a positive specimen, then, after confrontation, more frequent random screening should be conducted. Positive results used in conjunction with other evidence may be used to determine the frequency of screening.

8–5. OFFENDERS WHO ADMIT TO ABUSING ILLEGAL DRUGS SHOULD BE TESTED.

Commentary: A detailed description of the frequency and type of drug use involved and an offender signature on a standard admission form should be obtained.

Condition of Probation or Parole

8–6. DRUG TESTING SHOULD BE IMPOSED AS A CONDITION OF PROBATION OR PAROLE WHEN THE PRE-SENTENCE INVESTIGATION, INTAKE, OR AGENCY ASSESSMENT PHASE SUBSTANTIATES PRIOR USE OF ILLEGAL DRUGS OR PRIOR ARRESTS RELATING TO THE USE OR SALE OF ILLEGAL DRUGS.

Commentary: In the aggregate, decided cases indicate that there are four general requirements for the validity of probation and parole conditions, which are:

- the condition must be constitutional;
- the condition must be clear;
- the condition must be reasonable; and
- the condition must be reasonably related to the protection of society and/or the rehabilitation of the individual.

Court cases challenging the legality of drug testing as a condition of probation have been decided in accordance with these principles.

Drug-Free Offenders

8–7. OFFENDERS EVALUATED DURING PRE-SENTENCE INVESTIGATION, INTAKE, OR AGENCY ASSESSMENT PHASE AS HAVING LITTLE OR NO RISK OF USING ILLEGAL DRUGS SHOULD NOT BE TESTED ON A FREQUENT BASIS, UNLESS EXIGENT CIRCUMSTANCES ARISE.

Exigent Circumstances

The following guidelines relate to circumstances which may occur outside of normal testing practices.

8–8. AN OFFENDER SUSPECTED OF BEING UNDER THE INFLUENCE OF ILLEGAL DRUGS SHOULD ALWAYS BE TESTED.

Commentary: An officer may determine offender use of illegal drugs through observation of physical or behavioral characteristics. Collateral information may also be used in making a determination to conduct a drug test.

8–9. AN OFFENDER ARRESTED FOR A NEW DRUG-RELATED OFFENSE SHOULD ALWAYS BE TESTED AS SOON AS POSSIBLE AFTER NOTIFICATION OF THE ARREST.

Commentary: An offender on probation or parole who has not been tested previously should be tested immediately after an arrest. Officers should seek a court order or other authorization to ensure prompt action.

8–10. AN OFFENDER SHOULD BE TESTED WHEN IN POSSESSION OF ILLICIT DRUGS OR WHEN SUSPECTED ILLICIT DRUGS ARE DISCOVERED IN AN AREA CONTROLLED, OCCUPIED OR INHABITED BY AN OFFENDER.

8–11. DRUG TESTING SHOULD BE CONDUCTED WHEN PATTERNS DEVELOP WHICH INDICATE DRUG USE.

Commentary: The officer should seek a court order to test as soon as drug use by such an offender is indicated. Testing an offender for drugs in this sequence may be considered a progressive sanction. Subsequent to an initial determination that an offender is drug free, patterns may develop which necessitate the imposition of drug testing. Under these circumstances, the agency should seek a court order to initiate testing.

Screening Special Needs Offenders

8–12. AGENCIES SHOULD DEVELOP POLICIES AND PROCEDURES FOR CONDUCTING DRUG TESTING OF SPECIAL POPULATIONS WITHIN PROBATION AND PAROLE.

Commentary: Some offenders may have a mental illness that is not severe enough to require hospitalization. Many of these may be on medication to treat their condition. Borderline mentally retarded offenders may also be on treatment medications. It is important that these offenders are routinely monitored to insure that they stay on their prescribed medication. Nevertheless, there are special-needs offenders who are also illicit drug abusers. Their drug use may worsen or exaggerate their existing condition. It is critical that these people be effectively monitored through drug testing.

DRUG TESTING PROTOCOL

Scheduling Offenders for Testing

9–1. AGENCIES CONDUCTING DRUG TESTING SHOULD DETERMINE FOR EACH OFFENDER WHETHER THE COLLECTION OF SPECIMENS WILL BE RANDOM, SCHEDULED OR A COMBINATION OF RANDOM AND SCHEDULED.

Commentary: The advantages to random collections include the following:

- offenders are required to provide a specimen on notice;
- offenders have reduced ability to schedule their drug use so as to avoid detection; and
- the rate of specimen collection averages can be lowered, allowing for considerable cost reductions.

Random collection of specimens requires the use of a computer because monitoring the tests can be difficult. Without computers, patterns of collection could be discerned by offenders, while various offenders or groups of offenders may be either overtested or undertested.

Random collection generally requires being selected from a given population through a selection process where each person has an equal chance of being selected.

The advantages to scheduled collections include the following:

- scheduled collections are less confusing to offenders than unscheduled collections;
- offenders receive specific dates and times to provide specimens for testing; and
- scheduled collections are easier for staff to organize and maintain.

The greatest weakness of scheduled collections is that offenders may also schedule their drug use in order to escape detection. Effective monitoring of offenders using this method would require specimens to be collected three times a week.

9–2. AGENCIES SHOULD DEVELOP A PROCESS TO ENSURE RANDOM SELECTION FOR THOSE OFFENDERS TESTED ON AN UNSCHEDULED BASIS.

Commentary: Agencies electing to conduct unscheduled collections may want to use color codes, identification numbers or other means to determine how individuals or groups should be tested. This will ensure that the desired level of testing is maintained. For example, offenders on an unscheduled testing sequence requiring four specimens per month must be tested four times in such a manner that they cannot decipher the system.

Notification

9–3. AGENCIES SHOULD REQUIRE OFFENDERS TO REPORT TO THE COLLECTION SITE WITHIN 12 HOURS AFTER BEING NOTIFIED.

Commentary: A period longer than 12 hours will allow the offender to take the precautions necessary to produce a clean specimen, even though the offender is using drugs.

Transporting Specimens

9–4. AGENCIES SHOULD DEVELOP SPECIFIC PROCEDURES FOR PACKING AND TRANSPORTING SPECIMENS TO THE TEST SITE.

Commentary: Specimen identifications should be matched with a shipping invoice as each specimen is placed into a locked shipping box. Every shipping

container opening should be securely taped and signed by a staff member or a courier to ensure that the seal cannot be removed without detection. The testing site or offsite laboratory should be supplied with a list of acceptable signatures. Upon receipt of specimens the laboratory should commence the appropriate chain of custody procedures outlined elsewhere in the guidelines.

Full and Partial Drug Screens

9–5. AGENCIES SHOULD DEVELOP SPECIFIC PROCEDURES DETAILING WHAT CONSTITUTES A FULL DRUG SCREEN, A PARTIAL DRUG SCREEN, AND WHEN AND UNDER WHAT CONDITIONS THESE SCREENS SHOULD BE USED.

Commentary: Program developers should consider the number of drugs to be tested on the full drug screen. Full drug screens generally include from 5 to 7 categories. Some agencies may opt to conduct a full drug screen initially and then select which drugs to test on a case by case basis. Others may choose to focus on a particular drug or group of drugs based on current experience or information, using full screens only occasionally when multiple or otherwise unidentified drug use is suspected within the probation or parole population.

INSTRUCTIONS TO OFFENDERS

Proper notification to offenders of drug testing policies and procedures prior to drug testing is required by the offender's right to due process. In the interest of fundamental fairness, an offender must know the procedures and possible consequences of a drug testing program. This avoids inconsistency and minimizes the potential for abuse, both of which are due process concerns.

10–1. THE OFFICER SHOULD EXPLAIN TO OFFENDERS WHY THEY WERE SELECTED FOR DRUG TESTING.

Commentary: Appropriate justification may include:

- history of drug use;
- opposite test result;
- re-arrest for drug related offense;
- suspicion of acute intoxication or hangover; and
- serious personal disruption coupled with other indicators such as:
  - mood swings
  - needle marks
  - rapid weight loss
  - chronic runny nose
  - reliable information that offender is using drugs.

10–2. PROBATION AND PAROLE AGENCIES SHOULD PROVIDE OFFENDERS SELECTED FOR DRUG TESTING WITH INSTRUCTIONS CONTAINING SPECIFIC INFORMATION RELEVANT TO THE BASIC RULES AND REGULATIONS PERTINENT TO THEIR PARTICIPATION IN THE DRUG TESTING PROGRAM.

Commentary: Offender information should be specific and should be updated periodically as procedures change. It should be given and explained to offenders at the start of the probation or parole term.

In areas where languages other than English are widely used, the agency should attempt to produce this material in those languages. A map with the address and directions to the location of the collection site should be included.

10–3. OFFICERS SHOULD REVIEW INFORMATION CONTAINED IN THE INSTRUCTIONS WITH THE OFFENDERS.

Commentary: This information should be furnished by the agency and delivered to the offender as early as possible. Probationers and parolees should read the material thoroughly and comprehend it. Officers should make certain this information is understood by the offender. If the individual is unable to read, then the officer should read the procedures to the offender in order to make certain the material is understood.

The agency should require the offender to sign a Statement declaring that:

- the officer reviewed the instructions with the offender; and
- the offender comprehends the material reviewed.

10–4. OFFENDERS SHOULD BE INFORMED IN WRITING HOW DRUG TEST RESULTS WILL BE USED, WHO WILL RECEIVE THE TEST RESULT INFORMATION, AND THE CONSEQUENCES OF EITHER A POSITIVE RESULT OR A REFUSAL TO TEST.

Commentary: This information should be included in the materials reviewed with the offender at the start of the probation or parole term. It is essential offenders comprehend these issues, particularly regarding the consequences of positive test results. The written procedure should explain how the test is to be conducted and any sanctions that may be imposed due to test results.

10–5. THE OFFENDER SHOULD BE INFORMED IN WRITING THAT A POSITIVE DRUG TEST IS A VIOLATION OF PROBATION OR PAROLE, WILL BE REPORTED TO THE COURT OR PAROLE BOARD, AND MAY RESULT IN REVOCATION.

Commentary: While requiring an offender to submit to drug testing is self-incriminatory, this type of self-incrimination is not protected by the Constitution. What is prohibited is not physical self-incrimination, but testimonial self-incrimination. An accused can be compelled to appear in a line-up, give fingerprints, or furnish handwriting exemplars because these are forms of physical self-incrimination. Drug testing is a form of physical incrimination and falls outside the purview of constitutional protection. While the results obtained may indicate drug use and therefore incriminate the user, the test itself does not require an offender to verbally admit or confess guilt—the type of self-incrimination prohibited by the Constitution.

Court cases have held that a judge needs to be merely "reasonably satisfied" that a violation has occurred for revocation to be justified. A positive drug test result would more than suffice to meet that standard, as long as the result is proved to be reliable.

10–6. THE OFFENDER SHOULD BE INFORMED IN WRITING THAT FAILURE OR REFUSAL TO COOPERATE OR PROVIDE A URINE SPECIMEN WITHIN A REASONABLE TIME PERIOD IS A VIOLATION AND WILL BE REPORTED TO THE COURT OR PAROLE BOARD, AND MAY RESULT IN REVOCATION OR OTHER ADMINISTRATIVE SANCTIONS.

Commentary: Although the courts have not addressed this issue directly, chances are that the reasonableness of such stipulation will be upheld as valid so that the drug testing condition can be meaningful. Failure to uphold it means that the condition can be subverted by failure or refusal to comply. Refusal to be monitored is in itself an indication of a violation of probation or parole conditions. The time the offender is given if he or she cannot furnish the specimen depends upon agency policy based on reasonableness. A few hours of grace would most likely be considered reasonable by the court. During that time, however, the offender must not be allowed to leave, otherwise the possibility of evasion or adulteration becomes a problem.

10–7. THE OFFENDER SHOULD BE INFORMED IN WRITING OF RESTRICTIONS FROM ANY KNOWN SUBSTANCES WHICH MAY CROSS-REACT WITH CERTAIN DRUG ASSAYS USED BY THE AGENCY, SUCH AS POPPY SEEDS, VICKS INHALERS, ETC.

Commentary: In the initial instructions offenders should be made aware of any substances they need to refrain from using because of cross-reactivity problems. They should sign in writing their awareness of these restrictions, thereby acknowledging understanding that future positive screens cannot be blamed on these restricted substances.

10–8. THE OFFENDER SHOULD BE MADE TO SIGN A STATEMENT DECLARING COMPREHENSION OF THE DRUG TESTING PROCEDURE AND THE CONSEQUENCES OF A POSITIVE DRUG TEST OR A REFUSAL TO TAKE THE TEST.

Commentary: It is recommended that information in the handbook be discussed with the offender and a signature obtained for the case records, verifying the offender's understanding of the instructions. A signed copy of these instructions should be given to the offender. Obtaining an offender signature on this statement should not be optional. This should be a standard requirement in agencies that administer the drug test. It should not be assumed that because drug testing is imposed as a condition the procedures and consequences thereof are automatically deemed known to and accepted by the offender. Having an offender sign a statement puts the agency in a strong legal position if both procedure and consequences of the test are later challenged in court. This may be included in the process of giving and explaining the handbook to each youth.

Medical Information

10–9. OFFENDERS SHOULD BE REQUIRED TO FURNISH VERIFICATION FROM THEIR PHYSICIAN FOR ANY PRESCRIBED MEDICATION IN ADVANCE OF TESTING.

Commentary: During agency intake, offenders should furnish the agency with a complete list of prescription and non-prescription drugs currently being used. The offender should render a signature and date the list. Offenders should be encouraged to

inform their physician of prior or current drug problems. A copy of this list should be delivered to the offender's physician.

10–10. DOCUMENTATION SHOULD BE OBTAINED WHEN MEDICAL TREATMENT OR DRUG THERAPY IS ORDERED WHILE AN OFFENDER IS PARTICIPATING IN A DRUG TREATMENT PROGRAM.

Commentary: Pertinent medical documentation should be entered into the offender's case file. Notation of telephone conversations with the offender's physician should include the date, name of physician, and specific relevant case information discussed. Letters from the physician prescribing drug therapy and from the agency providing drug treatment should become part of the case file.

10–11. OFFICERS SHOULD REVIEW WITH THE OFFENDER PRESCRIPTION DRUGS OR OVER-THE-COUNTER MEDICINE THAT THE OFFENDER MAY BE TAKING AND RECORD THE TIME AND AMOUNT OF THE LAST DOSAGE PRIOR TO EACH SPECIMEN COLLECTION (SEE APPENDIX B, ATTACHMENT 4).

Commentary: The offender should be asked if there has been any drug usage, including prescription medication, over-the-counter medication, non-prescribed or illicit drug usage. Many medications will affect the outcome of a urine drug test. Onsite instrument testing or offsite laboratory testing personnel need this information before publishing the test results.

10–12. TO REDUCE CLAIMS OF CROSS-REACTIONS, OFFENDERS SHOULD BE ASKED TO FILL OUT A FORM INDICATING ANY MEDICATIONS THEY ARE TAKING PRIOR TO SUBMITTING A URINE SPECIMEN.

Commentary: Claims of cross-reactions have not fared well in courts, nonetheless this is a precaution that must be taken.

10–13. AGENCY PERSONNEL SHOULD CONFIRM PRESCRIPTION MEDICATIONS AND NOTE THOSE DRUGS ON THE REQUEST FORM WHICH ACCOMPANIES THE URINE SPECIMEN FOR ANALYSIS.

AGENCY COLLECTION SITES

11–1. EACH OFFICE/FACILITY CONDUCTING DRUG TESTING SHOULD DESIGNATE A COLLECTION SITE WHICH SHOULD HAVE THE NECESSARY MATERIALS AND EQUIPMENT TO PROVIDE FOR THE COLLECTION, SECURITY, TEMPORARY STORAGE, AND TRANSPORTATION OF URINE SPECIMENS.

Commentary: The designation of a collection site ensures uniformity in procedure and that trained personnel are collecting the specimens. It also makes it easier to establish proper chain of custody procedures should such be questioned, particularly if the procedures are prescribed, routinized, and strictly observed.

This collection site should not be used by staff or the general public. If private facilities are unavailable and public lavatories must be used, every reasonable effort should be made to reduce the possibility of interference with the collection process or the adulteration of the collected specimen.

11–2. NO UNAUTHORIZED PERSONNEL SHOULD BE PERMITTED IN ANY PART OF THE DESIGNATED COLLECTION SITE WHERE URINE SPECIMENS ARE COLLECTED.

Commentary: Sites should be closed to anyone not directly involved in the specimen collection process during collection periods. The agency may desire to develop this guideline further and to specifically list the individuals who will have access to the collection site.

11–3. EVERY AGENCY THAT COLLECTS SPECIMENS SHOULD DESIGNATE AN INDIVIDUAL AS AN ONSITE DRUG TESTING SPECIALIST.

Commentary: The responsibilities of the drug testing specialist should include, but are not limited to:

- maintaining a drug testing control log;
- maintaining documentation of urine specimen results;
- directing/monitoring the collection of urine specimens;
- establishing and setting conditions and controls for the onsite storage of specimens;
- overseeing the transfer of urine specimens to a drug testing site;
- maintaining secure storage conditions for unused containers;
- ensuring the availability of sufficient supplies for the uniform collection of urine specimens;
- ensuring that officers conform to the documentation guidelines outlined in the chain of custody procedures; and
- ensuring that officers and drug testing staff are thoroughly trained in:
  - ❑ specimen collection
  - ❑ container labeling
  - ❑ transportation of specimen
  - ❑ storage security.

CHAIN OF CUSTODY

"Chain of custody" means that one who offers evidence in court must be able to account for the custody of such evidence from the moment it is obtained until such a time when the evidence is offered in court. The chain of custody requirement ensures that the specimen that was obtained from the offender is the same specimen that is tested and that the result of such test is what is presented later as evidence in court. It raises issues of due process, meaning fairness to the offender being tested and making sure that there are no specimen substitutions or custodial carelessness that compromise the integrity of the process.

Chain of custody deals with:

- proper specimen collection, handling and identification; and
- proper documentation describing how the specimen was handled, tested, and the results presented in court.

Flaws, if any, are human fault instead of technological imperfection. Unless the proper chain of custody is established, the evidence will not be admissible in court. The burden of establishing the proper chain of custody lies with the party presenting the evidence—in the case of drug testing this would be the agency. Chain of custody forms should remain at the test site with the rest of the data and chain of custody documents necessary to support test results. Copies of the chain of custody documents could be made available, if necessary, to the appropriate agency staff.

It is imperative that rigorous chain of custody procedures be implemented as part of an agency drug testing strategy. Records should document who has handled each specimen from the time it was provided until the test results are introduced as evidence into court. The specimen should never be left unattended unless it is in a secured facility or container.

12–1. RIGOROUS CHAIN OF CUSTODY PROCEDURES SHOULD BE PRESCRIBED AND IMPLEMENTED AS PART OF THE AGENCY DRUG TESTING STRATEGY.

Commentary: This means that the collection and handling of the urine specimen must be properly performed and documented, from the time it is obtained from the offender up to the presentation of the results as evidence in court. Written chain of custody procedures will ensure that the collection, labeling, transportation, and storage of urine specimens is secure during each step of the entire drug testing process. Agencies choosing to contract for offsite laboratory services should make certain that stringent chain of custody procedures are performed by the laboratory selected. Chain of custody procedures should be reviewed and updated at least annually.

The chain of custody section of this manual prescribes procedures that need to be followed by an agency to avoid chain of custody problems. These procedures must be given proper attention and staff members involved in drug testing must be thoroughly familiar with them. This requires training and constant monitoring by the agency to make sure that these procedures are faithfully followed.

12–2. THE AGENCY SHOULD DEVELOP A CHAIN OF CUSTODY FORM TO BE PROPERLY SIGNED BY EVERY INDIVIDUAL RELEASING AND ACCEPTING THE URINE SPECIMEN.

Commentary: Chain of custody procedures which have been established either within the agency or between the agency and an outside laboratory for the transportation and analysis of specimens must be strictly observed and followed. Any deviation or difficulty which arises in this area should be reported immediately to the agency administration for review and action. With each transfer of possession, the chain of custody form should be dated and signed by the individual releasing the specimen and by the individual accepting the specimen.

Collecting Specimens

The preparation for specimen collection involves several general duties which are essential for maintaining the integrity of the specimen. The actual collection site should be made secure before an offender enters.

12–3. PRIOR TO COLLECTING A SPECIMEN THE SUPERVISING OFFICER SHOULD COMPLETE THE REQUEST PORTION OF THE CHAIN OF CUSTODY FORM (SEE APPENDIX B, ATTACHMENT 3).

Commentary: If testing is done in the presence of the offender, the chain of custody form may not have to be completed for negative specimens or for positives when offender admissions are obtained. Such a practice would need to be defined by policy.

12–4. THE PERSONNEL RESPONSIBLE FOR COLLECTING THE SPECIMEN SHOULD ENSURE THE OFFENDER SUBMITS AN UNADULTERATED SPECIMEN FOR DRUG TESTING.

Commentary: Care must be taken to ensure that the specimen collected has not been tampered with, contaminated, or diluted by the offender in the process of giving the urine specimen. Unless the integrity of the specimen collection is protected, the results of the test are misleading and useless to the agency. One writer notes that the urine specimen can be compromised by the specimen giver in a number of ways, such as:

1. Individuals have reportedly placed various chemical substances under their fingernails and released them into the urine specimen to affect the subsequent analysis.

2. Placing a pinhole in the bottom of the urine container would result in a leak that would not be detected at the collection site. During shipping, however, most of the urine would leak out.

3. Ordinary table salt, detergent, or other commonly available household chemicals can destroy the drug or affect the assay in such a manner as to generate false negative analysis. Frequently, soap dispensers or cleansers in toilet areas offer the opportunity to add effective adulterants to the specimen.

4. Use of a fluid-filled bulb placed under the arm, with a tube leading to the genital area, is another method. The subject can squeeze the bulb and release water or other substance that would dilute or contaminate his/her urine.

5. The subject can obtain urine from friends not using drugs or save their own urine from drug-free periods. This urine can be placed in the container during the collection period.

6. The subject can scoop water from the commode into the collection container and dilute the urine. (Directly quoted from Joseph E. Manno, "Specimen Collection and Handling," *Urine Testing for Drugs of Abuse, Research Monograph Series*, National Institute on Drug Abuse, Richard L. Hawks and Nora Chaing (eds.), 1986, at 26.) The use of blueing agents in the toilet bowl and tank is an option to deter the dilution of specimens at the collection site.

Any of the above attempts to compromise the integrity of a urine specimen should be considered a violation of probation or parole.

12–5. PROCEDURES FOR THE COLLECTION OF THE URINE SPECIMEN SHOULD GUARD AGAINST SPECIMEN SUBSTITUTION OR DILUTION, BUT AT THE SAME TIME SHOULD NOT BE UNDULY INTRUSIVE ON THE PRIVACY OF THE OFFENDER.

Commentary: The integrity of the collection process must be preserved and the privacy of the offender respected even though he or she is a probationer or parolee. The possibility of contamination or substitution must be minimized, not eliminated. The collection process must not be unnecessarily intrusive or humiliating. In one case, a court said that "the conduct of the search must be no more degrading than is necessary to satisfy the legitimate security interests of the institution. Forcing an inmate to urinate in front of others,[3] male or female, significantly enhances the humiliating nature of the test," *Storms v. Coughlin*, 600 F. Supp. 1214 (S.D.N.Y. 1984). A balance between some form of offender privacy and nontampering of specimen must be achieved. This should not prohibit direct observation of the collection pro-

3. *Others* means other inmates or offenders and does not refer to staff who function as witnesses to assure collection of an unadulterated specimen.

cess. The procedure for collection found in the chain of custody section of the guidelines must be carefully observed.

12–6. WHENEVER POSSIBLE COLLECTION OF THE SPECIMEN SHOULD BE OBSERVED BY A PERSON OF THE SAME GENDER AS THE OFFENDER PROVIDING THE SPECIMEN.

12–7. THE COLLECTION PERSONNEL SHOULD BE ALLOWED TO CONDUCT A SEARCH OF OFFENDER POSSESSIONS INCLUDING A PAT FRISK, IF DEEMED NECESSARY, TO ASSURE THE PROVISION OF AN UNADULTERATED URINE SPECIMEN.

Commentary: Jackets, purses and other hand-held items should not be allowed in the rest room. Offenders should be allowed to retain their wallets.

12–8. THE COLLECTION PERSONNEL SHOULD DEMONSTRATE TO THE OFFENDER THAT THE SPECIMEN CONTAINER IS UNADULTERATED PRIOR TO PROVIDING THE SPECIMEN.

Commentary: The officer should make certain the offender visually inspects the container to confirm that it is free of adulterants.

12–9. COLLECTORS SHOULD OBSERVE AND COLLECT ONLY ONE SPECIMEN AT A TIME AND SHOULD NOT HAVE GROUPS OF OFFENDERS PROVIDING SPECIMENS SIMULTANEOUSLY.

Commentary: Only one offender and one observer should be in the collection area at the same time. Offenders waiting to void should not be allowed in the collection area. Security is an important part of specimen integrity. This is achieved by having strict regulations excluding unauthorized personnel from areas where specimens are collected and stored.

12–10. OFFICERS SHOULD ASSEMBLE A DRUG TESTING KIT PRIOR TO SPECIMEN COLLECTION.

Commentary: Kits should include the following items:

- seal;
- labels;
- rubber gloves;
- specimen bottle;
- information forms;
- chain of custody forms; and
- mailing containers (if necessary).

12–11. PROBATION AND PAROLE AGENCIES SHOULD DEVELOP A SPECIMEN COLLECTION PROCESS IN WHICH THE COLLECTION PERSONNEL OR THEIR DESIGNEES NEVER DIRECTLY TOUCH THE SPECIMEN CONTAINER DURING THE COLLECTION PROCESS.

Commentary: This standard is entered as a precaution for agency personnel observing the specimen collection. The intention is to provide protection from communicable diseases. Agency procedures should guarantee the health and safety of the officer. The officer will instruct and observe the offender at each step of the labeling process which secures the specimen. After the specimen is secured the offender may place the specimen in a plastic bag for shipment or storage. In the event it becomes necessary for an officer to handle a specimen, protective gloves should be worn.

12–12. THE AGENCY SHOULD ESTABLISH A MINIMUM QUANTITY OF URINE TO CONSTITUTE AN ACCEPTABLE SPECIMEN.

Commentary: Collect enough for multiple tests, with margin for error Sufficient quantity is needed to test and confirm, if necessary. Check manufacturers quantity recommendations.

12–13. THE AGENCY SHOULD ESTABLISH A DESIGNATED PERIOD OF TIME FOR OFFENDERS TO SUBMIT A URINE SPECIMEN FOR TESTING.

Commentary: After a reasonable period of time the offender should be informed that refusal to provide a urine specimen constitutes a violation of probation or parole and that the offender may be subject to the same penalties that a positive result will support.

12–14. THE OFFICER SHOULD INSTRUCT THE OFFENDER WHO IS UNABLE TO PRODUCE A SPECIMEN TO REMAIN IMMEDIATELY AT THE OFFICE, OR AT THE COLLECTION SITE, UNTIL A SPECIMEN IS RENDERED.

Commentary: Any offender unable to provide a urine specimen should not be allowed to leave the immediate area until a specimen is produced. Only a witnessed collection specimen should be accepted and tested. This will reduce the possibility of the offender returning with a "clean" urine specimen as a substitute.

12–15. OFFENDERS SHOULD NEVER PARTICIPATE IN THE COLLECTION OF ANOTHER SUBJECT'S URINE SPECIMEN OR HAVE ACCESS TO COLLECTED URINE SPECIMENS, DRUG TESTING EQUIPMENT, SUPPLIES, OR DOCUMENTATION.

Chain of Custody Steps

The purpose of chain of custody is to assist probation and parole agencies in developing rigorous procedures through a chronological listing of the steps to be followed.

12–16. THE AGENCY SHOULD MAKE A POSITIVE OFFENDER IDENTIFICATION PRIOR TO DIRECTING THE OFFENDER TO PROVIDE A SPECIMEN.

Commentary: Identification of offenders is the first step in the chain of custody. Verification by photograph and offender signature is the best method available. Most States currently use photographs on automobile operator's licenses. Operator's licenses provide additional physical information about the offender at no additional cost to the agency. The probation or parole agency may consider developing an identification system based on a numbering scheme, thereby augmenting the agency's commitment to confidentiality and right to privacy. Social Security numbers, case numbers, date of birth, as well as sequential drug testing numbers, are other available options.

If the offender does not have proper photo identification, the collection site receptionists should contact the offender's officer or someone within the agency to make a positive identification. The agency may consider taking fingerprints when offenders have no identification. If the offender's identity cannot be established, the collection site receptionists should not proceed with the collection.

After establishing positive identification the offender should be registered. The offender should sign or initial the area next to offender's name. The agency should use the offender's name as it appears on the conditions of probation or parole each time a specimen is collected. The offender should be instructed to use the same initials whenever and wherever initialing is required. Agency personnel should be certain that the same name is used on forms and labels to avoid confusion.

12–17. THE COLLECTION PERSONNEL SHOULD ESCORT THE OFFENDER TO A SECURE COLLECTION SITE TO PROVIDE THE URINE SPECIMEN.

Commentary: At this time the offender may be instructed to remove any outer garments which might:

- obstruct the officers field of vision, or
- be used to adulterate the urine specimen.

12–18. THE COLLECTION PERSONNEL SHOULD INSTRUCT OFFENDERS TO WASH, RINSE, AND THOROUGHLY DRY THEIR HANDS PRIOR TO PROVIDING A URINE SPECIMEN.

Commentary: Offenders may attempt to adulterate the specimen by hiding an adulterant under the fingernails or on the skin. Offenders should remain in the presence of the officer after washing hands. Do not allow offender to have access to water.

12–19. THE COLLECTION PERSONNEL SHOULD EXAMINE THE OFFENDER'S ARMS AND HANDS AFTER WASHING AND DRYING AND BEFORE OBSERVING A URINE SPECIMEN COLLECTION.

12–20. THE COLLECTION PERSONNEL WILL DIRECTLY AND CONTINUOUSLY OBSERVE URINE PASSING FROM THE OFFENDER INTO THE SPECIMEN CONTAINER.

Commentary: Direct observation by an agency official will allow them to testify confidently before a court or commission that rigorous chain of custody procedures were followed while the urine specimen was in their control. Officers observing the collection process should understand that they are responsible for the integrity of the urine specimen until it is released from their custody. As part of the chain of

custody the officer collecting the specimen *may* be required to testify in court that the specimen was not adulterated or tampered with in any way during the time it was in the officer's custody. Agency officers who discharge drug testing procedures must realize that urine specimens are evidence and that the chain of custody of that evidence must be protected.

Offenders should not allow anything to obscure the officer's view of the urine flow into the container. The case officer obtaining a specimen from an offender should witness the flow of urine from the body orifice into the collection container.

12–21. ANY SPECIMEN NOT GIVEN UNDER DIRECT AND CONTINUOUS OBSERVATION SHOULD BE CONSIDERED INVALID FOR TESTING.

Commentary: In some cases it may be necessary to use the results of a "deliberately invalid" specimen, (i.e., one in which the officer did not directly observe but collects anyway). The results from such a specimen, particularly positive results, may still be used to confront the offender's illegal drug use. Conducting and analyzing "deliberately invalid" tests, however, are strongly discouraged, since they will be inadmissible in court.

12–22. THE COLLECTION PERSONNEL AND THE OFFENDER SHOULD KEEP THE SPECIMEN CONTAINER AND SUPPORTING DOCUMENTS IN VIEW AT ALL TIMES.

Commentary: The offender providing the specimen and the collection site personnel should have the specimen in view at all times prior to labeling and sealing. While performing any part of the chain of custody procedures it is essential that the urine specimen and custody documents be under the control of the personnel observing the collection. Should this individual need to leave the work station momentarily, the specimen and custody form should be secured.

12–23. THE COLLECTION PERSONNEL SHOULD INSTRUCT THE OFFENDER TO SECURE THE CAP TIGHTLY AND SHOULD WASH AND DRY THE CONTAINER AND HANDS BEFORE LABELING AND SECURING THE SPECIMEN CONTAINER.

12–24. THE COLLECTION PERSONNEL SHOULD INSTRUCT THE OFFENDER TO AFFIX AN IDENTIFICATION LABEL TO THE SPECIMEN CONTAINER TOP (SEE APPENDIX B, ATTACHMENT 6).

Commentary: An identification label filled out by the officer will include such information as the agency deems necessary. This information should be typed or printed with indelible ink. The offender should initial the specimen label on the bottle. The personnel conducting the collection should sign the log (See Appendix B, Attachment 14), next to the identifying information. Identifying information on the label should include the:

- offender's name;
- date and time;
- name of collection personnel;
- name of officer; and
- case number/social security number of the offender.

12–25. THE COLLECTION PERSONNEL SHOULD INSTRUCT THE OFFENDER TO WRAP ONE PIECE OF EVIDENCE TAPE OVER EACH END OF THE CONTAINER.

Commentary: This step will seal the specimen container. The collection personnel may now assume possession of the specimen *or* allow the offender, while under observation, to place the specimen in a plastic bag.

12–26. THE OFFENDER SHOULD BE REQUESTED TO READ AND SIGN A STATEMENT CERTIFYING THAT THE IDENTIFIED SPECIMEN COLLECTED FROM THE OFFENDER IS IN FACT THAT SPECIMEN THE OFFENDER PROVIDED AND HAS NOT BEEN ADULTERATED IN ANY WAY (SEE APPENDIX B, ATTACHMENTS 3, 6, AND 8).

12–27. THE COLLECTION PERSONNEL AND OFFENDER SHOULD BE CONTINUOUSLY PRESENT WHILE GUIDELINES 12-17 THROUGH 12-26 ARE BEING EXECUTED.

Collection Follow-Up

12–28. THE COLLECTION PERSONNEL WHO OBSERVED THE SPECIMEN COLLECTION SHOULD COMPLETE THE APPROPRIATE PORTION OF THE CHAIN OF CUSTODY FORM (SEE APPENDIX B, ATTACHMENT 3 - REQUEST FOR DRUG TEST).

Commentary: The urine specimen and chain of custody form should be made ready for shipment. If the specimen is not shipped immediately, it should be safeguarded during temporary storage.

12–29. THE NUMBER OF PERSONS HANDLING THE SPECIMENS SHOULD BE KEPT TO A MINIMUM TO MAINTAIN THE INTEGRITY OF EVIDENCE FOR FUTURE DISCIPLINARY OR ADMINISTRATIVE PROCEEDINGS.

Commentary: The importance of this standard should always be emphasized. The least number of individuals participating in this function increases the probability that a court challenge based on chain of custody will be unsuccessful.

12–30. COLLECTION PERSONNEL SHOULD MAINTAIN A CONTROL LOG (SEE APPENDIX B, ATTACHMENT 14).

Commentary: When the urine specimen is presented to the appropriate personnel, this individual should enter the following information on a control log:

- supervising officer's name;
- collection personnel's name;
- the offender's name and/or case number;
- the time and date the specimen was collected; and
- the time and date the specimen was transported to the test site;
- date test results received;
- test results.

12–31. PERSONS HANDLING THE URINE SPECIMENS SHOULD MAKE THE NECESSARY LOG NOTATIONS IN ORDER TO PRESERVE THE INTEGRITY OF THE CHAIN OF CUSTODY.

12–32. THE COLLECTION PERSONNEL SHOULD REFRIGERATE URINE SPECIMENS IN A SECURED AREA AS SOON AS POSSIBLE UNLESS TESTING IS CONDUCTED IMMEDIATELY.

Commentary: Drug testing should be performed as soon as possible. Studies show there is minimal deterioration of the specimen at room temperature during a 2 hour period following collection. Refrigeration is warranted after this time period in order to diminish specimen deterioration. Specimens may be tested onsite immediately or tested onsite at a later date. If onsite instrument testing is not available, specimens should be transferred to a designated agency test site or transported to a contracted laboratory.

12–33. STANDARDIZED CHAIN OF CUSTODY FORMS SHOULD BE SIGNED BY AUTHORIZED TEST SITE PERSONNEL UPON RECEIPT OF SPECIMENS (SEE APPENDIX B, ATTACHMENT 3).

Commentary: Handling and transportation of urine specimens from one authorized individual or place to another should always be accomplished through chain of custody procedures.

12–34. CHAIN OF CUSTODY DOCUMENTATION SHOULD ALWAYS BE ATTACHED TO EACH CONTAINER SEALED FOR SHIPMENT TO THE TEST SITE.

12–35. IN CASES WHERE AN OFFENDER IS SUSPECTED OF HAVING A HIGHLY COMMUNICABLE DISEASE, ALWAYS PLACE THE SEALED SPECIMEN CONTAINER INSIDE A PLASTIC GLOVE OR OTHER DEVICE WHICH WILL ALERT THE ONSITE INSTRUMENT DRUG TESTING PERSONNEL THAT THE SPECIMEN WAS PROVIDED BY A PERSON SUSPECTED OF HAVING A HIGHLY COMMUNICABLE DISEASE.

Commentary: After handling specimen containers infected with a highly communicable disease, officers should always discard their protective gloves in a plastic bag marked with a highly communicable disease warning.

REPORTING RESULTS

The guidelines for reporting of drug testing results should apply to both onsite instrument and non-instrument drug testing and contracted laboratories. Results will need to be shared between probation and parole agencies, treatment agencies, the courts and parole boards. Sharing results should be conducted within strict confidentiality protections. Agencies sharing drug testing results should have a joint strategy of how results will be used with the client. Agencies sharing results should have a strong knowledge of the process and technology used by the other testing systems.

13–1. THE AGENCY SHOULD DEVELOP STRINGENT CONTROLS OVER HOW DRUG TESTING RESULTS ARE TO BE TRANSMITTED AND DESIGNATE WHICH AGENCY PERSONNEL ARE TO RECEIVE DRUG TEST RESULTS.

Commentary: The details of who will actually have access to test results is a matter that should be handled inhouse. Organizational size, workload, resources, and mission should be considered when making this determination.

13–2. DRUG TEST RESULTS SHOULD BE RETURNED BY THE TEST SITE TO THE DESIGNATED AGENCY PERSONNEL WITHIN 72 HOURS OF RECEIPT FROM THE AGENCY.

Commentary: The laboratory may provide results by mail, through a computer link, or by fax. Standard turnaround time should be 72 hours or less from the time the specimen reaches the laboratory until the results are received by agency personnel. In some circumstances it may be appropriate for laboratories to provide test results verbally by telephone as long as formal results are received by the agency within 1 week.

The effectiveness of using results in the management of offenders is enhanced when results are received quickly. While 72 hour turnaround is the preferred time length, it is recognized that several factors may influence laboratory personnel's ability to achieve this optimum. Downtime in the laboratory may be caused by testifying obligations of the laboratory staff, inadequate staffing of the laboratory, leave time of staff, etc. These factors should be taken into consideration when staffing or contracting for a laboratory in order to maintain a consistent turnaround time.

13–3. THE RESULTS SHOULD BE REPORTED ON THE CHAIN OF CUSTODY FORM THAT ACCOMPANIED THE SPECIMEN AND APPROPRIATE LOGS.

Commentary: In the event that the testing technology enables the result to be xeroxed, a copy of the results should be made and filed in the offender's records.

13–4. THE RESULTS SHOULD IDENTIFY THE INSTRUMENTATION USED, THE DRUGS/METABOLITES TESTED, AND WHETHER THE TEST IS POSITIVE OR NEGATIVE, AND THE CUTOFF LEVELS FOR EACH TEST.

Commentary: Some testing systems provide semi-quantitative results from their analysis procedures. These systems cannot provide definite quantitative data, but they do attempt to determine the amounts of proportions of the drug/metabolite components in the urine, and can provide the laboratory with a numeric value result for each drug screen run.

When available, semi-quantitative information must be used cautiously. Personal characteristics of the offender, i.e., history of use, weight, etc., will affect the ability to interpret results with total accuracy. However, the ability to identify "some" evidence of use at lower levels can aid in the management of the offender, i.e., he doesn't think he has gotten away with it. Benefits of using this information carefully could include the "denial stage" being shortened, and an increase in the offender's perception concerning the credibility of the testing program could result.

If semi-quantitative results are available, laboratory personnel should not report these on a regular basis.

Laboratory personnel may share this information with the submitting personnel when semi-quantitative results indicate a number within a 20 point range below the cutoff level, and when the information should be used for inhouse management of the offender only.

However, if semi-quantitative results are available, testing personnel should never share this information when the number is below the cutoff level.

13–5. THE TEST SITE SHOULD SEND A CERTIFIED COPY OF THE ORIGINAL CHAIN OF CUSTODY FORM, SIGNED BY THE INDIVIDUAL RESPONSIBLE FOR ATTESTING TO THE VALIDITY OF THE TEST REPORTS, TO THE REQUESTING OFFICER AND A COPY SHOULD BE FILED AT THE TEST SITE.

13–6. THE TEST RESULTS FROM THE TEST SITE SHOULD ALWAYS BE INCLUDED IN THE OFFENDER'S CASE FILE.

13–7. WRITTEN LABORATORY REPORTS OF POSITIVE DRUG TESTS SHOULD BE PRINTED ON LABORATORY OR AGENCY LETTERHEAD AND CONTAIN THE LABORATORY DIRECTOR'S SIGNATURE IN ORDER TO BE CONSIDERED "TRUSTWORTHY AND RELIABLE."

Commentary: Laboratory reports are properly admissible even though hearsay without confrontation and cross-examination under an exception to the hearsay rule. Though this differs from one jurisdiction to another, such evidence is generally admissible without confrontation and cross-examination if "good cause" can be shown. In a laboratory testing situation where many persons could have been responsible for any one specimen, this is not difficult to show; however, the reports must be from an identified laboratory.

An agency should determine what form laboratory reports must be in, and what information they must contain, in order to be admitted as evidence in whatever hearings they may be used. Failure of reports to be in proper form will make the written report inadmissible and necessitate having laboratory personnel appear to testify. Use agency counsel to review report format issues.

USE OF RESULTS

The admissibility of scientific evidence is generally based on the Frye Doctrine (*Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) which holds that "the thing from which the deduction is made must be sufficiently established to have gained[4] general acceptance in the particular field to which it belongs." In some jurisdictions, however, the Frye Doctrine has been eroded by court decisions or legislation mandating more liberal admissibility rules. A great majority of courts in the United States have ruled that drug test results from the commonly accepted testing techniques are admissible as evidence, regardless of whether the Frye Doctrine is used in that jurisdiction or not. While the evidence is admissible, the weight given to the test results is a matter of discretion with the judge or parole board. For example, most courts and parole boards would revoke based on one positive test, while a few require confirmation, meaning that they do not consider the results of a single test sufficiently reliable to warrant revocation or other sanctions.

14–1. THE AGENCY SHOULD ESTABLISH DESIGNATED PROCEDURES REQUIRING IMMEDIATE SANCTIONS FOR VIOLATIONS WHEN RESPONDING TO POSITIVE RESULTS, IN COMPLIANCE WITH EXISTING AGENCY POLICIES.

Commentary: For any program to deter drug use, released offenders must be held accountable for any violations of the conditions of probation or parole. Probation and parole agencies and the courts must demonstrate intolerance toward drug use during the supervision period. Random drug testing schedules should be established with escalating sanctions imposed if drug use continues. Drug counseling and drug education offer the offender an opportunity for treatment. Rehabilitation of this nature may divert the offender from increasing levels of drug usage and criminal behavior.

A negative result suggests that illegal drugs are not present in the offender's system. This should be dealt with in a manner which encourages continued abstinence and is used to help build support with the offender.

Positive drug test results may be used in the following manner:

- to confront the offender;
- to hold the offender accountable;
- to make a treatment referral;

NOTE: Each agency should determine whether its staff is qualified to conduct counseling with offenders as part of the supervision process. If it is inappropriate for the agency staff to do so, then offenders should be referred to out-patient counseling in a local drug and alcohol treatment facility or mental health center. If necessary, the offender should be placed in an in-patient counseling setting.

- to modify the conditions of supervision;
- to reinforce continued sobriety and abstinence;
- to impose progressive sanctions such as a(n):
  - ❑ verbal and/or written warning;
  - ❑ inhouse disciplinary action, i.e., added community service hours, adjustment in curfew or travel restrictions, administrative hearings, etc.;
  - ❑ increase in frequency of testing;
  - ❑ modification of order to include required drug treatment, if this has not already been done;
  - ❑ partial revocation to some type of alternative program or intermediate sanction short of incarceration, i.e., intensive probation, restitution centers, house arrest, electronic monitoring, short term detention, etc.; and/or
  - ❑ full revocation.

4. (Frye v. U.S., App. DC 46, 293 F 1013 (1923)

Determining which sanction to use should depend on the number and frequency of positive results obtained, periods of abstinence, the court's tolerance level, and agency policies.

14–2. OFFICERS SHOULD REWARD OFFENDERS WITH PRIVILEGES THAT WERE NOT ALLOWED EARLIER DURING THE SUPERVISION PERIOD WHEN A PATTERN OF DRUG ABSTINENCE IS CLEARLY ESTABLISHED THROUGH NEGATIVE DRUG TESTS.

14–3. AGENCIES SHOULD REDUCE OR TERMINATE THE FREQUENCY OF DRUG TESTING FOR THOSE OFFENDERS WHO ARE IN COMPLIANCE WITH THE CONDITIONS OF PROBATION OR PAROLE AFTER A SPECIFIED PERIOD OF TIME.

Commentary: There are numerous factors which should be considered when arriving at such a decision. There is also a potential cost savings to the agency that may be realized.

14–4. AGENCY POLICY SHOULD REQUIRE OFFICERS TO CONFRONT THE OFFENDER WITH POSITIVE DRUG TEST RESULTS AS SOON AS POSSIBLE.

Commentary: Offenders who test positive should be confronted with test results within 72 hours after the agency has obtained the results. Under no circumstances should the period for confrontation exceed 7 days. The officer should discuss test results with the offender and give specific instructions regarding the behavior changes required to address the problem, including notification that the offender is to refrain from the use of drugs. The officer should review with the offender the case management plan and the mandatory conditions of supervision. The officer and offender should also discuss the implications of future positive test results.

Before confronting with unconfirmed results, care should be given to review the prescription or over-the-counter medication the offender may have acknowledged using in writing, when given the opportunity prior to the drug test. Since initial screening tests identify classes of drugs, such as opiates and not the specific drugs within the class such as codeine, or morphine or hydromorphine, an officer needs to be certain the positive result did not occur from a legitimate use of medication. If there is ever any question, officers should consult with agency testing authorities.

14–5. DRUG TESTING RESULTS USED TO SUBSTANTIATE A VIOLATION OF PROBATION OR PAROLE SHOULD BE HANDLED IN A MANNER THAT ENSURES THEIR CREDIBILITY IN A LEGAL PROCEEDING.

Commentary: Every detail of the chain of custody should be documented so that the integrity of the specimen is never in doubt.

14–6. AGENCY OFFICERS SHOULD OBTAIN AND DOCUMENT OTHER APPROPRIATE CASE DATA AND NOT RELY ON DRUG TEST RESULTS SOLELY AS A BASIS FOR A REVOCATION ACTION.

Commentary: Consideration should be given to an offender's overall level of compliance demonstrated toward the conditions of probation or parole. An offender who has demonstrated stability in other respects while under supervision may, at the discretion of the agency officer, receive a written warning on one positive drug test.

CONFIDENTIALITY

As a general principle, confidentiality of test results must be protected by the agency to the fullest extent possible. This is necessary because drug testing may disclose not only drug use but also the taking of other medication to control psychological or physiological disorders unrelated to the offense for which the person is on probation or parole. Also, possible civil liabilities exist in improper disclosure. Although offenders have a diminished constitutional right to privacy, they are nonetheless entitled to a measure of protection, particularly in such sensitive matters as the use of drugs.

Confusion abounds on the issues of disclosure or non-disclosure of test results. This is because confidentiality is governed by various rules that are not easy to gather and understand. For instance:

- There are Federal rules that govern the release or non-release of information from drug tests that use Federal funds. These rules are extremely complex and are often changed.
- Some States have laws that govern the disclosure or non-disclosure of information, but these laws may not be specific to probation and parole or even to drug testing. These laws tend to be complex and are usually unclear about what specifically can be withheld or disclosed. Inevitably, these laws vary from State to State and are therefore difficult to generalize.
- Although there have as yet been no cases addressing the issue of to whom the information may or may not be disclosed, this can change at any time, particularly as drug testing becomes more prevalent and further legal challenges develop.

Despite this muddled picture, there are certain guidelines on confidentiality that can be helpful when drafting drug testing policies and procedures. These standards are derived from case law, some State legislation, and Federal guidelines.

15–1. THE CONFIDENTIALITY OF DRUG TESTING RESULTS AND THE INDIVIDUAL RIGHT TO PRIVACY SHOULD BE UNCOMPROMISINGLY CONTROLLED.

Legal Requirements

15–2. AGENCIES SHOULD CONFORM TO EXISTING STATE LAWS AND COURT DECISIONS ON THE RELEASE OR NON-RELEASE OF INFORMATION RESULTING FROM DRUG TESTS AND SHOULD REVIEW THESE LAWS AND COURT DECISIONS PERIODICALLY.

Commentary: If there are State laws or court decisions, these must be incorporated into agency guidelines and followed strictly. This is the most important guideline on confidentiality. It is important that this be ascertained by the agency prior to drafting agency rules on drug tests. If such information is not readily available (as it usually is not), information must be sought from a knowledgeable lawyer or the Office of the State Attorney General. If such rules exist, strict adherence to these rules is a must. Even if State law or court decisions exist but do not cover the whole area of confidentiality, the agency must draft its own rules to supplement unaddressed concerns. In the absence of State confidentiality laws, Federal laws should be followed.

15–3. IF THERE ARE NO STATE LAWS OR COURT DECISIONS GOVERNING THE RELEASE OR NON-RELEASE OF DRUG TEST RESULT INFORMATION, THE AGENCY SHOULD DRAFT ITS POLICY IN COMPLIANCE WITH FEDERAL CONFIDENTIALITY LAWS.

Commentary: If there is State law on disclosure of information, such law is best incorporated in the agency policy on disclosure. If there is no such law, it becomes even more important that there be an agency policy on confidentiality. Civil liability risks for

the officers and the agency are minimized if a carefully drawn policy is used by the agency.

Perhaps the safest disclosure policy is one that limits disclosure:

- to the offender;
- to a third party with the offender's prior written consent; and
- pursuant to a court order.

The following agencies or personnel may also be given access to the information, provided State law or court decisions in that jurisdiction do not provide otherwise:

- medical personnel to meet that individual's bona fide medical needs;
- qualified personnel for research, audit, or program evaluation; and
- other criminal justice agencies on a "need to know" basis.

An agency list of the type of information that is permissible to release and to whom it is recommended. The list should also state what kind of information cannot be released and the possible penalty for unauthorized disclosure.

Protocol for Releasing Results

15–4. REQUESTS FOR DISCLOSURE OF TEST RESULT INFORMATION, OTHER THAN THOSE TO WHOM THE INFORMATION SHOULD BE DISCLOSED BY STATUTE OR CASE LAW, SHOULD BE MADE IN WRITING.

Commentary: This protects the officers and agency from the risks associated with malicious or bogus requests. Requests for disclosure by telephone must not be honored, unless authorized by State legislation or case law.

15–5. THERE SHOULD BE PROPER DOCUMENTATION OF THE ACTION TAKEN AND TO WHOM AND WHEN THE DISCLOSURE WAS MADE.

Commentary: The agency must monitor carefully the release of information on drug test results. This protects the agency and its officers against allegations of careless release.

15–6. IF THE AGENCY IS USING FEDERAL FUNDS FOR TESTING, THE AGENCY SHOULD COMPLY WITH FEDERAL RULES ON CONFIDENTIALITY.

Commentary: Such rules are found in 42 C.F.R., Part 2, Revised as of October 1, 1988.

15–7. AGENCY DRUG TESTING POLICY SHOULD CLEARLY DELINEATE THE PROCEDURES TO BE FOLLOWED FOR DISCLOSING OFFENDER DRUG TEST RESULTS.

Commentary: Disclosure policy should clearly state:

- who is eligible to receive the results;
- what information can and cannot be released;
- any conditions associated with releasing test results;
- the State law and agency policy governing disclosure of information; and
- any disciplinary action that will be undertaken when a breach of law or policy occurs.

15–8. TEST RESULTS SHOULD BE DISCLOSED ONLY TO THOSE WHO ARE REQUIRED BY LAW OR AGENCY POLICY TO HAVE THEM.

15–9. WHENEVER THERE IS A QUESTION CONCERNING THE DISCLOSURE OF TEST RESULTS, THEY SHOULD BE RELEASED ONLY WITH THE AUTHORIZATION OF A JUDGE OR PAROLE BOARD.

15–10. IF THE COURT OR PAROLE BOARD CANNOT OR WILL NOT AUTHORIZE THE DISCLOSURE OF DRUG TEST RESULTS, THEY SHOULD NOT BE RELEASED.

CRIMINAL JUSTICE DRUG TESTING OPTIONS

A probation or parole agency with responsibility for criminal justice drug testing has several alternatives for deciding where the actual drug testing will take place. These options include the following:

1. Contracting for Drug Testing Services

Drug testing services can be contracted to any reference laboratory with forensic testing capability. Forensic testing refers to handling specimens which have potentially legal implications, such as employee testing or criminal justice testing.

A reference laboratory may have clinical diagnostic capability which involves a wide range of diagnostic testing on bodily fluids primarily for medical purposes. *It is not necessary when contracting with a reference laboratory for criminal justice testing services that a laboratory have clinical diagnostic capability.*

Sub-specialty laboratories that are only criminal justice drug testing laboratories do exist. These laboratories consist of any place which provides, through the ownership or operation, facilities for drug use screening and/or confirmation for drug detection testing, and which are not subject to all regulations as defined for clinical laboratories.

2. Criminal Justice Onsite Drug Testing

Probation and parole agencies have the option of testing onsite for their initial screening criminal justice testing needs. There are currently two types of onsite testing capabilities.

(1) Onsite Instrument-Based Drug Testing uses a more formal laboratory-like instrument to detect drug use.

(2) Onsite Non-Instrument-Based Drug Testing relies on a small slide or card for the almost immediate detection of drug use.

Because both of these options involve only initial screening, they are not subject to all the same regulations as defined for clinical laboratories. This is why the APPA guidelines were needed to establish credible onsite testing programs.

Probation and parole agencies may use a combination of contracted services and onsite testing to provide for their testing needs, especially since only GC/MS confirmation tests are currently conducted at reference laboratories.

CONTRACTING FOR DRUG TESTING SERVICES

The purpose of this section is to assist agencies in developing the criteria required for initiating a contractual arrangement for laboratory drug testing services. While this testing will take place off-site, agency authorities still need to be actively involved in understanding and monitoring the operations of a contracted laboratory. This will help to increase the cost-effectiveness of this option.

Laboratories that meet the APPA Drug Testing Guidelines are acceptable for contracts to conduct drug testing. In contracting with a laboratory for drug testing services, the agency should consider the following criteria:

- review of the methodologies used at the laboratory site to ensure they are in compliance with APPA guidelines;
- defining the sequencing and occurrence of initial and confirmatory testing that is required by the agency, i.e., is re-screening of initial onsite positives necessary;
- whenever possible, building in APPA guidelines for different confirmatory practices, based on how test results will be used;
- determine possibility of developing a trends analysis system based on the test results of the agency's offender population;
- the adequacy of the laboratory facilities;
- the expertise and experience of the laboratory personnel;
- the performance of the laboratory on any performance tests;
- the excellence of the laboratory's quality assurance/quality control program;
- the laboratory's compliance with guidelines as reflected in any laboratory inspections; and
- any other factors affecting the reliability and accuracy of drug tests and reporting done by the laboratory.

Laboratory Personnel

16–1. THE LABORATORY SHOULD HAVE A QUALIFIED INDIVIDUAL TO ASSUME PROFESSIONAL, ORGANIZATIONAL, EDUCATIONAL, AND ADMINISTRATIVE RESPONSIBILITY FOR THE LABORATORY'S URINE DRUG TESTING OPERATIONS.

NOTE: This individual will hereafter be referred to as the Director.

16–2. THE DIRECTOR, FOR ANY LABORATORY WITH GC/MS CAPABILITY, SHOULD HAVE DOCUMENTED SCIENTIFIC QUALIFICATIONS IN ANALYTICAL FORENSIC TOXICOLOGY.

Commentary: The minimum management qualifications should be as listed below:

A. certification as a laboratory director by the State in forensic or clinical laboratory toxicology;

or

B. a Ph.D. in one of the natural sciences with an adequate undergraduate and graduate education in biology, chemistry, and pharmacology or toxicology;

or

C. training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree with additional training and laboratory/research experience in biology, chemistry, and pharmacology or toxicology;

and

D. in addition to the requirements in (A), (B), and (C) above, minimum qualifications also require:

(1) appropriate experience in analytical forensic toxicology including experience with the analysis of biological material for drugs of abuse;

and

(2) appropriate training and/or experience in forensic applications of analytical toxicology, e.g., publications, court testimony, research concerning analytical toxicology of drugs of abuse, or other factors which

qualify the individual as an expert witness in forensic toxicology.

16–3. THE DIRECTOR FOR CRIMINAL JUSTICE LABORATORIES PERFORMING INITIAL SCREENING SERVICES SHOULD HAVE THE SAME QUALIFICATIONS AS THE MANAGER FOR A CRIMINAL JUSTICE ONSITE INSTRUMENT-BASED TESTING FACILITY.

16–4. THE DIRECTOR SHOULD BE ENGAGED IN AND RESPONSIBLE FOR THE DAY-TO-DAY MANAGEMENT OF THE DRUG TESTING LABORATORY EVEN WHERE ANOTHER INDIVIDUAL HAS OVERALL RESPONSIBILITY FOR AN ENTIRE MULTISPECIALTY LABORATORY.

16–5. THE DIRECTOR SHOULD BE RESPONSIBLE FOR ENSURING THAT THERE ARE ENOUGH PERSONNEL WITH ADEQUATE TRAINING AND EXPERIENCE TO SUPERVISE AND CONDUCT THE WORK OF THE DRUG TESTING LABORATORY.

Commentary: This position should assure the continued competency of laboratory personnel by documenting their in-service training, reviewing their work performance, and verifying their skills.

Laboratory Analysis Procedures

16–6. THE DIRECTOR SHOULD BE RESPONSIBLE FOR MAINTAINING A LABORATORY PROCEDURE MANUAL WHICH IS COMPLETE, UP-TO-DATE, AVAILABLE TO ALL PERSONNEL PERFORMING TESTS, AND RIGOROUSLY FOLLOWED BY THOSE PERSONNEL.

Commentary: The procedure manual should be reviewed, signed, and dated by this responsible individual whenever procedures are first placed into use or changed or when a new individual assumes responsibility for management of the drug testing laboratory. Copies of procedures and dates on which they are in effect should be maintained. The manual should include information on:

- controls;
- references;
- cutoff values;
- linearity of methods;
- derivation of results;
- calibration procedures;
- standards and controls;
- preparation of reagents;
- principals of each test;
- sensitivity of the methods;
- reagents and expiration dates;
- mechanisms for reporting results;
- criteria for unacceptable specimens and results; and
- remedial actions to be taken when the test systems are outside of acceptable limits.

Quality Assurance and Quality Control

16–7. AGENCY AUTHORITIES SHOULD REVIEW THE LABORATORY'S QUALITY ASSURANCE AND QUALITY CONTROL RECORDS AT LEAST QUARTERLY.

Commentary: It is critical that all laboratories involved with criminal justice testing be reviewed on a regular basis to assure compliance with quality assurance and control practices.

16–8. THE DIRECTOR SHOULD BE RESPONSIBLE FOR MAINTAINING A QUALITY ASSURANCE PROGRAM WHICH ENCOMPASSES ALL ASPECTS OF THE TESTING PROCESS.

Commentary: Quality assurance procedures should be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs. These procedures should include:

- chain of custody;
- specimen acquisition;
- initial and confirmatory testing;
- security and reporting of results; and
- validation of analytical procedures.

This program will assure the:

- maintenance of quality control testing;
- proper performance and reporting of test results;
- maintaining acceptable analytical performance for controls and standards; and
- documentation of the following characteristics of each test and test system, including:
  - accuracy
  - validity
  - precision
  - performance
  - reliability.

16–9. THE DIRECTOR SHOULD BE RESPONSIBLE FOR TAKING REMEDIAL ACTION NECESSARY TO MAINTAIN SATISFACTORY OPERATION AND PERFORMANCE OF THE LABORATORY.

Commentary: This individual should respond when quality control systems are not within performance specifications, and when errors are made in result reporting or in analysis of performance testing results. This individual should ensure that specimen results are not reported until corrective action has been taken and the individual can guarantee that the tests results provided are accurate and reliable.

16–10. THE LABORATORY'S URINE DRUG TESTING FACILITY SHOULD HAVE A QUALIFIED INDIVIDUAL(S) WHO REVIEWS PERTINENT DATA AND QUALITY CONTROL RESULTS IN ORDER TO ATTEST TO THE VALIDITY OF THE LABORATORY'S TEST REPORTS.

Commentary: A laboratory may designate more than one person to perform this function. This individual may be any employee who is qualified to be responsible for day-to-day management or operation of the drug testing laboratory.

16–11. THE LABORATORY'S URINE DRUG TESTING FACILITY SHOULD HAVE AN INDIVIDUAL RESPONSIBLE FOR DAY-TO-DAY OPERATIONS AND TO SUPERVISE TECHNICIANS.

Commentary: This individual should have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. The individual should have training and experience in the theory and practice of the procedures used in the laboratory, resulting in a thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; maintenance of chain of custody; and proper remedial actions when control limits are exceeded or aberrant test or quality control results are detected.

16–12. THE LABORATORY'S URINE DRUG TESTING PROGRAM SHOULD MAKE AVAILABLE CONTINUING EDUCATION PROGRAMS TO MEET THE NEEDS OF LABORATORY PERSONNEL.

16–13. LABORATORY PERSONNEL FILES SHOULD INCLUDE:

- references;
- incident reports;
- job descriptions;
- certification or license;
- resume of training and experience;
- performance evaluation and advancement; and
- results of tests which establish employee competency for the position held.

Laboratory Security

16–14. DRUG TESTING LABORATORIES SHOULD BE SECURE AT ALL TIMES.

Commentary: Laboratories should have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory processes or to areas where records are stored. Access to these secure areas should be limited to specifically authorized individuals whose authorization is documented. With the exception of personnel authorized to conduct inspections on behalf of State or local agencies for which the laboratory is engaged in urine testing or on behalf of the agency director, authorized visitors and maintenance and service

personnel should be escorted at all times. Documentation of individuals accessing these areas, dates, and times of entry and purpose of entry should be maintained.

Contracted laboratories should not allow any employee who may be on probation or parole access to the specimens or procedures.

16–15. LABORATORIES SHOULD USE CHAIN OF CUSTODY PROCEDURES TO MAINTAIN CONTROL AND ACCOUNTABILITY OF SPECIMENS FROM RECEIPT THROUGH COMPLETION OF TESTING, REPORTING OF RESULTS, DURING STORAGE, AND CONTINUING UNTIL FINAL DISPOSITION OF SPECIMENS.

Commentary: The date and purpose should be documented on an appropriate chain of custody form each time a specimen is handled or transferred, and every individual in the chain should be identified. Authorized technicians should be responsible for each urine specimen or aliquot in their possession and should sign and complete chain of custody forms for those specimens or aliquot as they are received.

16–16. THE PROBATION OR PAROLE AGENCY SHOULD PROVIDE IN THE CONTRACT THAT THE LABORATORY ADHERES TO PROPER CHAIN OF CUSTODY PROCEDURES AND COMPLIES WITH STATE AND FEDERAL LEGISLATION AND CASE LAW, IF ANY.

Commentary: Should the testing of specimens be contracted with an outside laboratory instead of being done inhouse, the chain of custody problem becomes a joint concern between the agency and the laboratory. To ensure proper procedures, the agency must incorporate the proper chain of custody procedures it wants the laboratory to observe. When necessary, witnesses must be made available by the laboratory without expense to the agency, to prove that the proper chain of custody procedures were followed.

Tampering

16–17. WHEN A SHIPMENT OF SPECIMENS IS RECEIVED, LABORATORY PERSONNEL SHOULD INSPECT EACH PACKAGE FOR EVIDENCE OF POSSIBLE TAMPERING AND COMPARE INFORMATION ON SPECIMEN BOTTLES IN EACH PACKAGE WITH THE INFORMATION ON THE ACCOMPANYING CHAIN OF CUSTODY FORMS.

16–18. IN THE EVENT EVIDENCE OF TAMPERING IS DISCOVERED THE LABORATORY SHOULD NOTIFY THE AGENCY AND PROCEED ACCORDING TO AGENCY DIRECTIONS.

16–19. CONTRACTED LABORATORIES SHOULD TEST ONLY THOSE DRUG CATEGORIES REQUESTED BY AN AGENCY AS INDICATED ON THE REQUEST FOR DRUG TEST FORM (SEE APPENDIX B, ATTACHMENT 3).

16–20. THE AGENCY AND CONTRACTED LABORATORY SHOULD DETERMINE EXACTLY WHICH DRUG CATEGORIES WILL BE INCLUDED ON A FULL DRUG SCREEN PRIOR TO SIGNING THE CONTRACT.

Initial and Confirmatory Capability at Same Site

16–21. A FORENSIC REFERENCE LABORATORY SHOULD HAVE THE CAPABILITY TO CONDUCT BOTH INITIAL AND CONFIRMATORY TESTS ON THE SAME LABORATORY PREMISES, WHILE A CRIMINAL JUSTICE DRUG TESTING LABORATORY MAY BE USED TO PROVIDE INITIAL SCREENING ONLY.

Commentary: This capability should include testing for any drug authorized by the agency. Additionally, some drug testing laboratories have reciprocity agreements with NIDA-qualified laboratories when a GC/MS confirmation is required. An agreement of this nature would reduce the overall higher cost per test for agency referrals.

16–22. THE INITIAL TEST EMPLOYED BY THE CONTRACTED LABORATORY SHOULD USE AN IMMUNOASSAY WHICH MEETS THE REQUIREMENTS OF THE FOOD AND DRUG ADMINISTRATION FOR COMMERCIAL DISTRIBUTION FOR THOSE DRUGS WHICH CAN BE DETECTED WITH AN IMMUNOASSAY TECHNIQUE.

16–23. URINE SPECIMENS IDENTIFIED AS POSITIVE AND REQUIRING CONFIRMATION SHOULD BE CONFIRMED USING GAS CHROMATOGRA-

PHY/ MASS SPECTROMETRY (GC/MS), UNLESS IN APPROVED EXCEPTION CIRCUMSTANCES AS PER APPA CONFIRMATORY GUIDELINES.

Commentary: This guideline does not rule out the use of other sophisticated confirmation methods which may be appropriate under certain circumstances. There could be cases where the confirmation of a specific drug may be more thoroughly analyzed by using a methodology other than GC/MS. Furthermore, some jurisdictions may accept other sophisticated confirmation methods. However, GC/MS is the gold standard and should be used whenever the offender denies drug use and the test result is being used as evidence in a revocation proceeding. The criteria which require confirmations and other confirmatory options are delineated in guidelines 6-1 through 6-13.

Evaluation of Performance Testing

16–24. THE LABORATORY SHOULD PROVIDE THE AGENCY DRUG TESTING PROGRAM COORDINATOR WITH A MONTHLY STATISTICAL SUMMARY OF TEST RESULTS.

Commentary: Initial and confirmation data should be included from test results reported during that month. The summary should contain the following information:

- number of specimens received;
- number of positives confirmed; and
- number of specimens that screened positive and for which drugs.

16–25. THE AGENCY DIRECTOR AND OTHER STATE OFFICIALS SHOULD HAVE THE RIGHT TO INSPECT THE LABORATORY AT ANY TIME.

Commentary: An agency contract with a laboratory for drug testing, as well as any contract for collection site services, should permit the agency to conduct unannounced inspections.

16–26. THE LABORATORY SHOULD BE REQUIRED TO MAINTAIN DOCUMENTS FOR ANY SPECIMEN UNDER LEGAL CHALLENGE FOR AN INDEFINITE PERIOD.

16–27. A LABORATORY SHOULD HAVE DESIGNATED PERSONNEL TO TESTIFY, WHEN NECESSARY, IN A LEGAL PROCEEDING REGARDING THE RELIABILITY OF THE TEST RESULTS.

Commentary: The Fifth Amendment right to confrontation and cross-examination protects persons from the hazards of hearsay evidence. Defendants can be convicted only when they have had a chance to confront and question their accusers. Probation or parole revocation, however, is not a trial, and, consequently, probationers are not entitled to the full panoply of constitutional rights guaranteed to presumably innocent defendants. Standing alone, test results deprive offenders of the right to confrontation and cross-examination. It is hearsay if the technician who conducts the test cannot be in court for cross-examination. However, exceptions to the hearsay rule exist, including the introduction of drug testing laboratory reports in certain instances. Agencies should be prepared to bring the appropriate personnel into court whenever expert testimony is required for any part of the testing process.

16–28. LABORATORY FACILITIES SHOULD COMPLY WITH APPLICABLE PROVISIONS OF ANY STATE LICENSURE REQUIREMENTS.

16–29. LABORATORY CONTRACTS SHOULD REQUIRE THAT THE CONTRACTOR COMPLY WITH THE PRIVACY ACT, 5 U.S.C. 552a.

Commentary: Contracts should further require compliance with the patient access and confidentiality provisions of section 503 of Public Law 100-71.

16–30. THE AGENCY SHOULD RETAIN THE RIGHT OF TERMINATING THE CONTRACTUAL ARRANGEMENT WITH ANY LABORATORY IN ORDER TO ENSURE THE FULL RELIABILITY AND ACCURACY OF DRUG TESTS AND THE ACCURATE REPORTING OF TEST RESULTS.

Commentary: The agency should consider the following factors when making a determination to terminate a contract:

- false positives for confirmatory tests;
- unsatisfactory participation in performance evaluations or laboratory inspections;
- unsatisfactory performance in analyzing and

reporting the results of drug tests, especially a false positive;

- conviction for any criminal offense committed as an incident to operation of the laboratory;
- material violation of a contract term or other condition imposed on the laboratory by the agency using the laboratory services; and
- any other cause which materially affects the ability of the laboratory to ensure the full reliability and accuracy of drug tests and the accurate reporting of results.

16–31. THE AGENCY SHOULD AUDIT THE PERFORMANCE TEST REQUIREMENTS.

Commentary: Performance testing should be a necessary part of the continuing assessment of the laboratory performance. Agencies may wish to establish their own criteria for the evaluation of performance testing. The agency should consider the following:

- false positives for confirmatory test should disqualify a laboratory from consideration;
- an initial three cycles of successful participation in testing should be required before a laboratory may be considered;
- a laboratory must correctly identify and confirm 90 percent of the total drug challenges in the three initial cycles;
- laboratories should be challenged every other month with sets of at least 10 specimens for a total of six cycles per year;
- performance test specimens should be handled in a manner identical to that applied to routine laboratory specimens;
- laboratories should be subject to blind performance testing with performance expectations at the same level as for open performance testing;
- laboratories should report performance testing results in the same manner as those for routine laboratory specimens;
- performance test specimens should approximate levels of drug and metabolite concentrations which might be expected in the urine of recent drug users; and
- experience of the laboratory in meeting test performance standards of a State agency (e.g., State health department) authorized to review and license laboratories within its jurisdiction.

16–32. AGENCIES SHOULD DEVELOP RESPONSES FOR DEALING WITH FALSE POSITIVES.

Commentary: An agency detecting a false positive should immediately notify the laboratory and the agency director. The laboratory should provide the agency director with a written explanation within 5 working days.

16–33. THE LABORATORY SHOULD COMPLY WITH OTHER APPLICABLE APPA DRUG TESTING GUIDELINES AS THEY RELATE TO LABORATORY PRACTICES.

Commentary: These include legal issues, confidentiality, specimen storage, reporting of results, and confirmations.

Establishing Criminal Justice Onsite Instrument-Based Drug Testing

In recent years drug testing technology has evolved to a level of simplistic instrumentation. The ease of operation of these instruments has resulted in establishing a viable, cost-effective alternative to contracting for drug testing services. As more probation or parole agencies have become involved in operating their own testing equipment, the need has emerged for onsite instrument guidelines to ensure and enhance the credibility, accuracy, and defensibility of probation or parole onsite instrument-based drug testing.

The following represent appropriate guidelines for probation or parole onsite instrument criminal justice drug testing. Compliance with these guidelines even at the highest level does not guarantee accuracy of each result reported by the test site. Results from an onsite testing facility complying with these guidelines must be interpreted with a complete understanding of the total collection, analysis and reporting process before a final conclusion is made.

Onsite instrument-based drug testing facilities require accountability for efficient quality assurance and quality control procedures which are associated with the operations of a more formal laboratory. These are outlined in the following guidelines and provide the necessary framework for operating procedures which enhance the credibility of this initial screening alternative for criminal justice drug testing services. The following APPA guidelines would also apply to an off-site instrument-based criminal justice drug testing facility with which an agency could contract to perform its initial screening tests.

These guidelines only apply to initial testing and not to the GC/MS confirmatory operations which may be required for some positive screens. GC/MS is only operated in more formal reference laboratories and an agency will need to contract for these services. The APPA guidelines for contracting for drug testing services would apply to those facilities with GC/MS capability.

Initial Test (Screening Test)

17–1. THE INITIAL TEST SHOULD USE AN IMMUNOASSAY WHICH MEETS THE REQUIREMENTS OF THE FOOD AND DRUG ADMINISTRATION FOR COMMERCIAL DISTRIBUTION.

Commentary: The purpose of this initial test is to eliminate negative specimens from further consideration, and to identify positive specimens. Probation or parole onsite instrument testing using an immunoassay methodology is technically only an initial test instrument. However, these sites can provide confirmatory alternatives to the more formal and expensive GC/MS confirmation, as described in the confirmation section of these guidelines.

Drugs To Include In Testing Protocol

17–2. ONSITE INSTRUMENT-BASED TESTING SHOULD HAVE THE CAPABILITY OF TESTING FOR AT LEAST FIVE ILLEGAL DRUGS OR DRUG CATEGORIES, WHICH MAY INCLUDE MARIJUANA, COCAINE, AMPHETAMINES, BARBITURATES, OPIATES, PCP, BENZODIAZAPINES, OR OTHER DRUGS OF ABUSE CURRENTLY IN THE AREA.

Commentary: Illegal drugs refer to those drugs included in schedule I or II of the Controlled Substance Act, but not when used pursuant to a valid prescription or when used as otherwise authorized by law.

Number of Tests per Specimen

17–3. ONSITE INSTRUMENT-BASED TESTING SHOULD ONLY TEST FOR THOSE DRUG CATEGORIES REQUESTED BY THE SUPERVISING OFFICER AS INDICATED ON THE REQUEST FOR DRUG TEST(S) FORM UNLESS OTHERWISE AUTHORIZED BY APPROPRIATE PERSONNEL (SEE APPENDIX B, ATTACHMENT 3).

17–4. AGENCY AUTHORITIES SHOULD PREDETERMINE WHICH DRUG CATEGORIES SHOULD BE INCLUDED ON A FULL SCREEN AND THE FREQUENCY OF USE OF FULL SCREENS.

Commentary: Instrument tests will routinely be running partial screens on most specimens. Partial screens should consist of testing for 1–3 illegal drugs, depending on the most abused drugs currently used by the offender population, and the funds of the agency. The types of drugs tested for will vary greatly depending on location.

Full screens will be run as requested by the supervising officer. It is critical that a testing site conducts at least quarterly random full screens for identifying the current drugs of choice and detecting changes in drug use trends. The ability to run full screens more frequently will often depend on the financial resources of an agency. The inability to routinely run full screens does not necessarily decrease the effectiveness of onsite instrument testing. Significant resources can be saved by primarily conducting partial screens.

Security

17–5. ONSITE INSTRUMENT-BASED TESTING SHOULD HAVE IN PLACE SUFFICIENT SECURITY MEASURES TO CONTROL ACCESS TO THE PREMISES, AND TO ENSURE THAT NO UNAUTHORIZED PERSONNEL HANDLE SPECIMENS OR GAIN ACCESS TO THE TEST SITE PREMISES OR TO THE AREA WHERE RECORDS ARE STORED.

Commentary: Security of the testing site should be taken into consideration before selecting the laboratory site. In many cases the testing site will be a room in a probation or parole facility. This room should be locked when not in use. With the exception of authorized personnel everyone else should be accompanied by staff in the testing site. Only authorized testing site personnel should have keys to the testing site. Cleaning and maintenance crews should not have unescorted access to the testing site.

Location of Onsite Instrument Testing

17–6. ONSITE INSTRUMENT-BASED TESTING SHOULD BE ESTABLISHED IN ROOMS WHERE THERE IS ADEQUATE VENTILATION, LIGHTING, ELECTRICAL OUTLETS, AND ACCESS TO HOT AND COLD RUNNING WATER.

17–7. ONSITE INSTRUMENT-BASED TESTING SHOULD BE LOCATED AWAY FROM THE NORMAL FLOW OF TRAFFIC, ESPECIALLY OFFENDER TRAFFIC.

17–8. ONSITE INSTRUMENT-BASED TESTING ROOM(S) SHOULD BE LARGE ENOUGH TO CONTAIN THE NECESSARY TESTING EQUIPMENT AND SUPPLIES, REFRIGERATOR(S) AND FREEZERS, NECESSARY TESTING RECORDS, AND TESTING SITE PERSONNEL'S SUPPLIES.

17–9. THE GENERAL SAFETY OF THE AREA IN WHICH THIS FACILITY IS LOCATED SHOULD BE CONSIDERED BEFORE IT IS SELECTED FOR ONSITE TESTING.

Chain of Custody

17–10. ONSITE INSTRUMENT-BASED TESTING SHOULD USE CHAIN OF CUSTODY PROCEDURES TO MAINTAIN CONTROL AND ACCOUNTABILITY OF SPECIMENS FROM RECEIPT THROUGH COMPLETION OF TESTING, REPORTING OF RESULTS, DURING STORAGE AND CONTINUING UNTIL FINAL DISPOSITION OF SPECIMENS.

17–11. THE DATE AND PURPOSE SHOULD BE DOCUMENTED ON AN APPROPRIATE CHAIN OF CUSTODY FORM WHEN THE SPECIMEN IS RECEIVED AND EACH TIME A SPECIMEN IS TRANSFERRED, AND EVERY INDIVIDUAL HANDLING THE SPECIMEN SHOULD BE IDENTIFIED.

17–12. WHEN A SHIPMENT OF SPECIMENS IS RECEIVED, ONSITE INSTRUMENT-BASED TESTING PERSONNEL SHOULD ACKNOWLEDGE RECEIPT ON THE CHAIN OF CUSTODY FORM AND PROVIDE A COPY TO THE DELIVERER.

17–13. ONSITE INSTRUMENT-BASED TESTING PERSONNEL SHOULD MAINTAIN A CONTROL LOG.

Commentary: When the urine specimen is presented to the onsite instrument testing personnel, testing site should enter and update the following information on a control log:

- test result;
- date results reported;
- supervising officer's name;
- name of staff member receiving specimen;
- the offender's last name and identifying number;
- the time and date the specimen was received; and
- the time and date the specimen was shipped to another confirmatory site, if applicable.

17–14. ONSITE INSTRUMENT-BASED TESTING PERSONNEL SHOULD INSPECT EACH PACKAGE FOR EVIDENCE OF POSSIBLE TAMPERING AND COMPARE INFORMATION ON SPECIMEN BOTTLES WITHIN EACH PACKAGE TO THE INFORMATION ON THE ACCOMPANYING CHAIN OF CUSTODY FORM.

17–15. ANY DIRECT EVIDENCE OF TAMPERING OR DISCREPANCIES IN THE INFORMATION ON SPECIMEN BOTTLES OR THE AGENCIES CHAIN OF CUSTODY FORM ATTACHED TO THE SHIPMENT SHOULD BE REPORTED TO THE SUBMITTING OFFICE, AND SHOULD BE NOTED ON THE CHAIN OF CUSTODY FORM WHICH SHOULD ACCOMPANY THE SPECIMENS WHILE THEY ARE ONSITE.

Commentary: It is critical to the credibility of onsite instrument testing that the same rigorous chain of custody procedures which were followed prior to the specimen arriving at the test site are also maintained while the specimen is onsite. Any weakness in this chain could result in the inadmissibility of test results in a court hearing, and could cause the reputation of onsite instrument testing to be jeopardized.

Storage

17–16. SHORT TERM STORAGE: SPECIMENS WAITING TO BE TESTED SHOULD BE STORED IN A REFRIGERATOR ACCORDING TO THE TESTING SUPPLIER'S REQUIREMENTS.

Commentary: Each supplier will make a recommendation that the urine specimens be refrigerated after sitting out a certain length of time, in order for their assays to be able to detect a drug or metabolite accurately. Test results are only as good as the specimen they came from. Deviations from manufacturer's recommendations could result in inaccurate test results.

Typically, this will require storage for specimens which have not been refrigerated for 2–48 hours. It is important to include the amount of time the specimen was not refrigerated during collection and transportation in determining the need for storage onsite. In refrigerating, the specimen temperatures should generally not exceed 6 degrees Celsius.

17–17. LONG-TERM STORAGE: IN THE EVENT OF A POSITIVE RESULT ON AN INITIAL TEST, TESTING SITES SHOULD FREEZE THE SPECIMEN TO ENSURE THAT POSITIVE URINE SPECIMENS WILL BE AVAILABLE FOR ANY NECESSARY RETESTING.

17–18. UNLESS OTHERWISE AUTHORIZED IN WRITING BY THE SUPERVISING OFFICER, DRUG TESTING SITES SHOULD RETAIN, FREEZE, AND PLACE THE POSITIVE SPECIMEN IN PROPERLY SECURED LONG-TERM STORAGE FOR A PERIOD OF 90 DAYS.

Commentary: At the supervising officer's discretion, onsite testing personnel may be authorized to discard a positive specimen at any time during the 90-day period. Such authorization may occur as a result of an offender admission, final court disposition, or as a determination by agency personnel that the specimen will not be used in a legal proceeding.

17–19. WITHIN THE 90-DAY PERIOD, THE SUBMITTING OFFICE MAY REQUEST THAT THE TEST

SITE RETAIN THE SPECIMEN FOR AN ADDITIONAL PERIOD OF TIME, i.e., UNTIL DATE OF HEARING.

Commentary: If no such request is received, the test site may discard the specimen after 90 days. Test sites may be required to maintain any specimens under legal challenge for an indefinite period. Test sites will need to have enough refrigerator and freezer capacity to store their specimens. Refrigeration will also be needed for the chemicals used in the testing procedures.

The number of refrigerators and freezers needed will depend on the estimated number of specimens received per month, and the positive rate of these specimens. In general, two 15–20 cubic feet refrigerators and two 15.1 cubic feet freezers will be needed to handle the storage demand for a test site that averages 750 specimens per month.

17–20. NEGATIVE SPECIMENS SHOULD NOT BE STORED AND CAN BE DISCARDED IMMEDIATELY UPON IDENTIFYING THE NEGATIVE RESULTS FROM THE TEST.

17–21. REFRIGERATOR(S) AND FREEZERS SHOULD BE SECURED WITH A LOCK, IN ADDITION TO THE ROOM LOCK, WHEN THE TEST SITE IS NOT IN USE.

Commentary: Refrigerators often come with locks built in; however, a large chain lock wrapped around the refrigerator may offer more security.

Onsite Instrument-Based Testing Analysis Procedures

17–22. RELIABILITY/VALIDITY OF RESULTS: ONSITE TESTING PERSONNEL SHOULD MAINTAIN STRICT ADHERENCE TO SUPPLIER'S PROCEDURES REGARDING ASPECTS OF THE ANALYSIS PROCESS.

Commentary: Failure to comply with specific supplier's procedures could result in the reliability and validity of the test result being challenged, and the results deemed inadmissible as evidence in a revocation hearing. The use of nontechnical personnel to run the testing instruments in no way reduces the established reliability and validity of an existing methodology, as long as the test site's operating procedures comply with the manufacturer's procedures.

17–23. AGENCY POLICY SHOULD DETERMINE THE THRESHOLD LEVELS TO BE USED FOR EACH DRUG BEING TESTED, AND FOR EACH PURPOSE OF TESTING, i.e., INITIAL TESTING, CONFIRMATORY TESTING, INHOUSE DISCIPLINARY ACTION VS. COURT ACTION, ETC.

17–24. AGENCY PERSONNEL SHOULD USE THE SUPPLIER'S RECOMMENDATION FOR THE DEFENSIBLE CUTOFF LEVELS FOR THEIR INSTRUMENTATION IN DETERMINING THE CUTOFF LEVEL FOR EACH DRUG BEING TESTED.

Commentary: Most manufacturers have adapted their methodologies to the cutoff levels established by NIDA, and they will recommend using these cutoffs for probation and parole drug testing settings. However, these guidelines did not take into account the advancement of some technologies to identify drug metabolites at lower threshold levels. For probation or parole agencies the ability to identify accurately drug use at levels below the NIDA guidelines may assist in the management of the drug offender.

Agencies exploring the threshold issues need to make certain they use the cutoff level which the manufacturer will support in court. Therefore, each agency will need to determine what is the most useful as well as defensible cutoff level to use for its testing needs.

Quality Assurance

Quality assurance is the drug testing program protocol instituted to assure day to day reliability and validity of test results. Some of the quality assurance procedures will vary depending on the instrumentation used. The manufacturer will be the most appropriate resource for establishing most of the quality assurance procedures for its instrumentation, i.e., quality control steps, maintenance schedules and logs.

There are other quality assurance procedures which must be adhered to in establishing a credible testing program. Participation in a recognized performance test system can be set up through organizations such

as the American Society of Clinical Pathologists (ASCP) or the American Association of Bio-Analysts (AABA). This performance test will consist of identifying a set number of blind specimens to verify that both operator and machine are operating accurately. A performance record of these tests should be kept at the test site.

17–25. THE ONSITE INSTRUMENT-BASED TESTING FACILITY SHOULD ESTABLISH PROCEDURES TO ASSURE DAY-TO-DAY RELIABILITY OF TEST RESULTS.

17–26. QUALITY ASSURANCE PROCEDURES SHOULD INCLUDE PARTICIPATION IN A MONTHLY PROFICIENCY SURVEY (PERFORMANCE TESTS).

Commentary: Performance tests consist of identifying a set number of blind specimens to verify that both operator and machine are operating accurately. Performance testing can be set up with one of the organizations mentioned above. Reports of the results of the performance tests will be kept onsite, as well as being forwarded to the agency authority responsible for monitoring the onsite facilities performance, for review and appropriate action.

17–27. QUALITY ASSURANCE PROCEDURES SHOULD INCLUDE REPLICATE TESTING OF KNOWN POSITIVE SPECIMENS WHICH HAVE BEEN FROZEN AND ARE REMOVED QUARTERLY AND TESTED.

17–28. QUALITY ASSURANCE PROCEDURES SHOULD INCLUDE ROUTINELY PERFORMING A PARTIAL REANALYSIS OF SPLIT SAMPLES ON AT LEAST 1-PERCENT OF TESTS RUN.

Commentary: At least 1 percent of the specimens collected should be split-specimen collections, with appropriate chain of custody and sealed containers. The onsite facility shall analyze one of the two concurrently collected specimens. The facility shall submit the alternate specimen to a certified laboratory for analysis (including screening and confirmation). Reports of both testing results will be forwarded to the agency authority responsible for monitoring the onsite facility's performance, for review and appropriate action.

17–29. QUALITY ASSURANCE PROCEDURES SHOULD INCLUDE ADHERENCE AND DOCUMENTATION OF EQUIPMENT MAINTENANCE AND DAILY QUALITY CONTROL PROCEDURES.

17–30. QUALITY ASSURANCE PROCEDURES SHOULD BE DOCUMENTED ON APPROPRIATE FORMS AND BE AVAILABLE FOR INSPECTION OR COURT EVIDENCE IF NEEDED.

17–31. ONSITE INSTRUMENT TESTING SHOULD FOLLOW THE SUPPLIER'S ESTABLISHED QUALITY CONTROL REQUIREMENTS AND SHOULD DOCUMENT THE RESULTS FROM THE QUALITY CONTROL REQUIREMENTS.

Commentary: Quality control is part of the quality assurance protocol and consists of running a certain number of standard controls, which are known substances at known values, to assure calibration curves are producing correct results. The quality control requirements will again vary depending on the instrumentation used. The manufacturer has the responsibility for developing quality control requirements specific to the equipment. Deviations from these requirements could result in inaccurate test results, and the manufacturer not supporting the test site's results in the event of a court challenge.

17–32. FALSE POSITIVES: IN THE EVENT A PERFORMANCE TEST REVEALS THE TEST SITE HAD A FALSE POSITIVE, IMMEDIATE ACTION (AS SET BY THE PROBATION OR PAROLE AUTHORITIES RESPONSIBLE FOR THE TEST SITE) SHOULD BE TAKEN TO IDENTIFY THE PROBLEM.

17–33. ACTION TAKEN DUE TO A FALSE POSITIVE SHOULD BE DOCUMENTED AND AT A MINIMUM INCLUDE:

- retesting the specimen;
- checking for operator error;
- contacting supplier for information; and
- placing a temporary hold on testing with the particular drug assay that produced the false positive unless a confirmatory method is used until the problem is resolved.

Commentary: A false positive could result for a variety of reasons, including operator error, improper storage of specimens, assay contamination, possible

adulteration of specimen, or weakness in the methodology. No methodology can assure 100-percent accuracy. Once the problem is identified, probation or parole authorities must make the decision on resuming normal testing for the particular drug. Test sites may choose to have confirmatory tests run on GC/MS initially to increase confidence level in the test.

Reviewing Results

17–34. IN THE EVENT THE TEST SITE IS ASKED TO RETEST A POSITIVE SPECIMEN AND REVIEW OF PERTINENT DATA REVEALS THAT THE RESULT IS SCIENTIFICALLY INSUFFICIENT FOR FURTHER ACTION, THE TEST SITE SHOULD DECLARE THE SPECIMEN A NEGATIVE AND CONTACT THE REQUESTING OFFICE WITH THIS INFORMATION.

Commentary: There may be several instances that arise where a test site is required to retest a positive specimen. The site may be asked to retest a positive result on the same instrument, which may provide a confirmatory option acceptable to local courts. Or a question may arise regarding the accuracy and validity of a positive result. Or a non-instrument test may have been used as the initial test and a positive result was sent to the test site for a confirmatory procedure. In these instances the test site should be prepared to handle these requests, and should maintain the same guidelines which apply to initial testing.

It is important to realize that some analytes will deteriorate or become lost during freezing and/or storage of the specimen. Therefore, retesting may not provide data sufficient to confirm the presence of the drug or metabolite and test sites would then have to declare this specimen a negative.

Court Challenges

17–35. IN THE EVENT THERE IS A COURT CHALLENGE TO THE VALIDITY OF A POSITIVE RESULT, RETESTING SHOULD BE AN OPTION.

17–36. AGENCY STAFF SHOULD ESTABLISH POLICIES FOR HANDLING COURT CHALLENGES TO TEST RESULTS, AND ONSITE STAFF SHOULD BE PREPARED TO PROVIDE EVIDENCE TO SUPPORT THE RESULTS PROVIDED.

17–37. IN THE EVENT CHALLENGES ARISE TO THE VALIDITY AND RELIABILITY OF THE TEST RESULTS, THE RESPONSIBILITY FOR PROVIDING EXPERT TESTIMONY SHOULD ALSO BE SHARED BY THE SUPPLIER OF THE INSTRUMENT USED BY THE TEST SITE.

Commentary: Drug test suppliers may have generous claims to product reliability. This is a technical area which the agency is not prepared to confirm or disprove. It should be the responsibility of the supplier to establish the reliability of the product in case such is challenged or sought to be established in court. This expertise should be furnished at no expense to the agency and should be contained in a contract entered into with the supplier prior to using the drug test. If the drug test is conducted by an outside agency instead of onsite by the probation or parole department, the same stipulation about expert testimony should be in a contract with the outside agency.

Test sites should be knowledgeable of court requirements for drug testing in the area they service. Handling of court challenges will vary greatly from agency to agency because so much depends on local policies, legal mandates, and court acceptance of test results. Test sites will need to work within the parameters set by the courts for admissibility of tests as evidence. Suppliers should provide valuable resources, such as expert testimony to help support test sites through any court challenges to test results. That is why strict adherence to manufacturer's requirements on testing procedures is critical.

Testifying

17–38. ONSITE TESTING STAFF AND SUPPLIER REPRESENTATIVES SHOULD BE PREPARED TO PROVIDE EXPERT TESTIMONY TO THE COURTS THEY SERVICE REGARDING TESTING PROCEDURES AND RESULTS.

Commentary: It is the responsibility of the test site to provide court testimony relevant to any issue involved with the testing of a specimen. This is often a very time-consuming obligation which should be taken into account when staffing the test site(s). Some courts

may accept as evidence a certified copy of the test results. However, acceptance of a drug test report will be determined by the local courts and when this practice is not accepted, the test site should provide this service whenever possible. It is to be understood that conflicts in court hearings will occur from time to time and onsite test personnel should try to schedule drug testing operations around court appearances.

Documentation

17–39. THE TEST SITE SHOULD MAINTAIN DOCUMENTATION ON EVERY ASPECT INVOLVED WITH THE TESTING PROCESS, INCLUDING, BUT NOT LIMITED TO:

- completed chain of custody documents;
- quality assurance/quality control records;
  - maintenance logs
  - performance, replicate and split-specimen testing results
- agency and manufacturer's policy and procedures manuals;
- test data resulting from testing instruments;
  - calibration curves
  - computer printouts
  - any calculations used in determining test results
- hard copies of computer-generated data; and
- copies of agency-required reports.

17–40. TEST SITES SHOULD RETAIN DOCUMENTATION OF EVERY ASPECT OF THE TESTING PROCESS IN ACCORDANCE WITH AGENCY POLICY ON RECORD RETENTION; A TIME PERIOD THAT SHOULD NOT BE LESS THAN 2 YEARS.

17–41. THE RECORD-RETENTION TIME PERIOD MAY BE EXTENDED UPON WRITTEN NOTIFICATION OF AGENCY SUPERIORS, AND THE TEST SITE SHOULD BE REQUIRED TO MAINTAIN DOCUMENTS FOR ANY SPECIMEN UNDER LEGAL CHALLENGE FOR AN INDEFINITE PERIOD OF TIME.

Commentary: Test site records may be provided as evidence in revocation hearings. It is important that these documents are retained for at least 2 years in order to provide this support to probation and parole agencies and the courts. Documentation of compliance with policies and procedures will also support the test sites in the event of challenges.

17–42. THE TEST SITE SHOULD MAINTAIN ONSITE BOTH THE AGENCY POLICIES AND PROCEDURES MANUAL RELEVANT TO DRUG TESTING, AND THE TESTING INSTRUMENT'S PROCEDURES MANUAL.

17–43. CHANGES MADE TO EITHER OF THESE MANUALS SHOULD BE DOCUMENTED ACCORDING TO ESTABLISHED AGENCY POLICIES.

17–44. IN THE EVENT NO POLICY EXISTS, A SYSTEM FOR LOGGING THESE CHANGES SHOULD BE ESTABLISHED BY THE TEST SITE.

Commentary: Both these manuals serve as important reference tools for onsite instrument testing personnel. They will both require updating as needed. It is critical that onsite instrument testing personnel are current on these changes; a logging system for documenting updates will ensure compliance with changes. The documentation can also serve as evidence of compliance in the event of challenges.

17–45. TEST SITES SHOULD PROVIDE TO THE AGENCY OFFICIAL RESPONSIBLE FOR THE COORDINATION OF THE DRUG TESTING PROGRAM A MONTHLY STATISTICAL SUMMARY OF DRUG TESTING.

17–46. THE MONTHLY REPORT SHOULD INCLUDE, BUT IS NOT LIMITED TO:

- the number of retests run;
- the number of specimens received;
- the number of tests run per specimen;
- the number of positives and for which drugs; and
- the method of confirmation used, if any, and the number of positives confirmed by this method.

Commentary: This report may also include the demographics of the population being tested, the number of court challenges that occurred, and the disciplinary action that was taken on the positive result, if known. Statistics generated from test sites can be used to summarize current abuse trends; detect changes in those trends; demonstrate the extent of the problem; and justify the need for action and support on the part of agency supervisors, legislators, media, etc. Information generated can also be used by the field in the management of the drug offender and in budgetary considerations.

Inspections

17–47. AGENCY SUPERIORS SHOULD RESERVE THE RIGHT TO INSPECT THE TEST SITE AT ANY TIME.

17–48. THE NUMBER OF INSPECTIONS WILL BE SET BY AGENCY POLICY, BUT SHOULD MINIMALLY INCLUDE ONE PER QUARTER.

17–49. INSPECTIONS SHOULD MINIMALLY CONSIST OF:

- random security checks of equipment;
- replicate testing of frozen positive specimens;
- review of quality assurance and chain of custody documentation; and
- observation of the technician in running the instrumentation.

Commentary: In order to ensure compliance with policies and guidelines, agency administrators need an open-door policy concerning onsite instrument testing. Administrators need to have access to the test site to observe technicians in operation of testing instruments and specimen handling.

Protected Work Environment

17–50. ONSITE INSTRUMENT-BASED TESTING PERSONNEL SHOULD DEVELOP A BASIC SAFETY DATA SHEET AND INCLUDE THIS IN THE POLICY AND PROCEDURES MANUAL MAINTAINED ONSITE, WHICH SHOULD MINIMALLY INCLUDE THE FOLLOWING PRECAUTIONS:

- use of rubber gloves and a laboratory coat during the handling of specimens;
- no smoking, eating, or drinking in the test site;
- no refrigeration of food where chemicals/specimens are stored;
- compliance with office policy and procedure relevant to fire/emergencies; and
- access to goggles in the event of handling hazardous chemicals.

Commentary: Safety is an obvious concern of any test site, and safety precautions need to be taken by onsite personnel during drug testing operations. While probation and parole test sites are not involved with hazardous chemicals often used in clinical laboratories, it is still important that drug testing personnel adhere to basic practices established for the protection of this particular work environment. The basic safety data sheet outlines established procedures regarding the above conditions and any other areas that may be developed by the test site or agency personnel.

The supplier is often the best resource for obtaining current safety precautions in the drug testing environment. More detailed safety precautions are outlined by such organizations as OSHA or the State licensing authority, but since probation and parole test sites are reference test sites only, application of these precautions will be minimal.

Staffing for Onsite Instrument-Based Drug Testing

17–51. PROBATION OR PAROLE AUTHORITIES SHOULD ADEQUATELY STAFF DRUG TESTING SITES IN ORDER TO CONTINUE OPERATIONS DURING THE ESTABLISHED HOURS OF OPERATION.

17–52. AUTHORITIES SHOULD CONSULT WITH THE SUPPLIER IN DETERMINING ADEQUATE STAFFING PATTERNS FOR THE INSTRUMENTATION USED.

17–53. IN DETERMINING THE STAFFING PATTERN OF THE TEST SITE, AUTHORITIES SHOULD CONSIDER THE FOLLOWING:

- anticipated number of tests run per month;
- anticipated number of retests run per month;
- anticipated testimony time requirements of the courts, in the area served by the test site;
- amount of time it takes to run a set number of tests on the instrumentation used;
- other responsibilities that may be assigned to the technician(s);
- amount of time needed for documentation of the testing procedures; and
- eligible leave time of the technician(s).

17–54. STAFF FOR DRUG TESTING PROGRAMS OF PROBATION OR PAROLE AGENCIES OPERATING ONSITE INSTRUMENT DRUG TESTING SHOULD CONSIST, AT A MINIMUM, OF AN AGENCY DRUG TESTING PROGRAM COORDINATOR, ONSITE DRUG TESTING MANAGER(S), AND ONSITE DRUG TESTING TECHNICIAN(S).

Commentary: In small agencies it is likely that one or two individuals may assume more than one of these roles.

A. Agency Drug Testing Program Coordinator:

17–55. THE DRUG TESTING PROGRAM COORDINATOR SHOULD BE RESPONSIBLE FOR THE COORDINATION OF THE AGENCY'S DRUG TESTING PROGRAM, IN ADDITION TO OTHER ADMINISTRATIVE RESPONSIBILITIES WITHIN THE AGENCY.

Commentary: In probation or parole agencies where there is only one test site, the onsite drug testing manager may serve as the program coordinator.

17–56. IN PROBATION OR PAROLE AGENCIES WHERE THERE IS MORE THAN ONE TEST SITE, A CENTRAL AGENCY EMPLOYEE SHOULD BE GIVEN THE RESPONSIBILITY FOR COORDINATION OF THE AGENCY'S DRUG TESTING PROGRAM.

17–57. THE AGENCY DRUG TESTING PROGRAM COORDINATOR SHOULD ASSUME RESPONSIBILITY FOR THE FOLLOWING:

- contract negotiations and renewals for testing instrumentation;
- coordination of training for testing personnel;
- accumulation and analysis of monthly field reports;
- budgetary responsibilities in compliance with agency policy;
- monitoring legal issues regarding testing methodologies, court challenges, testifying requirements, etc.;
- sharing in hiring decisions of staff for onsite testing, in accordance with agency policy;
- inspection of test sites;
- initiation of appropriate remedial action in accordance with agency policy, if test sites fail to comply with agency policy and guidelines regarding operation of the drug testing site;
- development and implementation of agency's drug testing policy;
- evaluation and analysis of drug testing program; and
- making changes in instrumentation used if needed.

17–58. IN ADDITION TO FULFILLING THE NECESSARY EDUCATIONAL AND TRAINING REQUIREMENTS TO BE IN HIS OR HER PRESENT MANAGEMENT POSITION, THE DRUG TESTING PROGRAM COORDINATOR SHOULD MEET THE SAME TRAINING QUALIFICATIONS AS THE ONSITE TESTING MANAGER.

17–59. THE PROGRAM COORDINATOR SHOULD ALSO ASSIST THE AGENCY'S TRAINING STAFF AND/OR SUPPLIER IN THE DEVELOPMENT AND IMPLEMENTATION OF INITIAL AND INSERVICE TRAINING FOR ONSITE INSTRUMENT TESTING STAFF.

B. Onsite Drug Testing Manager:

17–60. THE ONSITE DRUG TESTING MANAGER SHOULD ASSUME RESPONSIBILITY FOR THE FOLLOWING:

- managing the onsite testing, in addition to other administrative responsibilities relevant to the management of the office where the test site is located;
- ensuring that there are sufficient personnel with adequate training to supervise and conduct the work of the drug testing sites;
- assuring the continued competency of the onsite instrument testing personnel by documenting their inservice training, reviewing their work performance, and verifying their skills;
- taking any remedial action needed with the drug testing technician(s) if disciplinary problems occur, according to agency policy;
- ensuring that a procedural manual is complete, up to date, and available for personnel performing tests; and followed by those personnel;
- reviewing, signing, and dating the procedural manual whenever procedures are first placed into use or changed, or when a new individual assumes day-to-day responsibility for management of the test site;
- maintaining a quality assurance program to assure the proper performance and reporting of test results;
- maintaining acceptable analytical performance for controls and guidelines;
- maintaining quality control testing;
- assuring and documenting the validity, reliability, accuracy, precision, and performance characteristics of each test and test system;
- taking remedial actions necessary to maintain satisfactory operation and performance of the test site in response to quality control systems not being within performance specifications, errors in result reporting, or in analysis of performance testing results;
- ensuring that specimen results are not reported until corrective actions have been taken and that the test results provided are accurate and reliable; and
- ensuring that at least a 3-month supply of chemicals and needed equipment is on hand to avoid any unnecessary shutdown of the test site.

17–61. PROBATION OR PAROLE AUTHORITIES, IN CONJUNCTION WITH THE ONSITE DRUG TESTING MANAGER, SHOULD DECIDE INITIALLY WHEN THE TEST SITE WILL OPERATE AND THEN MAKE THE FIELD STAFF AWARE OF THESE HOURS.

17–62. THE ONSITE DRUG TESTING MANAGER SHOULD BE RESPONSIBLE FOR POSTING THE HOURS OF OPERATION OF THE TEST SITE AND MAKING FIELD STAFF AWARE OF ANY CHANGES IN THE ESTABLISHED HOURS.

Commentary: The test site may operate 1 to 7 days a week depending on the volume of tests needed and the staff on hand. It is realistic to expect that hours of operation may change over time as the level of need changes.

17–63. WHEN THERE IS MORE THAN ONE INDIVIDUAL GIVEN THE RESPONSIBILITY AS AN INSTRUMENT DRUG TESTING TECHNICIAN FOR A TEST SITE, THE ONSITE DRUG TESTING MANAGER SHOULD ASSIGN THE PRIMARY DRUG TESTING TECHNICIAN TO BE THE TEST SITE SUPERVISOR WITH RESPONSIBILITY FOR ASSISTING THE ONSITE DRUG TESTING MANAGER IN CARRYING OUT RELEVANT TASKS.

17–64. THE ONSITE DRUG TESTING MANAGER SHOULD MAINTAIN RESPONSIBILITY FOR DELEGATED TASKS.

Commentary: The onsite drug testing manager can delegate some of the above responsibilities to the onsite drug testing supervisor or technician.

17–65. IN ADDITION TO FULFILLING EDUCATIONAL AND TRAINING REQUIREMENTS NECESSARY FOR ASSUMING A SUPERVISORY-LEVEL POSITION, THE ONSITE DRUG TESTING MANAGER SHOULD HAVE TRAINING AND EXPERTISE IN:

- the theory and practice of the procedures used in the test site resulting in understanding of quality control practices and procedures;
- the review, interpretation, and reporting of test results;
- maintenance of chain of custody;
- the proper remedial actions to be taken in response to test systems being out of control limits; and
- detecting aberrant test or quality control results.

17–66. TRAINING FOR THE ONSITE DRUG TESTING MANAGER SHOULD BE PROVIDED INITIALLY BY THE SUPPLIER BUT SHOULD BE NEITHER AS LONG AS THE ONSITE INSTRUMENT DRUG TESTING TECHNICIAN'S INITIAL TRAINING NOR CONSIST OF AS MUCH TECHNICAL DETAIL.

17–67. THE ONSITE DRUG TESTING MANAGER SHOULD PARTICIPATE IN 1 HOUR PER QUARTER OF INSERVICE TRAINING, WITH THE SAME CURRICULUM CONTENT AS THE ONSITE INSTRUMENT DRUG TESTING TECHNICIAN'S INSERVICE TRAINING.

17–68. THE ONSITE DRUG TESTING MANAGER SHOULD ASSIST THE SUPPLIER, DRUG TESTING PROGRAM COORDINATOR, AND/OR AGENCY TRAINING STAFF IN DEVELOPING AND IMPLEMENTING THIS TRAINING CURRICULUM.

Commentary: At the majority of probation and parole test sites, the onsite drug testing manager will be a supervisory-level manager in the office where the test site is located. This individual is usually given the responsibility of managing the test site in addition to other supervisory responsibilities within that probation or parole facility. Generally, this individual will not be trained in the actual hands-on operation of the test site, but will have knowledge of the overall requirements of test site operations as stated in the above guidelines.

C. Onsite Instrument Drug Testing Technician(s):

17–69. THE TEST SITE SHOULD HAVE A QUALIFIED INDIVIDUAL(S) TO ASSUME PROFESSIONAL, ORGANIZATIONAL, AND ADMINISTRATIVE RESPONSIBILITY FOR THE DRUG TESTING SITE.

Commentary: This individual should hereafter be referred to as the "technician," but may be given another appropriate title by the hiring agency.

The technician's role is the most critical to the effective operation of onsite instrument drug testing. Because onsite instrument drug testing is only an immunoassay test site and does not provide GC/MS confirmations, it is not necessary for this individual to have the same technical background as those hired in private laboratories. The ease in operation of onsite testing instrumentation allows this role to be assumed by other personnel currently on staff, such as surveillance officers, probation or parole officers, etc., or may require an agency hiring a technician specifically for the test site.

The technician may be used in the test site full time or may assist on a part-time basis and assume other responsibilities within the agency. This will depend on the hours of operation and the various testing needs of an agency. Because there are so many variables involved in determining staffing of a test site, it is difficult to provide a standard number of technicians needed for each site. It is the responsibility of authorities coordinating the drug testing program to determine the number of staff needed to comply with these guidelines.

Typically, a test site will need at least one full-time technician and one to two part-time technicians, or two full-time technicians, if they are testing an average of 500-750 specimens per month and complying with the onsite instrument drug testing guidelines.

17–70. THE TECHNICIAN SHOULD BE RESPONSIBLE FOR THE DAY-TO-DAY MANAGEMENT OF THE DRUG TESTING SITE EVEN WHEN ANOTHER INDIVIDUAL HAS OVERALL ADMINISTRATIVE RESPONSIBILITY FOR THE TEST SITE AND/OR THE OFFICE IN WHICH THE TEST SITE IS LOCATED.

17–71. IT IS THE RESPONSIBILITY OF THE MANUFACTURER TO PROVIDE THE INITIAL TRAINING FOR THE TECHNICIAN IN THE UTILIZATION AND OPERATION OF ITS TESTING INSTRUMENT TO ENSURE COMPETENCE ON ITS TESTING EQUIPMENT.

17–72. THE TECHNICIAN SHOULD BE CERTIFIED BY THE MANUFACTURER ON ABILITY TO PERFORM TESTING AND HANDLE TROUBLESHOOTING OF THE EQUIPMENT, ACCORDING TO ESTABLISHED PROCEDURES.

17–73. THE TECHNICIAN SHOULD MEET ANY EDUCATIONAL REQUIREMENTS OR OTHER QUALIFICATIONS ESTABLISHED BY THE MANUFACTURER AS NEEDED TO OPERATE ITS EQUIPMENT.

17–74. DOCUMENTATION OF TECHNICIANS' QUALIFICATIONS, INCLUDING RELEVANT TRAINING, SHOULD BE KEPT IN THEIR PERSONNEL FILE.

17–75. RESPONSIBILITIES OF THE TECHNICIAN(S) SHOULD INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING:

- ordering of supplies and inventory control;
- receiving specimens;
- operating instruments;
- complying with quality assurance/quality control and maintenance requirements;
- troubleshooting of instruments;
- testifying in court;
- acting as consultant to probation or parole personnel on drug testing issues;
- maintaining required documentation of the testing process; and
- assisting the drug testing manager as directed.

17–76. THE TECHNICIAN SHOULD PARTICIPATE IN CONTINUING EDUCATION, AT LEAST 1 HOUR PER QUARTER.

Commentary: Training should be provided by the agency and/or supplier, and training should be documented and filed in the technician's personnel file.

17–77. THE CURRICULUM SHOULD CONSIST OF TOPICS RELEVANT TO DRUG TESTING TECHNOLOGY, SUCH AS MEDICAL TECHNOLOGY, PHARMACOLOGY, BIOCHEMISTRY, CHEMISTRY, AND/OR TOXICOLOGY.

17–78. THE CURRICULUM SHOULD CONSIST OF 50-PERCENT INSTRUCTION TIME AND 50-PERCENT HANDS-ON EXPERIENCE WITH THE DRUG TESTING INSTRUMENT AND TESTING PROCEDURES.

17–79. THE TECHNICIAN SHOULD PARTICIPATE IN ANY DISCUSSION GROUP/TASK FORCE ESTABLISHED BY THE AGENCY TO ELICIT FEEDBACK FROM THE FIELD ON TOPICS RELEVANT TO DRUG TESTING.

Commentary: Initial and inservice training for the technician is a critical factor to consider in establishing effective and credible onsite instrument drug testing. Other than the initial training provided by the suppliers, which will vary in length depending on the instrumentation used, training does not always require formal lectures. Inservice training may consist of guest speakers, video tapes, slide presentations, self-study materials, etc., which may be provided by the agency's training staff and/or the supplier.

Certification

17–80. THE DRUG TESTING SITE SHOULD ATTEMPT TO BECOME CERTIFIED BY ITS STATE LICENSING AUTHORITY, WHENEVER POSSIBLE.

Commentary: It is recognized that many States have certification procedures which apply only to clinical laboratories and which would not be applicable to reference drug testing sites in a probation or parole setting. In that case, documented adherence to the manufacturer's quality assurance and control procedures offers probation and parole onsite instrument drug testing the most defensible alternative to State certification.

17–81. DRUG TESTING SITES SHOULD COMPLY WITH APPLICABLE GUIDELINES AS THEY RELATE TO ONSITE INSTRUMENT DRUG TESTING PRACTICES.

Commentary: These include such topics as reporting of results, cutoff levels, confidentiality, confirmation, chain of custody, and storage of specimens.

17–82. AGENCIES WHICH CONTRACT WITH TREATMENT ALTERNATIVES TO STREET CRIME (TASC) PROGRAMS SHOULD ENSURE THAT THE GUIDELINES IN THIS SECTION ARE MET.

Commentary: Many probation and parole agencies contract with TASC programs for the delivery of drug testing services. Although this kind of contractual arrangement is acceptable, agencies should ensure that the TASC laboratory complies with the guidelines under the Establishing Criminal Justice Onsite Instrument-based Drug Testing section.

Establishing Onsite Non-Instrument-Based Drug Testing

Advancements in drug testing technologies have provided a simple, accurate, and cost-effective initial immunoassay testing alternative for probation and parole agencies. This immediate result capability does not require the formality of an onsite instrument setting, but rather uses a slide or card which requires no calibration or formal instrumentation of any kind. The product usually comes complete with the needed supplies in the form of a testing kit.

These drug tests are easily transported wherever agency personnel feel testing is warranted such as field locations like the jail, offender's home, or offender's place of employment. The majority of tests will most likely be run in the probation or parole office setting.

While the relative ease of this product may offer an advantage over the more technical alternatives, it is still necessary to meet certain criteria in order to establish a defensible and reputable testing program. The following represent guidelines specifically for agencies interested in utilizing this new technology for conducting onsite non-instrument-based testing.

Probation and parole personnel now have access to this technology which allows them to choose where and when they want to test. Although probation and parole personnel can use this technology to conduct drug testing in the field, it is most often used at any of the probation and parole offices and/or facilities.

Anticipating Effect of Onsite Non-Instrument Testing

18–1. AGENCIES IMPLEMENTING ONSITE NON-INSTRUMENT TESTS SHOULD TAKE INTO CONSIDERATION THE POSSIBLE EFFECTS OF SUCH TESTING, AND HOW IT MAY AFFECT THE AGENCY, STAFF, AND OFFENDERS.

Commentary: Agencies need to anticipate an increase in the number of drug tests performed due to the ease of use and accessibility of these non-instrument tests. This will have an effect on financial resources within the agency. This may also affect revocation rates if steps are not taken to implement progressive sanctions and monitor adherence to established policy. This should be balanced by noting the potential reduction in drug use due to the deterrent effect of these tests.

Onsite Non-Instrument-Based Test Methodology

18–2. THE ONSITE NON-INSTRUMENT-BASED TEST SHOULD BE AN IMMUNOASSAY WHICH MEETS THE REQUIREMENTS OF THE FOOD AND DRUG ADMINISTRATION FOR COMMERCIAL DISTRIBUTION.

18–3. THE ONSITE NON-INSTRUMENT-BASED TEST SHOULD HAVE ESTABLISHED CUTOFF LEVELS FOR THE DRUGS BEING TESTED AND SHOULD COMPLY WITH THE CUTOFF LEVELS ESTABLISHED IN THE NIDA GUIDELINES.

Commentary: Unlike some onsite testing instrumentation, the non-instrument test comes with a set threshold level. This is why there are no time-consuming requirements for calibrating the non-instrument test. In view of the methodology in the non-instrument test, the NIDA guidelines offer the most defensible threshold levels. Refer to the section on cutoff levels, specifically guideline 7–4, for exceptions.

18–4. THE ONSITE NON-INSTRUMENT-BASED TEST SHOULD BE USED PRIMARILY AS AN INITIAL SCREENING TOOL.

Commentary: The non-instrument-based test serves in the same capacity as the onsite instrument-based drug testing in terms of providing initial test results.

The primary purpose of this test is to eliminate negative specimens from further consideration and to identify positive specimens. However, the non-instrument test can also serve in a probation and parole confirmatory capacity as described in the confirmation section of these guidelines.

The non-instrument-based test will permit immediate feedback for both the tester and the offender. The non-instrument test, if negative, permits the officer to acknowledge success by the offender and to move to other areas of concern. If positive, the officer and the offender can address the issue immediately.

Staffing Requirements

18–5. THE AGENCY SHOULD APPOINT AN ONSITE NON-INSTRUMENT TESTING SPECIALIST AT EACH OFFICE/FACILITY USING ONSITE NON-INSTRUMENT DRUG TESTING.

18–6. THE ONSITE NON-INSTRUMENT TESTING SPECIALIST SHOULD HAVE PRIMARY RESPONSIBILITY FOR THE ONSITE NON-INSTRUMENT TESTING AT THAT SITE, TO INCLUDE THE FOLLOWING:

- ordering supplies;
- completing any necessary documentation for testing;
- working directly with the agency drug testing coordinator;
- ensuring that any controls have been run before testing any specimens;
- maintaining chain of custody documents and the evidence log sheet used;
- ensuring that equipment is properly handled, stored and maintained; and
- running the tests and/or checking testing supplies out to other qualified operators.

18–7. THE AGENCY SHOULD IDENTIFY AT LEAST ONE RESERVE ONSITE TESTING SPECIALIST AT EACH OFFICE/FACILITY USING THE ONSITE NON-INSTRUMENT TEST TO COMPLETE THE ABOVE TASKS IN THE ABSENCE OF THE PRIMARY SPECIALIST.

Commentary: The test specialist has a slightly different role than the technician identified for the more formal onsite instrument drug testing setting. The testing specialist's responsibilities can be given to and shared among any qualified officers, in addition to their regular duties. This is because the onsite non-instrument test operating requirements are minimal and not as time consuming as the more formal onsite instrument drug testing systems.

18–8. AGENCY AUTHORITIES AT EACH OFFICE/FACILITY USING THE ONSITE NON-INSTRUMENT TEST MAY IDENTIFY OTHER PROBATION PERSONNEL AS TESTING OPERATORS, DEPENDING ON THE TESTING NEEDS OF THE AGENCY.

18–9. TESTING OPERATORS SHOULD COORDINATE USE OF THE TESTING EQUIPMENT THROUGH THE IDENTIFIED TEST SPECIALIST(S).

Commentary: Due to an agency's heavy testing needs, authorities may need to appoint as many operators as needed to conduct the onsite non-instrument tests. However, it is critical these operators work through the test specialist to ensure proper use of the equipment and correct documentation of the testing.

18–10. AN AGENCY DRUG TESTING PROGRAM COORDINATOR SHOULD BE RESPONSIBLE FOR THE COORDINATION OF THE AGENCY'S DRUG TESTING PROGRAM, IN ADDITION TO OTHER ADMINISTRATIVE RESPONSIBILITIES WITHIN THE AGENCY.

Commentary: The program coordinator should assume applicable responsibilities identified in the onsite instrument-based drug testing guidelines.

Training/Qualification of Testing Personnel

18–11. PERSONNEL WHO WILL OPERATE THE ONSITE NON-INSTRUMENT TESTS SHOULD BE TRAINED AND CERTIFIED IN THE USE AND OPERATION OF THE TEST INSTRUMENT BY THE SUPPLIER OR A SPECIALIST SPECIFICALLY TRAINED FOR THIS PURPOSE BY THE SUPPLIER.

18–12. TRAINED PERSONNEL SHOULD BE KNOWLEDGEABLE ABOUT RESOURCES AVAILABLE TO THEM IN THE EVENT A PROBLEM ARISES IN UTILIZING THE TEST.

Commentary: Manufacturers of the non-instrument test have developed the appropriate training required to conduct the test. These companies have established a system for field staff to obtain technical assistance through the use of such things as 800 numbers and/or local representatives.

Location

18–13. AGENCY AUTHORITIES SHOULD IDENTIFY APPROVED SITES FOR USING THE ONSITE NON-INSTRUMENT TEST, AND THESE SHOULD BE REFERRED TO AS ONSITE NON-INSTRUMENT TEST SITES.

Commentary: The compactness of the non-instrument tests will enable staff to transport the testing equipment and run the tests in a variety of locations. Typically the sites may be the probation or parole office/facility, a local jail, an offender's home, the offender's place of employment, etc. The sites should be identified and approved by agency authorities for safety purposes. This is necessary to avoid excessive and improper use of the equipment by qualified personnel conducting the tests. When possible, these sites should be located where there is access to a collection site so that the test can be analyzed immediately after receiving the specimen, in order to avoid unnecessary chain of custody delays.

18–14. AGENCY AUTHORITIES SHOULD IDENTIFY A SPECIFIC AREA IN ANY PROBATION OR PAROLE OFFICE OR FACILITY USING THE NON-INSTRUMENT TEST, FOR STORAGE OF TESTING EQUIPMENT, RELATED DOCUMENTATION, AND REFRIGERATION.

Commentary: The space required for using the non-instrument test will be much less than is needed for formal onsite instrument drug testing. However, the same precautions and criteria that are outlined in the onsite instrument guidelines on storage should also apply. Therefore, it will be important for agency authorities to approve collection of the specimen at various locations, such as the jail, the offender's home, or the offender's place of employment.

Security

18–15. THE REFRIGERATOR USED TO STORE SPECIMENS SHOULD BE SECURED WHEN AUTHORIZED TESTING PERSONNEL ARE NOT PRESENT.

18–16. THE TESTING SUPPLIES AND DOCUMENTATION RECORDS SHOULD BE STORED IN A ROOM WHERE TESTING PERSONNEL CAN CONTROL ACCESS TO THE PREMISES TO ENSURE THAT NO UNAUTHORIZED INDIVIDUALS HANDLE SPECIMENS, SUPPLIES, OR TESTING RECORDS.

Commentary: While the non-instrument tests do not require an onsite drug testing room in order to operate the tests, it is still important to take basic security measures with supplies, urine, and records. Refrigerators can be locked with a chain lock wrapped around the outside of the refrigerator. Testing supplies, specimens, and records should be inaccessible to the normal daily traffic flow within the site.

Collection and Transportation

18–17. SPECIMENS SHOULD BE COLLECTED IN COMPLIANCE WITH APPA GUIDELINES FOR COLLECTION AND OBSERVATION, WHEN APPLICABLE.

18–18. PROBATION AND PAROLE COLLECTION PERSONNEL SHOULD MONITOR THE OFFENDER THROUGHOUT THE COLLECTION PROCESS.

Commentary: Because the non-instrument test can be conducted outside the probation or parole office, a rest room designated solely for the purpose of collecting specimens will not always be available.

18–19. IF THE SPECIMEN IS BEING TRANSPORTED TO ANOTHER LOCATION, THE SPECIMEN WILL BE HANDLED ACCORDING TO THE ESTABLISHED APPA CHAIN OF CUSTODY GUIDELINES.

Chemical Storage

18–20. THE CHEMICALS REQUIRED TO RUN THE TESTS SHOULD BE REFRIGERATED ACCORDING TO THE MANUFACTURER'S INSTRUCTIONS.

Commentary: It is important that the refrigerator is set at the temperature recommended by the manufacturer. Temperatures which are not at the recommended setting may affect the performance of the chemicals used.

Probation and parole offices with non-instrument test capability will need to have enough refrigerator and freezer capacity to store their specimens. These offices will usually perform tests for that particular probation or parole site, as opposed to handling large volumes of testing from a variety of sites. Therefore, it is usually possible to meet the storage requirement with a small refrigerator.

Testing Operations

18–21. QUALIFIED TESTING PERSONNEL SHOULD MAINTAIN STRICT ADHERENCE TO SUPPLIER'S PROCEDURES REGARDING ASPECTS OF TESTING OPERATIONS IN ORDER TO ENSURE THE RELIABILITY AND VALIDITY OF RESULTS.

Commentary: The ease of operating the non-instrument test in no way reduces the established reliability/validity of the non-instrument test methodology, as long as testing personnel comply with the manufacturer's established procedures. Failure to comply with specific manufacturer procedures could result in the reliability and validity of the test results being challenged. In the event challenges to the testing methodology occur, the manufacturer will be able to assist in providing court testimony to support the methodology if the correct procedures have been followed by testing personnel.

Caution: The simplicity of operating this test could lead personnel to become careless in handling the chemicals. This is why it is important that an onsite non-instrument test specialist(s) be made primarily responsible for the testing at each site, in order to ensure careful handling of the testing equipment.

Number of Tests per Specimen

18–22. ONSITE NON-INSTRUMENT TEST SITES SHOULD ROUTINELY RUN PARTIAL SCREENS ON EACH SPECIMEN, AND AGENCY POLICY SHOULD BE ESTABLISHED REGARDING THE FREQUENCY OF RANDOM FULL SCREENS.

Commentary: Partial screens consist of testing for one to three illegal drugs, depending on the most abused drugs currently used by the offender population, the offender's drug of choice, and the funds of the agency. The ability to run a full screen on each specimen for at least five illegal drugs will depend on the availability of the non-instrument test technology to provide capability for detection of this quantity of drugs, and the resources of the agency.

Non-instrument testing technology is currently based on testing for one drug at a time, unlike the more formal onsite instrument-based drug testing, which can be set to run full screens automatically. Because of the storage and shelf life limitations of the non-instrument test, it may not always be economical to conduct frequent random full screens. Therefore, agency policy should dictate frequency of full screens.

It is critical that an agency should attempt to run some random full drug screens, technology permitting, in order to identify the current drugs of choice and detect changes in drug use trends. However, inability to run frequent full screens does not necessarily decrease the effectiveness of the testing program. Significant resources can be saved by primarily conducting partial screens.

Quality Assurance

18–23. TESTING PERSONNEL SHOULD COMPLY WITH THE APPA QUALITY ASSURANCE GUIDELINES 17–25 THROUGH 17–30 FOR ONSITE INSTRUMENT-BASED TESTING.

Quality Control

18–24. TESTING PERSONNEL SHOULD COMPLY WITH THE MANUFACTURER'S ESTABLISHED QUALITY CONTROL PROCEDURES.

18–25. TESTING EQUIPMENT SHOULD NOT BE USED PAST THE EXPIRATION DATE.

Commentary: The simplicity of the non-instrument test greatly reduces the need for lengthy quality control procedures. The quality control typically may consist of running a negative control before testing a specimen. A negative control consists of testing a known substance (the control), to ensure the chemicals are producing correct results.

Testifying

18–26. QUALIFIED SPECIALISTS/OPERATORS, AND THE NON-INSTRUMENT TEST MANUFACTURER SHOULD BE RESPONSIBLE FOR PROVIDING NEEDED COURT TESTIMONY ON TEST RESULTS.

Commentary: One of the advantages of the non-instrument test is that a supervising officer who is qualified to run the test can provide the needed testimony at a revocation hearing, or has easy access to the testing operators who can testify for their office/facility. In this way the problems and delays associated with the more formal onsite instrument drug testing in subpoenaing technicians are avoided.

Confrontation

18–27. TESTING PERSONNEL CHOOSING TO RUN THE TEST IN FRONT OF THE OFFENDER SHOULD BE PREPARED TO IMMEDIATELY CONFRONT THE OFFENDER IN THE EVENT OF A POSITIVE RESULT.

Commentary: Running the test in front of the offender greatly increases the amount of admissions obtained, which may cut down on the need for other confirmatory options. Obtaining the admission is also the most economical and preferred method of confirming positives.

The reason for the increase in admissions when using the non-instrument drug test, as opposed to an onsite instrument drug test or an outside laboratory, is that the denial stage is reduced. Offenders cannot blame the positive result on mixups in the laboratory or chain of custody procedures. They may deny use when the non-instrument test first starts, but within a few minutes, before the result is evident, they often confess to drug use.

18–28. IF THE TEST IS NOT RUN IN FRONT OF THE OFFENDER, A POSITIVE RESULT SHOULD STILL REQUIRE SUPERVISING PERSONNEL TO CONFRONT THE OFFENDER WITHIN 72 HOURS OF RECEIVING THE RESULTS.

Safety Issues for Testing Personnel

18–29. TESTING PERSONNEL SHOULD MAKE A DECISION TO RUN THE TEST IN FRONT OF AN OFFENDER AT THEIR OWN DISCRETION, IF AGENCY POLICY PERMITS.

Commentary: Caution should be taken by testing staff in making this decision, particularly when it involves an offender who may be under the influence or has a violent history.

18–30. TESTING PERSONNEL SHOULD MAKE A DECISION TO TEST AN OFFENDER IN THE OFFENDER'S HOME OR SOME OTHER NON-SECURED LOCATION AT THE TESTING STAFF'S DISCRETION, IF AGENCY POLICY PERMITS.

Commentary: Caution should be taken by testing staff in making this decision, particularly when it involves an offender who may be under the influence, and/or has a violent history, and/or where family and friends of the offender are present.

18–31. TESTING PERSONNEL SHOULD IMPLEMENT BASIC SAFETY/CRISIS INTERVENTION PROCEDURES IN COMPLIANCE WITH AGENCY POLICY, TO REDUCE ANY THREAT AND ENSURE NON-INSTRUMENT TEST SITE SAFETY.

Commentary: Safety is a critical concern in any probation and parole activity. Confronting the offender immediately with test results can be a potentially threatening experience which may lead to the offender acting out. However, experience with running these tests shows that offenders usually become complacent rather than offensive because of the reduction in their denial stage due to the quick turnaround time. They tend to be more willing to comply with any sanctions imposed because they know they

were "caught in the act," and they hope to reduce the severity of the sanctions imposed by cooperating with the officer.

Basic office and field visit safety policies should already be established for the agency. Implementing the non-instrument testing capability in the office or field visit routine should only require that testing staff are reminded of these policies, adjusting such policies as applicable to a testing /confronting situation.

Protected Work Environment

18–32. BASIC SAFETY PRECAUTIONS SHOULD BE TAKEN BY NON-INSTRUMENT TESTING PERSONNEL DURING THE OPERATION OF THE TEST, TO MINIMALLY INCLUDE:

- using rubber gloves during the handling of the specimens;
- no smoking, eating, or drinking at the testing site;
- no refrigeration of food where chemicals/ specimens are stored; and
- compliance with office safety policies.

Commentary: Safety of the work environment is an obvious concern with any type of drug testing. However, the non-instrument test (because of its simplicity) does not require as many protected work environment precautions as the more formal onsite instrument drug testing.

Documentation/Chain of Custody Requirements

18–33. NON-INSTRUMENT TEST SITES SHOULD MAINTAIN DOCUMENTATION ON EVERY ASPECT OF THE TESTING PROCESS.

18–34. MINIMALLY, THREE DOCUMENTS SHOULD BE USED TO DOCUMENT NON-INSTRUMENT TESTING ACTIVITIES, INCLUDING:

- the request for drug testing form;
- an evidence log sheet; and
- the agency monthly report.

18–35. AGENCY PERSONNEL REQUESTING A DRUG SCREEN SHOULD COMPLETE THE REQUEST FOR DRUG TESTING/CHAIN OF CUSTODY FORM ACCORDING TO AGENCY POLICY.

Commentary: This should be done for the purposes of maintaining control and accountability of specimens from collection through completion of testing, including:

- storage;
- reporting of results;
- transportation (if any); and
- final disposition of specimens.

18–36. THE DATE AND PURPOSE SHOULD BE DOCUMENTED ON AN APPROPRIATE CHAIN OF CUSTODY FORM WHEN THE SPECIMEN IS RECEIVED AND EACH TIME A SPECIMEN IS TRANSFERRED, AND EVERY INDIVIDUAL IN THE CHAIN SHOULD BE IDENTIFIED.

18–37. WHEN SPECIMENS ARE RECEIVED FROM ANOTHER OFFICE OR FACILITY, TESTING PERSONNEL SHOULD ACKNOWLEDGE RECEIPT ON THE CHAIN OF CUSTODY FORM AND PROVIDE A COPY TO THE DELIVERER.

18–38. TESTING PERSONNEL SHOULD INSPECT EACH PACKAGE FOR EVIDENCE OF POSSIBLE TAMPERING AND COMPARE INFORMATION ON THE ACCOMPANYING CHAIN OF CUSTODY FORM.

18–39. ANY EVIDENCE OF TAMPERING WITH OR DISCREPANCIES IN THE INFORMATION ON SPECIMEN BOTTLES OR THE AGENCY'S CHAIN OF CUSTODY FORM ATTACHED TO THE SHIPMENT SHOULD BE REPORTED IMMEDIATELY TO THE SUBMITTING OFFICE, AND SHOULD BE NOTED ON THE CHAIN OF CUSTODY FORM WHICH SHOULD ACCOMPANY THE SPECIMENS WHILE THEY ARE AT THE NON-INSTRUMENT TEST SITE.

18–40. CHAIN OF CUSTODY FORMS SHOULD BE FILED AT THE TESTING SITE.

Commentary: This should be primarily the responsibility of the designated drug testing specialist(s) at the site, but may also be completed by other qualified testing personnel. Non-instrument test sites should comply with APPA chain of custody guidelines. It is critical to the credibility of the non-instrument test site that the same rigorous chain of custody procedures which are followed when using more formal onsite instrument drug testing are also maintained while specimens are at the non-instrument test sites.

18–41. AN EVIDENCE LOG SHOULD BE MAINTAINED WITH THE TESTING SUPPLIES FOR THE PURPOSE OF DOCUMENTING THE DRUG TESTING OPERATIONAL PROCESS.

18–42. FORMS SHOULD BE COMPLETED BY ANY TRAINED PERSONNEL RUNNING THE TEST; HOWEVER, THE IDENTIFIED DRUG TESTING SPECIALIST(S) HAS PRIMARY RESPONSIBILITY FOR ENSURING THE DOCUMENT IS COMPLETED ACCURATELY.

18–43. MINIMALLY, THE EVIDENCE LOG SHOULD INCLUDE THE FOLLOWING:

- test results;
- date test results received;
- time and date the specimen was collected;
- indication that the established quality control measures were taken;
- offender's name and case number;
- collection personnel's name;
- drugs being tested;
- indication of confirmatory option that may have been used:
  - ❑ retests run
  - ❑ admission received
  - ❑ location of other testing sites if used
  - ❑ documentation of the date the specimen was sent to another site
  - ❑ date results were received from the confirmatory method
- date on which the specimen was disposed.

Commentary: The log may also document demographics of the population tested, disciplinary action that was taken on positive screens, and court challenges that may have resulted.

18–44. EACH PROBATION OR PAROLE OFFICE/FACILITY SHOULD PROVIDE TO THE AGENCY DRUG TESTING PROGRAM COORDINATOR A MONTHLY STATISTICAL SUMMARY OF DRUG TESTING TO MINIMALLY INCLUDE:

- number of tests run;
- number of positives and for which drugs;
- number of admissions received; and
- method of confirmatory options taken, if any, and the number of positives confirmed by this option.

Commentary: This report may also include the demographics of the population being tested, disciplinary action taken for positive results, and the number of court challenges that occurred.

Statistics generated from the non-instrument test site can be used to summarize current abuse trends; detect changes in trends; demonstrate the extent of the problem; and justify the need for action and support on the part of agency supervisors, legislators, media, etc. Information generated can also be used by the field in the management of the drug offender and in budgetary considerations.

Compliance With Other Testing Guidelines

18–45. NON-INSTRUMENT TEST SITES SHOULD COMPLY WITH ANY OTHER APPA DRUG TESTING GUIDELINES WHICH MAY BE APPLICABLE.

Commentary: This includes such topics as reporting of results, cutoff levels, chain of custody, storage, confirmation, and confidentiality.

DRUG TESTING COSTS

The purpose of this section is to assist planners and policy makers in determining how much it will cost to implement a drug testing program in their jurisdiction.

A primary consideration that every probation and parole agency director will face when implementing a drug testing program or enlarging an existing one is to secure the needed financial resources. There are a number of critical elements which agency planners should consider when developing a drug testing program. This section addresses those issues to help agencies focus on options that are both cost-effective and responsive to the agency's drug testing goals and objectives.

There are two sets of factors, jurisdictional and procedural, which will assist the agency in estimating drug testing costs.

Jurisdictional factors include the:

- salaries the agency pays its employees;
- rate of drug abuse within the population;

NOTE: The Drug Use Forecasting Project (DUF) is generating useful data that can be used to project the positive test rate during the planning process. Any jurisdiction may use DUF results for calculating costs. This may be accomplished by selecting several of the DUF participating sites whose general characteristics are similar to those of the jurisdiction planning a program.

The percentage of the targeted population which will test positive for drug use will affect costs. An agency whose target population tests positive 70 percent of the time will have program costs exceeding a comparable agency where only 30 percent test positive.

- size of the probation or parole population; and
- length of time for monitoring and supervising each case.

Procedural factors include the:

- frequency of random drug testing;

NOTE: Drug testing program planners should determine what percentage of the probation and parole population will be tested. Will those testing positive during the presentence investigation, intake, or agency assessment phase become part of a random drug testing program? Will only a portion of the population testing positive be selected for testing? An agency can reduce its costs by limiting the populations targeted for testing.

- number of drugs for which the program will test;

NOTE: Full drug screens generally include five to seven drug categories. Some agencies may opt to conduct a full drug screen initially and then select which drugs to test on a case-by-case basis.

- size of the population that will be targeted for testing;
- scheme of sanctions for violations of the testing conditions;
- costs of contracting to an outside testing laboratory vs. establishing onsite instrument-based drug testing capabilities;
- methodology used; and
- extent to which initial positive tests are confirmed.

19–1. DRUG TESTING SHOULD BE CONDUCTED IN A COST-EFFECTIVE MANNER, AND A COST SHEET COMPARISON SHOULD BE REVIEWED PRIOR TO MAKING A DECISION CONCERNING WHICH TYPE(S) OF CRIMINAL JUSTICE DRUG TESTING OPTIONS TO USE.

Commentary: Agencies should employ drug testing strategies which allow maximum utilization of the agency drug testing budget, within the parameters of the established needs and goals of the testing program. To facilitate efficiency, each agency should determine:

- program costs;
- basic drug screens to be conducted;
- drug testing schedules;
- drugs of choice within the agency's jurisdiction; and
- the feasibility of onsite instrument-based drug testing vs. contracting drug testing services.

In determining which option is more economical for meeting the projected program needs, planning and budget personnel should review several testing factors which will affect the cost of their program. This can be done by comparing the costs involved with each testing service option. The cost sheet comparison should minimally include cost factors associated with the following:

- chain of custody procedures;
- certification requirements;
- training requirements;
- personnel needed;
- calibration of instruments;
- ancillary supplies needed;
- turnaround times;
- need for confirmations; and
- retesting of results required by manufacturer.

19–2. AN ADMINISTRATIVE PLAN AND BUDGET FOR THE DRUG TESTING PROGRAM SHOULD BE ESTABLISHED.

Commentary: The plan and budget should, as nearly as possible, cover the entire program for the next 1 to 3 years and consider the following:

- costs;
  - ❑ equipment
  - ❑ operations
  - ❑ incidental
- personnel;
- storage space;
- specimen collection facilities;
- laboratory space (if onsite instrument drug testing);
- contracting for laboratory drug testing services; and
- confirmation procedures.

19–3. A WRITTEN DIRECTIVE SHOULD EITHER AUTHORIZE OR PROHIBIT THE USE OF OFFENDER FEES FOR GENERATING REVENUE FOR DRUG TESTING.

19–4. A PROJECTION SHOULD BE MADE OF THE PERCENTAGE OF THOSE BEING TESTED WHO WILL REQUIRE GRADUATED OR INTERMEDIATE SANCTIONS.

Commentary: Increased testing and other progressive sanctions for offenders with positive test results will be more costly than for those offenders who comply with the conditions of probation and parole.

19–5. STRICT ADHERENCE TO THE REQUIRED QUALITY ASSURANCE, QUALITY CONTROL, AND CONFIRMATION POLICIES OF A PROGRAM SHOULD BE SUPPORTED IN THE BUDGET AND MAINTAINED BY THE AGENCY.

Commentary: It is critical for the defensibility, credibility, and integrity of an agency's drug testing program that the quality assurance, quality control, and confirmation policies be maintained despite financial restraints. These policies should be upheld first and the budget should be built around the policies. In the event of limited funding, it is recommended that agencies reduce the amount of their testing capability rather than compromise on their quality assurance, quality control, or confirmation policies.

MANAGEMENT INFORMATION SYSTEMS

It is essential that test results be recorded correctly in a timely manner. Mechanisms should be established so that agency officials and other appropriate parties can audit recording practices whenever test results are challenged.

20–1. PROBATION AND PAROLE AGENCIES SHOULD REGULARLY MONITOR AND EVALUATE THE UTILITY AND EFFECTIVENESS OF THEIR DRUG TESTING PROGRAM.

Commentary: Research should be conducted on the relationship between illegal drug use and the violation of conditions of probation or parole. The agency might find it useful to maintain data on how positive drug test results might be used to project future violations of probation or parole.

Probation and parole agencies considering drug testing should document the presence of illegal drug use in the population. After bringing a drug testing program into operation, mechanisms should be established to document program practices and to measure program effects.

Every agency in government is in competition with other government agencies and programs for limited resources. Agencies should be able to show policy-makers that drug testing programs are functioning efficiently and effectively. An agency desiring continued or increased resources should show that its intervention strategies are producing the desired results. Records should be maintained which indicate:

- caseload levels;
- recidivism rates;
- numbers of offenders under drug testing supervision; and
- cost savings to the taxpayers from drug testing through decreased jail time and reduced criminal activity.

One of the most important steps a probation and parole agency can take to improve its drug testing program and make it more cost-effective is to keep detailed statistical data on positive rates and corresponding drug use trends, and redirect its drug testing based on this data. Many probation and parole programs continue to test for specific drugs long after they have ceased to be a substance abuse problem. Many test for specific drugs which are not substance abuse problems in their area.

An agency capable of producing statistically significant program information from an inhouse data base will be in a much stronger position to obtain needed scarce resources for program continuation and growth.

20–2. DRUG TESTING AGENCIES SHOULD USE AN ORGANIZED INFORMATION RETRIEVAL AND REVIEW SYSTEM THAT COMPLEMENTS A GENERAL RESEARCH CAPABILITY.

Commentary: There are countless advantages to computerized management information systems. These should be explored by an agency during the program preparation stage. Information produced by electronic systems coupled with a research capacity will greatly strengthen any drug testing program. The interpretations of data these systems can provide when program reports are needed might help to support further drug testing operations.

20–3. THE AGENCY LEADERSHIP AND STAFF SHOULD IDENTIFY INFORMATION NEEDS BASED ON THE AGENCY'S GOALS AND OBJECTIVES, PRIOR TO DEVELOPING A MANAGEMENT INFORMATION SYSTEM.

Commentary: An agency should consider a system capable of delivering two basic kinds of information:

- standard information consisting of the data needed for management control; and

- demand information consisting of information needed to generate a report.

20–4. THE AGENCY DRUG TESTING PROGRAM COORDINATOR SHOULD DIRECT THE DEVELOPMENT OF POLICIES AND PROCEDURES FOR COLLECTING, RECORDING, ORGANIZING, PROCESSING, AND REPORTING DATA COLLECTED FOR INFORMATION MANAGEMENT PURPOSES.

20–5. THE AGENCY SHOULD ACCURATELY INDEX THE DRUGS OF CHOICE USED BY THE AGENCY'S OFFENDER POPULATION.

Commentary: The ability to determine accurately the drugs of choice in the offender population will assist agency directors in identifying drug trends and administering a more efficient and cost-effective drug testing program.

APPENDIX A: DRUG TESTING CASE LAW

The following appendix is provided as a reference for field professionals who would not necessarily have legal training. It is furnished to illustrate legal principles regarding drug testing and is not intended to be a complete or exhaustive compendium of drug testing case law. This section is not intended to be substitute for legal counsel, therefore if a legal opinion is needed, then you should consult an attorney who is familiar with the law on drug testing.

I. Principles of Law for Leading Drug Testing and Related Cases In Probation and Parole (Arranged by Topics)

1. Testing as a Condition of Probation and Parole

MADDOX V. U.S. PAROLE COMMISSION, 702 F. Supp. 706 (N.D. Ill. 1989) - Modifications by the Parole Commission, adding drug testing as a special condition of parole, were proper, after an officer learned the parolee was using cocaine.

PEOPLE V. SHIMEK, 252 Cal. Rptr. 214 (Cal. Ct. App. 1988) - Court-imposed testing of urine as a condition of probation is proper even if marijuana is the only drug used, as the purpose of the test is to determine if the law has been violated.

STATE V. SMITH, 540 A.2d 679 (Conn. 1988) - Drug testing could be properly imposed on a defendant on probation for armed robbery. Moreover, a search by a probation officer is subject to the less stringent standard of "reasonable suspicion," not "probable cause." This standard requires nothing more than that the officer is able to point to specific and articulate facts that lead to a rational inference that a condition of probation has been violated.

PEOPLE EX REL. JIMINEZ V. WARDEN, 530 N.Y.S.2d 499 (N.Y. Sup. Ct. 1988) - A parole officer's request for the parolee to submit to a urine test did not constitute an illegal search and seizure. A parole officer's request for parolee to submit to urinalysis is substantially related to the officer's duty to determine if the parolee is drug free. The evidence seized as a result of the drug test is admissible in a parole revocation proceeding.

PEOPLE V. ROTH, 397 N.W.2d 196 (Mich. Ct. App. 1986) - Submission to urinalysis testing is a valid condition of probation.

UNITED STATES V. DUFF, 831 F.2d 176 (9th Cir. 1987) - Searches of probationers by officers are held to a less stringent standard than probable cause, one based on "reasonableness," as such submission to urinalysis qualifies, since it is often the least intrusive way of determining if probationers have refrained from drug use. A probation officer may order a probationer to undergo urine testing for illegal drugs even though such testing has not been imposed by the judge as a condition of probation. The probation officer's use of urinalysis is consistent with the condition that the probationer not violate the law. The court, however, stated that it would have been preferable for the probation officer to obtain a court modification of the conditions before performing the test.

UNITED STATES V. WILLIAMS, 787 F.2d 1182 (7th Cir. 1986) - Court-imposed drug testing as a condition of probation in cases where the probationer was not initially charged with a drug offense, but where he has been shown to have a problem of drug abuse of dependency is "reasonably related to the rehabilitation of the individual."

STORMS V. COUGHLIN, 600 F. Supp. 1214 (S.D.N.Y. 1984) - Even in a prison setting, there are limits to what correctional officers can do to obtain a urine sample. The court said: "It is important . . . that the conduct of the search be no more degrading than is reasonably necessary to satisfy the legitimate security interests of the institution. Forcing an inmate to urinate in front of others, male or female, significantly enhances the humiliating nature of the test."

HOWARD V. STATE, 308 S.E.2d 424 (Ga. Ct. App. 1983) - Drug testing can be imposed on probationers when residential treatment programs include a non-use rule.

MACIAS V. STATE, 649 S.W.2d 150 (Tex. Ct. App. 1983) - The taking of a urine sample is analogous to the taking of a blood sample, each involving an extraction from the human body and as such constitutes a search and seizure imbued with Fourth Amendment protection.

UNITED STATES V. TONRY, 605 F.2d 144 (5th Cir. 1979) - Conditions of probation should be "reasonably related" to the (Federal Probation) Act. Consideration of three factors is required to determine whether a reasonable relationship exists: (1) the purpose sought to be served by probation; (2) the extent to which constitutional rights enjoyed by law-abiding citizens should be accorded to probationers; and (3) the legitimate needs of law enforcement.

STATE V. ROBLEDO, 569 P.2d 288 (Ariz. Ct. App. 1977) - Results of urine tests may be used in revocation proceedings when abstinence from illegal drugs is a condition of probation.

LATTA V. FITZHARRIS, 521 F.2d 246 (9th Cir.), *cert denied*, 423 U.S. 897 (1975) - A search based on a "hunch" by a parole officer is not unreasonable.

EWING V. STATE, 310 N.E.2d 571 (Ind. Ct. App. 1974) - Drug testing is a valid means of enforcing non-use conditions of probation where the underlying conviction is for a drug offense.

SCHMERBER V. CALIFORNIA, 384 U.S. 757 (1966) The removal of blood from a suspect without his or her consent to obtain evidence is not a violation of any constitutional rights as long as the removal is done by medical personnel using accepted medical methods.

2. Informing Offenders

CLAY V. STATE, 710 S.W.2d 119 (Tex. Ct. App. 1986) - Failure to submit to urine tests can be negatively construed in probation revocation cases.

PEOPLE V. HOLZHAUER, 494 N.E.2d 272 (Ill. App. Ct. 1986) - Failure to submit to breathalyzer test upon request of proper officials justifies revocation of probation.

3. Reliability and Accuracy

ARGUIJO V. STATE, 764 S.W.2d 919 (Tex. Ct. App. 1989) - Preponderance of the evidence necessary in revocation proceedings is met when samples test positive for metabolites which an expert testifies indicates prior use of the drug.

BROWN V. STATE, 760 S.W.2d 748 (Tex. Ct. App. 1988) - Where an initial screen and an alternative procedure show presence of cannabinoids, and an expert testifies that the necessary quantity present to obtain positive results could not have been due to passive inhalation, "preponderance of evidence" is met in showing that the probationer exercised care, control and management over the substance in usable quantity.

CHANEY V. SOUTHERN RAILWAY CO., 847 F.2d 718 (11th Cir. 1988) - The Eleventh Circuit Court of Appeals remanded a case to the trial court for consideration of employee's claim that the EMIT™ test produces false positive results for blacks and hence is unreliable. Whether or not the EMIT™ test results in fact produce false positives for blacks is still an unsettled legal issue.

MOORE V. COM., PA. BD. OF PROBATION & PAROLE, 505 A.2d 1366 (Pa. Commw. Ct. 1986) - A claim that samples are inaccurate due to the ingestion of medication for illness was not accepted when traces of three drugs (amphetamine, methamphetamine, and tetrahydrocannabinol) were found in the probationer's body.

WILSON V. STATE, 697 S.W.2d 83 (Tex. Ct. App. 1985) - The burden of proof is on the one who offers the test result to establish the scientific acceptance of its equipment and results. Unless this is done, the evidence is not admissible.

ISAACKS V. STATE, 646 S.W.2d 602 (Tex. Ct. App. 1983) - Testimony from an operator who knew nothing of the scientific theory enabling the machine to detect a controlled substance could not overcome the absence of general acceptance of drug tests and tests of reliability and accuracy.

SMITH V. STATE, 298 S.E.2d 482 (Ga. 1983) - Trial courts may make a determination of the admissibility of test results on the basis of testimony, exhibits, treatises or the rationale of cases in other jurisdictions, rather than calculating the consensus of the scientific community. In this case, a revocation based on a single EMIT™ administered to probationers at random was upheld.

FRYE V. UNITED STATES, 293 F. 1013 (D.C. Cir. 1923) - Before the results of scientific tests will be admissible as evidence in a trial, the procedures used should be sufficiently established to have gained general acceptance in the particular field to which they belong. The court said: "[w]hile courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field to which it belongs."

4. Confirmation of Positive Results

STATE V. QUELNAN, 767 P.2d 243 (Hawaii 1989) - When a timely request is made by defense counsel for the production of an existing sample for an independent test, the request should be honored.

PELLA V. ADAMS, 702 F. Supp. 244 (D. Nev. 1988) The court held that double EMIT™ testing satisfied due process requirements in prison disciplinary cases.

IN RE JOHNSTON, 745 P.2d 864 (Wash. 1987) - Single positive urinalysis test results meet the "some evidence" criteria in prison disciplinary proceedings where revocation of good time and mandatory segregation may be the result.

LAHEY V. KELLY, 518 N.E.2d 924 (N.Y. 1987) - Results of an EMIT™ test confirmed by a second EMIT™ test constitutes "substantial evidence" to support a determination that inmates have violated institutional rules prohibiting the use of controlled substances.

STATE V. JOHNSON, 527 A.2d 250 (Conn. App. Ct. 1987) - A double EMIT™ test was considered sufficient proof of drug use to support revocation, even though the defendant's expert testified that the EMIT™ test results error rate was 5 to 10%.

PEOPLE V. WALKER, 517 N.E.2d 679 (Ill. App. Ct. 1987) - Double EMIT™ test results showing positive results on same sample are sufficiently reliable to support revocation.

SPENCE V. FARRIER, 807 F.2d 753 (8th Cir. 1986) - Double EMIT™ tests provide "some evidence" necessary to support prison disciplinary board's decision.

VASQUEZ V. COUGHLIN, 499 N.Y.S.2d 461 (N.Y. App. Div. 1986) - Positive results from two EMIT™ tests performed on the same sample were held by the court as sufficient to establish guilt in a prison disciplinary hearing.

BROWN V. SMITH, 505 N.Y.S.2d 743 (N.Y. Sup. Ct. 1985) - In prison disciplinary proceedings, a second EMIT™ test given by different test operators was not considered sufficiently reliable as confirmation where operators could only reproduce their results 37.5% of the time.

HIGGS V. BLAND, 888 F.2d 443 (6th Cir. 1989) - A positive EMIT™ test result is sufficient evidence to satisfy due process requirements in a prison disciplinary proceeding.

PERANZO V. COUGHLIN, 850 F.2d 125 (2d Cir. 1988) - Double EMIT™ test results, screening and confirmation, upheld in prison disciplinary proceedings.

SUPERINTENDENT V. HILL, 472 U.S. 445 (1985) - The United States Supreme Court held that disciplinary action against an inmate resulting in solitary confinement or loss of good time credit may be sustained if the decision is supported by "some evidence."

WYKOFF V. RESIG, 613 F. Supp. 1504 (N.D. Ind. 1985) - The unconfirmed single EMIT™ test result was held not sufficient as a basis for action in a work release disciplinary hearing, but a positive result from a second EMIT™ test constituted sufficient evidence.

JENSEN V. LICK, 589 F. Supp. 35 (D.N.D. 1984) - Single EMIT™ test results were upheld as sufficient in prison disciplinary proceedings. The court noted that the Center for Disease Control in Atlanta found EMIT™ test results to be from 97–99 percent accurate, and concluded that it was sufficient to apply to prison disciplinary cases.

STORMS V. COUGHLIN, 600 F. Supp. 1214 (S.D.N.Y. 1984) - Inmate's evidence concerning the lack of reliability of double EMIT™ testing of the same sample raised an issue of substance sufficient to withstand a motion to dismiss.

PEOPLE V. MOORE, 666 P.2d 419 (Cal. 1983) - The government should employ "rigorous and systematic" procedures to preserve samples. In this case samples were preserved for 90 days, or longer if a request was made, but the government failed to show that such requests were routinely made and honored.

SMITH V. STATE, 298 S.E.2d 482 (Ga. 1983) - Revocation based on single EMIT™ test administered to probationers at random was upheld.

STATE V. RIVERA, 569 P.2d 1347 (Ariz. 1977) - A one-time urine drug test along with admission that probationer had used drugs is sufficient to uphold revocation.

5. Chain of Custody of Specimen

McDONALD V. STATE, 550 A.2d 696 (Md. 1988) - It is the affirmative duty of the State to establish chain of custody procedures to show that the urine tested is in fact the urine of the probationer being revoked.

McQUEEN V. STATE, 740 P.2d 744 (Okla. Crim. App. 1987) - Inadequate chain of custody procedures become irrelevant if the probationer confesses to using drugs.

STAHL V. COM., PA. BD. OF PROBATION & PAROLE, 525 A.2d 1272 (Pa. Commw. Ct. 1987) - A showing that samples were labelled by an officer and placed in a refrigerator until mailing them to the laboratory amounted to sufficient custodial procedure to establish a chain of custody.

6. Court Testimony and Laboratory Reports

LAWSON V. COM., DEPT. OF CORRECTIONS, 539 A.2d 69 (Pa. Commw. Ct. 1988) - The court rejected a pre-parolee's claim that the revocation procedure denied him due process of law in that he was deprived of the right to confrontation and cross-examination by the introduction of a laboratory report into evidence. The court found it "clear" that no one has a constitutional right to either participate in a pre-release program, or to the confrontation and cross-examination of witnesses in prison disciplinary proceedings, and that therefore no constitutional right was violated.

WARD V. COM., PA. BD. OF PROBATION & PAROLE, 538 A.2d 971 (Pa. Commw. Ct. 1988) - Parole was revoked based on parole agent's testimony and two laboratory reports to the effect that parolees used controlled substances. The court held that although the parole agent's testimony constituted hearsay, the evidence was admissible as an exception to the hearsay rule. As for laboratory reports, the court held them admissible under a good cause exception if they bear sufficient "indicia of reliability." The laboratory report was held reliable here because it contained the laboratory letterhead and was signed by the laboratory's pathologist director, satisfying the "indicia of reliability" test set in *Powell v. Com., Pa. Bd. of Probation & Parole* 513 A.2d 1139 (Pa. Commw. Ct. 1986).

DAMRON V. COM., PA. BD. OF PROBATION & PAROLE, 531 A.2d 592 (Pa. Commw. Ct. 1987) - A laboratory urinalysis report which contains the laboratory letterhead and pathologist director's signature bears sufficient "indicia of reliability" to be accepted under the business record exception to the hearsay rule.

COMMONWEALTH V. JORASKIE, 519 A.2d 1010 (Pa. Super. Ct. 1987) - Unproved urinalysis report suggesting presence of cannabinoids in parolee's urine was inadmissible as a business record exception to the hearsay rule and, therefore, could not provide the basis for revocation of parole.

WILSON V. STATE, 521 A.2d 1257 (Md. Ct. Spec. App. 1987) - Unidentified laboratory reports purportedly indicating that a probationer has used marijuana are not sufficiently reliable to justify revocation.

JONES V. COM., PA. BD. OF PROBATION & PAROLE, 520 A.2d 1258 (Pa. Commw. Ct. 1987) - Laboratory reports not containing any "indicia of regularity and reliability" on their face are not admissible over parolees' hearsay objections.

McQUEEN V. STATE, 740 P.2d 744 (Okla. Crim. App. 1987) - A confession of drug use by a probationer is sufficient evidence for revocation even without a laboratory analysis of his urine sample.

JEFFERSON V. COM., PA. BD. OF PROBATION & PAROLE, 506 A.2d 495 (Pa. Commw. Ct. 1986) - Laboratory reports are properly admissible hearsay evidence in revocation hearings without allowing confrontation and cross-examination subject to a finding of "good cause" to deny a parolee this right.

POWELL V. COM., PA. BD. OF PROBATION & PAROLE, 513 A.2d 1139 (Pa. Commw. Ct. 1986) - To admit a laboratory drug screen report without witness confrontation, the report has to contain "indicia of regularity and reliability."

UNITED STATES V. BELL, 785 F.2d 640 (8th Cir. 1986) - Where a probationer presents no evidence to contradict his drug usage, a report which bears "substantial indicia of reliability" is admissible without allowing confrontation and cross-examination of those preparing the reports.

WHITMORE V. COM., PA. BD. OF PROBATION & PAROLE, 504 A.2d 401 (Pa. Commw. Ct. 1986) - Hospital urinalysis reports were not admissible as a business record exemption to the hearsay rule, as no custodian or qualified witness testified in support of the record.

UNITED STATES V. PENN, 721 F.2d 762 (11th Cir. 1983) - A laboratory urinalysis report accompanied by a letter from the laboratory president is "trustworthy and reliable."

7. Confidentiality

No court cases have yet been decided on confidentiality of urine test results. Disclosure or nondisclosure is governed by State law or agency policy.

II. Principles of Law for Leading Drug Testing and Related Cases In Probation and Parole (Arranged by Constitutional Issues)

1. Right Against Unreasonable Search and Seizure

STATE V. SMITH, 540 A.2d 679 (Conn. 1988) - Drug testing could be properly imposed on a defendant on probation for armed robbery. Moreover, a search by a probation officer is subject to the less stringent standard of "reasonable suspicion," not "probable cause." This standard requires nothing more than that the officer is able to point to specific and articulate facts that lead to a rational inference that a condition of probation has been violated.

PEOPLE EX REL. JIMINEZ V. WARDEN, 530 N.Y.S.2d 499 (N.Y. Sup. Ct. 1988) - A parole officer's request for the parolee to submit to a urine test did not constitute an illegal search and seizure. A parole officer's request for parolee to submit to urinalysis is substantially related to the officers duty to determine if the parolee is drug free. The evidence seized as a result of the drug test is admissible in a parole revocation proceeding.

UNITED STATES V. DUFF, 831 F.2d 176 (9th Cir. 1987) - Searches of probationers by officers are held to a less stringent standard than probable cause, one based on "reasonableness," and submission to urinalysis qualifies, since it is often the least intrusive way of determining if probationers have refrained from drug use. A probation officer may order a probationer to undergo urine testing for illegal drugs even though such testing has not been imposed by the judge as a condition of probation. The probation officer's use of urinalysis is consistent with the condition that the probationer not violate the law. The court, however, stated that it would have been preferable for the probation officer to obtain a court modification of the conditions before performing the test.

STORMS V. COUGHLIN, 600 F. Supp. 1214 (S.D.N.Y. 1984) - Even in a prison setting, there are limits to what correctional officers can do to obtain a urine sample. The court said: "It is important . . . that the conduct of the search be no more degrading than is reasonably necessary to satisfy the legitimate security interests of the institution. Forcing an inmate to urinate in front of others, male or female, significantly enhances the humiliating nature of the test."

MACIAS V. STATE, 649 S.W.2d 150 (Tex. Ct. App. 1983) - The taking of a urine sample is analogous to the taking of a blood sample, each involving an extraction from the human body and as such constitutes a search and seizure imbued with Fourth Amendment protection.

LATTA V. FITZHARRIS, 521 F.2d 246 (9th Cir.), *cert denied*, 423 U.S. 897 (1975) - A search based on a "hunch" by a parole officer is not unreasonable.

SCHMERBER V. CALIFORNIA, 384 U.S. 757 (1966) The removal of blood from a suspect without his or her consent to obtain evidence is not a violation of any constitutional rights as long as the removal is done by medical personnel using accepted medical methods.

2. Right to Due Process

Test Accuracy and Reliability

ARGUIJO V. STATE, 764 S.W.2d 919 (Tex. Ct. App. 1989) - Preponderance of the evidence necessary in revocation proceedings is met when samples test positive for metabolites which an expert testifies indicates prior use of the drug.

BROWN V. STATE, 760 S.W.2d 748 (Tex. Ct. App. 1988) - Where an initial screen and an alternative procedure show presence of cannabinoids, and an expert testifies that the necessary quantity present to obtain positive results could not have been due to passive inhalation, "preponderance of evidence" is met in showing that the probationer exercised care, control and management over the substance in usable quantity.

CHANEY V. SOUTHERN RAILWAY CO., 847 F.2d 718 (11th Cir. 1988) - The Eleventh Circuit Court of Appeals remanded a case to the trial court for consideration of employee's claim that the EMIT™ test produces false positive results for blacks and hence is unreliable. Whether or not the EMIT™ test results in fact produce false positives for blacks is still an unsettled legal issue.

MOORE V. COM., PA. BD. OF PROBATION & PAROLE, 505 A.2d 1366 (Pa. Commw. Ct. 1986) - A claim that samples are inaccurate due to the ingestion of medication for illness was not accepted when traces of three drugs (amphetamine, methamphetamine, and tetrahydrocannabinol) were found in the probationer's body.

WILSON V. STATE, 697 S.W.2d 83 (Tex. Ct. App. 1985) - The burden of proof is on the one who offers the test result to establish the scientific acceptance of its equipment and results. Unless this is done, the evidence is not admissible.

ISAACKS V..STATE, 646 S.W.2d 602 (Tex. Ct. App. 1983) - Testimony from an operator who knew nothing of the scientific theory enabling the machine to detect a controlled substance could not overcome the absence of general acceptance of drug tests and tests of reliability and accuracy.

SMITH V. STATE, 298 S.E.2d 482 (Ga. 1983) - Trial courts may make a determination of the admissibility of test results on the basis of testimony, exhibits, treatises or the rationale of cases in other jurisdictions, rather than calculating the consensus of the scientific community. In this case, a revocation based on a single EMIT™ administered to probationers at random was upheld.

CURTIS V. STATE, 548 S.W.2d 57 (Tex. Crim. App. 1977) - Preponderance of evidence is not met when a screening test shows positive for heroin, when the record showed that 25 other substances could result in false positive findings.

FRYE V. UNITED STATES, 293 F. 1013 (D.C. Cir. 1923) - Before the results of scientific tests will be admissible as evidence in a trial, the procedures used should be sufficiently established to have gained general acceptance in the particular field to which they belong. The court said: "[w]hile courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field to which it belongs."

Confirmation of positive test results

PELLA V. ADAMS, 702 F. Supp. 244 (D. Nev. 1988) The court held that double EMIT™ testing satisfied due process requirements in prison disciplinary cases.

IN RE JOHNSTON, 745 P.2d 864 (Wash. 1987) - Single positive urinalysis test results meet the "some evidence" criteria in prison disciplinary proceedings where revocation of good time and mandatory segregation may be the result.

LAHEY V. KELLY, 518 N.E.2d 924 (N.Y. 1987) - Results of an EMIT™ test confirmed by a second EMIT™ test constitutes "substantial evidence" to

support a determination that inmates have violated institutional rules prohibiting the use of controlled substances.

STATE V. JOHNSON, 527 A.2d 250 (Conn. App. Ct. 1987) - A double EMIT™ test was considered sufficient proof of drug use to support revocation, even though the defendant's expert testified that the EMIT™ test results error rate was 5 to 10%.

PEOPLE V. WALKER, 517 N.E.2d 679 (Ill. App. Ct. 1987) - Double EMIT™ tests showing positive results on the same sample are sufficiently reliable to support revocation.

SPENCE V. FARRIER, 807 F.2d 753 (8th Cir. 1986) - Double EMIT™ tests provide "some evidence" necessary to support prison disciplinary board's decision.

VASQUEZ V. COUGHLIN, 499 N.Y.S.2d 461 (N.Y. App. Div. 1986) - Positive results from two EMIT™ tests performed on the same sample were held by the court as sufficient to establish guilt in a prison disciplinary hearing.

BROWN V. SMITH, 505 N.Y.S.2d 743 (N.Y. Sup. Ct. 1985) - In prison disciplinary proceedings, a second EMIT™ test given by different test operators was not considered sufficiently reliable as confirmation where operators could only reproduce their results 37.5% of the time.

HIGGS V. BLAND, 888 F.2d 443 (6th Cir. 1989) - A positive EMIT™ test result is sufficient evidence to satisfy due process requirements in a prison disciplinary proceeding.

PERANZO V. COUGHLIN, 850 F.2d 125 (2d Cir. 1988) - Double EMIT™ tests, screening and confirmation, upheld in prison disciplinary proceedings.

SUPERINTENDENT V. HILL, 472 U.S. 445 (1985) - The United States Supreme Court held that disciplinary action against an inmate resulting in solitary confinement or loss of good time credit may be sustained if the decision is supported by "some evidence."

WYKOFF V. RESIG, 613 F. Supp. 1504 (N.D. Ind. 1985) - The unconfirmed single EMIT™ test result was held not sufficient as a basis for action in a work release disciplinary hearing, but a positive result from a second EMIT™ test result constituted sufficient evidence.

JENSEN V. LICK, 589 F. Supp. 35 (D.N.D. 1984) - Single EMIT™ test results were upheld as sufficient in prison disciplinary proceedings. The court noted that the Center for Disease Control in Atlanta found EMIT™ test results to be from 97-99% accurate, and concluded that it was sufficient to apply to prison disciplinary cases.

STORMS V. COUGHLIN, 600 F. Supp. 1214 (S.D.N.Y. 1984) - Inmates evidence concerning the lack of reliability of double EMIT™ testing of the same sample raised an issue of substance sufficient to withstand a motion to dismiss.

SMITH V. STATE, 298 S.E.2d 482 (Ga. 1983) - Revocation based on single EMIT™ test administered to probationers at random was upheld.

STATE V. RIVERA, 569 P.2d 1347 (Ariz. 1977) - A one-time urine drug test along with admission that probationer had used drugs is sufficient to uphold revocation.

Chain of custody of specimen

McDONALD V. STATE, 550 A.2d 696 (Md. 1988) - It is the affirmative duty of the State to establish chain of custody procedures to show that the urine tested is in fact the urine of the probationer being revoked.

McQUEEN V. STATE, 740 P.2d 744 (Okla. Crim. App. 1987) - Inadequate chain of custody procedures become irrelevant if the probationer confesses to using drugs.

STAHL V. COM., PA. BD. OF PROBATION & PAROLE, 525 A.2d 1272 (Pa. Commw. Ct. 1987) - A showing that samples were labelled by an officer and placed in a refrigerator until mailing them to the laboratory amounted to sufficient custodial procedure to establish a chain of custody.

Preservation of specimen

STATE V. QUELNAN, 767 P.2d 243 (Hawaii 1989) - When a timely request is made by defense counsel for the production of an existing sample for an independent test, the request should be honored.

PEOPLE V. MOORE, 666 P.2d 419 (Cal. 1983) - The government must employ "rigorous and systematic" procedures to preserve samples. In this case samples were preserved for 90 days, or longer if a request was made, but the government failed to show that such requests were routinely made and honored.

3. Right to Confrontation and Cross-Examination

LAWSON V. COM., DEPT. OF CORRECTIONS, 539 A.2d 69 (Pa. Commw. Ct. 1988) - The court rejected a pre-parolee's claim that the revocation procedure denied him due process of law in that he was deprived of the right to confrontation and cross-examination by the introduction of a laboratory report into evidence. The court found it "clear" that no one has a constitutional right to either participate in a pre-release program, or to the confrontation and cross-examination of witnesses in prison disciplinary proceedings, and that therefore no constitutional right was violated.

WARD V. COM., PA. BD. OF PROBATION & PAROLE, 538 A.2d 971 (Pa. Commw. Ct. 1988) - Parole was revoked based on parole agent's testimony and two laboratory reports to the effect that parolees used controlled substances. The court held that although the parole agent's testimony constituted hearsay, the evidence was admissible as an exception to the hearsay rule. As for laboratory reports, the court held them admissible under a good cause exception if they bear sufficient "indicia of reliability." The laboratory report was held reliable here because it contained the laboratory letterhead and was signed by the laboratory's pathologist director, satisfying the "indicia of reliability" test set in *Powell v. Com.*, 513 A.2d 1139 (1986).

DAMRON V. COM., PA. BD. OF PROBATION & PAROLE, 531 A.2d 592 (Pa. Commw. Ct. 1987) - A laboratory urinalysis report which contains the laboratory letterhead and pathologist director's signature bears sufficient "indicia of reliability" to be accepted under the business record exception to the hearsay rule.

COMMONWEALTH V. JORASKIE, 519 A.2d 1010 (Pa. Super. Ct. 1987) - Unproved urinalysis report suggesting presence of cannabinoids in parolee's urine was inadmissible as a business record exception to the hearsay rule and, therefore, could not provide the basis for revocation of parole.

JONES V. COM., PA. BD. OF PROBATION AND PAROLE, 520 A.2d 1258 (Pa. Commw. Ct. 1987) - Laboratory reports not containing any "indicia of regularity and reliability" on their face are not admissible over parolees' hearsay objections.

McQUEEN V. STATE, 740 P.2d 744 (Okla. Crim. App. 1987) - A confession of drug use by a probationer is sufficient evidence for revocation even without a laboratory analysis of his urine sample.

WILSON V. STATE, 521 A.2d 1257 (Md. Ct. Spec. App. 1987) - Unidentified laboratory reports purportedly indicating that a probationer has used marijuana is not sufficiently reliable to justify revocation.

JEFFERSON V. COM., PA. BD. OF PROBATION & PAROLE, 506 A.2d 495 (Pa. Commw. Ct. 1986) - Laboratory reports are properly admissible hearsay evidence in revocation hearings without allowing confrontation and cross-examination subject to a finding of "good cause" to deny a parolee this right.

POWELL V. COM., PA. BD. OF PROBATION & PAROLE, 513 A.2d 1139 (Pa. Commw. Ct. 1986) - To admit a laboratory drug screen report without witness confrontation, the report has to contain "indicia of regularity and reliability."

UNITED STATES V. BELL, 785 F.2d 640 (8th Cir. 1986) - Where a probationer presents no evidence to contradict his or her drug usage, a report which bears "substantial indicia of reliability" is admissible without allowing confrontation and cross-examination of those preparing the reports.

WHITMORE V. COM., PA. BD. OF PROBATION & PAROLE, 504 A.2d 401 (Pa. Commw. Ct. 1986) - Hospital urinalysis reports were not admissible as a business record exemption to the hearsay rule as no custodian or qualified witness testified in support of the record.

UNITED STATES V. PENN, 721 F.2d 762 (11th Cir. 1983) - A laboratory urinalysis report accompanied by a letter from the laboratory president is "trustworthy and reliable."

4. Right Against Self-Incrimination

CLAY V. STATE, 710 S.W.2d 119 (Tex. Ct. App. 1986) - Failure to submit to urine tests can be negatively construed in probation revocation cases.

PEOPLE V. HOLZHAUER, 494 N.E.2d 272 (Ill. App. Ct. 1986) - Failure to submit to breathalyzer test upon request of proper officials justifies revocation of probation.

McQUEEN V. STATE, 740 P.2d 744 (Okla. Crim. App. 1987) - Inadequate chain of custody procedures become irrelevant if the probationer confesses to using drugs.

III. Principles of Law for Leading Drug Testing and Related Cases In Probation and Parole (Arranged in Alphabetical Order)

ADKINS V. MARTIN, 699 F. Supp. 1510 (W.D. Okla. 1988) - The utilization of two separate and independent tests, each having a different scientifically accepted methodology, satisfies the requirements of due process.

ARGUIJO V. STATE, 764 S.W.2d 919 (Tex. Ct. App. 1989) - Preponderance of the evidence necessary in revocation proceedings is met when samples test positive for metabolites which an expert testifies indicates prior use of the drug.

BROWN V. SMITH, 505 N.Y.S.2d 743 (N.Y. Sup. Ct. 1985) - In prison disciplinary proceedings, a second EMIT™ test given by different test operators was not considered sufficiently reliable as confirmation where operators could only reproduce their results 37.5% of the time.

BROWN V. STATE, 760 S.W.2d 748 (Tex. Ct. App. 1988) - Where an initial screen and an alternative procedure show presence of cannabinoids, and an expert testifies that the necessary quantity present to obtain positive results could not have been due to passive inhalation, "preponderance of evidence" is met in showing that the probationer exercised care, control and management over the substance in usable quantity.

CHANEY V. SOUTHERN RAILWAY CO., 847 F.2d 718 (11th Cir. 1988) - The Eleventh Circuit Court of Appeals remanded a case to the trial court for consideration of employee's claim that the EMIT™ test produces false positive results for blacks, hence is unreliable. Whether or not the EMIT™ test results in fact produce false positives for blacks is still an unsettled legal issue.

CLAY V. STATE, 710 S.W.2d 119 (Tex. Ct. App. 1986) - Failure to submit to urine tests can be negatively construed in probation revocation cases.

COMMONWEALTH V. JORASKIE, 519 A.2d 1010 (Pa. Super. Ct. 1987) - Unproved urinalysis report suggesting presence of cannabinoids in parolee's urine was inadmissible as a business record exception to the hearsay rule and, therefore, could not provide the basis for revocation of parole.

DAMRON V. COM., PA. BD. OF PROBATION & PAROLE, 531 A.2d 592 (Pa. Commw. Ct. 1987) - A laboratory urinalysis report which contains the laboratory letterhead and pathologist director's signature bears sufficient "indicia of reliability" to be accepted under the business record exception to the hearsay rule.

EWING V. STATE, 310 N.E.2d 571 (Ind. Ct. App. 1974) - Drug testing is a valid means of enforcing non-use conditions of probation where the underlying conviction is for a drug offense.

FRYE V. UNITED STATES, 293 F. 1013 (D.C. Cir. 1923) - Before the results of scientific tests will be admissible as evidence in a trial, the procedures used must be sufficiently established to have gained general acceptance in the particular field to which they belong. The court said: "[w]hile courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field to which it belongs."

HIGGS V. BLAND, 888 F.2d 443 (6th Cir. 1989) - A positive EMIT™ test result is sufficient evidence to satisfy due process requirements in a prison disciplinary proceeding.

HOWARD V. STATE, 308 S.E.2d 424 (Ga. Ct. App. 1983) - Drug testing can be imposed on probationers when residential treatment programs include a non-use rule.

IN RE JOHNSTON, 745 P.2d 864 (Wash. 1987) - Single positive urinalysis test results meet the "some evidence" criteria in prison disciplinary proceedings where revocation of good time and mandatory segregation may be the result.

ISAACKS V. STATE, 646 S.W.2d 602 (Tex. Ct. App. 1983) - Testimony from an operator who knew nothing of the scientific theory enabling the machine to detect a controlled substance could not overcome the absence of general acceptance of drug tests and tests of reliability and accuracy.

JEFFERSON V. COM., PA. BD. OF PROBATION & PAROLE, 506 A.2d 495 (Pa. Commw. Ct. 1986) - Laboratory reports are properly admissible hearsay evidence in revocation hearings without allowing confrontation and cross-examination subject to a finding of "good cause" to deny a parolee this right.

JENSEN V. LICK, 589 F. Supp. 35 (D.N.D. 1984) - Single EMIT™ test results were upheld as sufficient in prison disciplinary proceedings. The court noted that the Center for Disease Control in Atlanta found EMIT™ test results to be from 97–99 percent accurate, and concluded that it was sufficient to apply to prison disciplinary cases.

JONES V. COM., PA. BD. OF PROBATION & PAROLE, 520 A.2d 1258 (Pa. Commw. Ct. 1987) - Laboratory reports not containing any "indicia of regularity and reliability" on their face are not admissible over parolees' hearsay objections.

JONES V. UNITED STATES, 548 A.2d 35 (D.C. 1988) - Although the record in the present case did not include sufficient testimony on the general acceptance of the EMIT™ test in the scientific community, the court took judicial notice of another trial court decision in the same jurisdiction and of the opinions of the courts in other jurisdictions and held that EMIT™ test results are presumptively reliable and admissible into evidence; and the agency's record reporting the test results falls within the business exception to the hearsay rule because it contains objective facts rather than expressions of opinion and bares sufficient indicia of reliability.

LAHEY V. KELLY, 518 N.E.2d 924 (N.Y. 1987) - Results of an EMIT™ test results confirmed by a second EMIT™ test constitute "substantial evidence" to support a determination that inmates have violated institutional rules prohibiting the use of controlled substances.

LATTA V. FITZHARRIS, 521 F.2d 246 (9th Cir.), *cert denied*, 423 U.S. 897 (1975) - A search based on a "hunch" by a parole officer is not unreasonable.

LAWSON V. COM., DEPT. OF CORRECTIONS, 539 A.2d 69 (Pa. Commw. Ct. 1988) - The court rejected a pre-parolee's claim that the revocation procedure denied him due process of law in that he was deprived of the right to confrontation and cross-examination by the introduction of a laboratory report into evidence. The court found it "clear" that no one has a constitutional right to either participate in a pre-release program, or to the confrontation and cross-examination of witnesses in prison disciplinary proceedings, and that therefore no constitutional right was violated.

McDONALD V. STATE, 550 A.2d 696 (Md. 1988) - It is the affirmative duty of the State to establish chain of custody procedures to show that the urine tested is in fact the urine of the probationer being revoked.

McQUEEN V. STATE, 740 P.2d 744 (Okla. Crim. App. 1987) - Inadequate chain of custody procedures become irrelevant if the probationer confesses to using drugs.

MACIAS V. STATE, 649 S.W.2d 150 (Tex. Ct. App. 1983) - The taking of a urine sample is analogous to the taking of a blood sample, each involving an extraction from the human body and as such constitutes a search and seizure imbued with Fourth Amendment protection.

MADDOX V. U.S. PAROLE COMMISSION, 702 F. Supp. 706 (N.D. Ill. 1989) - Modifications by the Parole Commission, adding drug testing as a special condition of parole, were proper, after an officer learned the parolee was using cocaine.

MOORE V. COM., PA. BD. OF PROBATION & PAROLE, 505 A.2d 1366 (Pa. Commw. Ct. 1986) - A claim that samples are inaccurate due to the ingestion of medication for illness was not accepted when traces of three drugs (amphetamine, methamphetamine, and tetrahydrocannabinol) were found in the probationer's body.

NEAL V. COM., PA. BD. OF PROBATION AND PAROLE, 531 A.2d 119 (Pa. Commw. Ct. 1987) - Due process does not require that laboratory personnel be produced at the hearing for firsthand authentication where the hearing officer has found good cause for not doing so. There is, however, a need for some indicia of reliability in the form of a responsible person's signature certifying the identity of the report's subject and the correctness of the report.

PELLA V. ADAMS, 702 F. Supp. 244 (D. Nev. 1988) The court held that double EMIT™ testing satisfied due process requirements in prison disciplinary cases.

PEOPLE EX REL. JIMINEZ V. WARDEN, 530 N.Y.S.2d 499 (N.Y. Sup. Ct. 1988) - A parole officer's request for the parolee to submit to a urine test did not constitute an illegal search and seizure. A parole officer's request for parolee to submit to urinalysis is substantially related to the officer's duty to determine if the parolee is drug free. The evidence seized as a result of the drug test is admissible in a parole revocation proceeding.

PEOPLE V. HOLZHAUER, 494 N.E.2d 272 (Ill. App. Ct. 1986) - Failure to submit to breathalyzer test upon request of proper officials justifies revocation of probation.

PEOPLE V. MOORE, 666 P.2d 419 (Cal. 1983) - The government must employ "rigorous and systematic" procedures to preserve samples. In this case samples were preserved for 90 days, or longer if a request was made, but the government failed to show that such requests were routinely made and honored.

PEOPLE V. ROTH, 397 N.W.2d 196 (Mich. Ct. App. 1986) - Submission to urinalysis testing is a valid condition of probation.

PEOPLE V. SHIMEK, 252 Cal. Rptr. 214 (Cal. Ct. App. 1988) - Court-imposed testing of urine as a condition of probation is proper even if marijuana is the only drug used, as the purpose of the test is to determine if the law has been violated.

PEOPLE V. WALKER, 517 N.E.2d 679 (Ill. App. Ct. 1987) - Double EMIT™ tests showing positive results on same sample are sufficiently reliable to support revocation.

PERANZO V. COUGHLIN, 850 F.2d 125 (2d Cir. 1988) - Double EMIT™ tests, screening and confirmation, upheld in prison disciplinary proceedings.

POWELL V. COM., PA. BD. OF PROBATION & PAROLE, 513 A.2d 1139 (Pa. Commw. Ct. 1986) - To admit a laboratory drug screen report without witness confrontation, the report has to contain "indicia of regularity and reliability."

SCHMERBER V. CALIFORNIA, 384 U.S. 757 (1966) The removal of blood from a suspect without his or her consent to obtain evidence is not a violation of any constitutional rights as long as the removal is done by medical personnel using accepted medical methods.

SMITH V. STATE, 298 S.E.2d 482 (Ga. 1983) - Trial courts may make a determination of the admissibility of test results on the basis of testimony, exhibits, treatises or the rationale of cases in other jurisdictions, rather than calculating the consensus of the scientific community. In this case, a revocation based on a single EMIT™ test administered to probationers at random was upheld.

SOTO V. LORD, 693 F. Supp. 8 (S.D.N.Y. 1988) - Assuming that reliance on an unconfirmed EMIT™ test violates due process, prison official is entitled to qualified immunity because the law requiring use of confirmatory test is not clearly established; and prison official is not entitled to qualified immunity for failure to establish a chain of custody because his conduct was unreasonable in relying upon the inaccurate, incomplete checklist.

SPENCE V. FARRIER, 807 F.2d 753 (8th Cir. 1986) - Double EMIT™ tests provide "some evidence" necessary to support prison disciplinary board's decision.

STAHL V. COM., PA. BD. OF PROBATION & PAROLE, 525 A.2d 1272 (Pa. Commw. Ct. 1987) - A showing that samples were labelled by an officer and placed in a refrigerator until mailing them to the laboratory amounted to sufficient custodial procedure to estabiish a chain of custody.

STATE V. JOHNSON, 527 A.2d 250 (Conn. App. Ct. 1987) - A double EMIT™ test was considered sufficient proof of drug use to support revocation, even though the defendant's expert testified that the EMIT™ test error rate was 5 to 10%.

STATE V. PARRAMORE, 768 P.2d 530 (Wash. Ct. App. 1989) - Condition that defendant who was convicted of selling marijuana submit to urine testing was permissible crime-related prohibition related directly to his conviction.

STATE V. QUELNAN, 767 P.2d 243 (Hawaii 1989) - When a timely request is made by defense counsel for the production of an existing sample for an independent test, the request should be honored.

STATE V. RIVERA, 569 P.2d 1347 (Ariz. 1977) - A one-time urine drug test along with admission that probationer had used drugs is sufficient to uphold revocation.

STATE V. ROBLEDO, 569 P.2d 288 (Ariz. Ct. App. 1977) - Results of urine tests may be used in revocation proceedings when abstinence from illegal drugs is a condition of probation.

STATE V. SIGLER, 769 P.2d 703 (Mont. 1989) - Because defendant had failed several prior drug tests and because the probation offices believed the rehabilitation process could not begin until he was sure defendant was free from drugs, there are reasonable grounds to require that defendant submit to urine testing.

STATE V. SMITH, 540 A.2d 679 (Conn. 1988) - Drug testing could be properly imposed on a defendant on probation for armed robbery. Moreover, a search by a probation officer is subject to the less stringent standard of "reasonable suspicion," not "probable cause." This standard requires nothing more than that the officer is able to point to specific and articulate facts that lead to a rational inference that a condition of probation has been violated.

STORMS V. COUGHLIN, 600 F. Supp. 1214 (S.D.N.Y. 1984) - Even in a prison setting, there are limits to what correctional officers can do to obtain a urine sample. The court said: "It is important . . . that the conduct of the search be no more degrading than is reasonably necessary to satisfy the legitimate security interests of the institution. Forcing an inmate to urinate in front of others, male or female, significantly enhances the humiliating nature of the test." In this case, single EMIT™ test results were upheld in prison disciplinary proceedings.

SUPERINTENDENT V. HILL, 472 U.S. 445 (1985) - The United States Supreme Court held that disciplinary action against an inmate resulting in solitary confinement or loss of good time credit may be sustained if the decision is supported by "some evidence."

UNITED STATES V. BELL, 785 F.2d 640 (8th Cir. 1986) - Where a probationer presents no evidence to contradict his drug usage, a report which bears "substantial indicia of reliability" is admissible without allowing confrontation and cross-examination of those preparing the reports.

UNITED STATES V. BURTON, 866 F.2d 1057 (8th Cir. 1989) - Admission of laboratory reports supported by affidavit from laboratory director bore sufficient indicia of reliability and did not violate probationer's right to confront witnesses; and although lax, the chain of custody of urine samples was adequate because the samples retained identification labels from receipt of samples from probation to their delivery to laboratory and return of reports.

UNITED STATES V. DUFF, 831 F.2d 176 (9th Cir. 1987) - Searches of probationers by officers are held to a less stringent standard than probable cause, one based on "reasonableness," and submission to urinalysis qualifies, since it is often the least intrusive way of determining if probationers have refrained from drug use. A probation officer may order a probationer to undergo urine testing for illegal drugs even though such testing has not been imposed by the judge as a condition of probation. The probation officer's use of urinalysis is consistent with the condition that the probationer not violate the law. The court, however, stated that it would have been preferable for the probation officer to obtain a court modification of the conditions before performing the test.

UNITED STATES V. PENN, 721 F.2d 762 (11th Cir. 1983) - A laboratory urinalysis report accompanied by a letter from the laboratory president is "trustworthy and reliable."

UNITED STATES V. TONRY, 605 F.2d 144 (5th Cir. 1979) - Conditions of probation must be "reasonably related" to the (Federal Probation) Act. Consideration of three factors is required to determine whether a reasonable relationship exists: (1) the purpose sought to be served by probation; (2) the extent to which constitutional rights enjoyed by law-abiding citizens should be accorded to probationers; and (3) the legitimate needs of law enforcement.

UNITED STATES V. WILLIAMS, 787 F.2d 1182 (7th Cir. 1986) - Court imposed drug testing as a condition of probation in cases where the probationer was not initially charged with a drug offense, but where he or she has been shown to have a problem of drug abuse of dependency is "reasonably related to the rehabilitation of the individual."

VASQUEZ V. COUGHLIN, 499 N.Y.S.2d 461 (N.Y. App. Div. 1986) - Positive results from two EMIT™ tests performed on the same sample were held by the court as sufficient to establish guilt in a prison disciplinary hearing.

WARD V. COM., PA. BD. OF PROBATION & PAROLE, 538 A.2d 971 (Pa. Commw. Ct. 1988) - Parole was revoked based on parole agent's testimony and two laboratory reports to the effect that parolees used controlled substances. The court held that although the parole agent's testimony constituted hearsay, the evidence was admissible as an exception to the hearsay rule. As for laboratory reports, the court held them admissible under a good cause exception if they bear sufficient "indicia of reliability." The laboratory report was held reliable here because it contained the laboratory letterhead and was signed by the laboratory's pathologist director, satisfying the "indicia of reliability" test set in *Powell v. Com.*, 513 A.2d 1139 (Pa. Commw. Ct. 1986).

WHITMORE V. COM., PA. BD. OF PROBATION & PAROLE, 504 A.2d 401 (Pa. Commw. Ct. 1986) - Hospital urinalysis reports were not admissible as a business record exemption to the hearsay rule as no custodian or qualified witness testified in support of the record.

WILSON V. STATE, 697 S.W.2d 83 (Tex. Ct. App. 1985) - The burden of proof is on the one who offers the test result to establish the scientific acceptance of its equipment and results. Unless this is done, the evidence is not admissible.

WILSON V. STATE, 521 A.2d 1257 (Md. Ct. Spec. App. 1987) - Unidentified laboratory reports purportedly indicating that a probationer has used marijuana are not sufficiently reliable to justify revocation.

WYKOFF V. RESIG, 613 F. Supp. 1504 (N.D. Ind. 1985) - The unconfirmed single EMIT™ test result was held not sufficient as a basis for action in a work release disciplinary hearing, but a positive result from a second EMIT™ test constituted sufficient evidence.

IV. Drug Testing Case Abstracts: Facts and Holdings by Issue

1. Admissibility of Test Results

UNITED STATES V. BELL, 785 F.2d 640 (8th Cir. 1986)

Facts: At Defendant's probation revocation hearing, laboratory reports indicating positive urine tests were introduced through the probation officer. Defendant argued that his Sixth Amendment right to confront and cross-examine witnesses against him was violated by the introduction of the laboratory reports.

Held: In determining whether "good cause" exists for not allowing confrontation, the court must: (1) assess the government's explanation of why confrontation is undesirable or impractical; and (2) consider the reliability of the evidence which the government offers in place of live testimony. Good cause was present where the laboratory was in California and the revocation hearing was in Arkansas, and the reports were the regular reports of a company whose business it is to conduct such tests.

UNITED STATES V. PENN, 721 F.2d 762 (11th Cir. 1983)

Facts: At Defendant's probation revocation hearing in Alabama, the probation officer testified that Defendant had tested positive for drugs on four separate occasions. The court admitted into evidence the lab reports from a Connecticut laboratory, and a letter from the laboratory summarizing the test results and indicating that at least five different people participated in the analysis of each specimen.

Held: Hearsay statements are admissible in a revocation proceeding where "indicia of reliability" are present and good cause is shown for not allowing confrontation.

STATE V. RIVERA, 569 P.2d 1347 (Ariz. 1977)

Facts: At Defendant's probation revocation hearing, the probation officer testified that Defendant's urine sample had tested positive for morphine use and that Defendant had admitted heroin use. The court admitted the laboratory report showing the positive result into evidence.

Held: The laboratory report is admissible based upon the testimony of the probation officer. The probation officer laid the foundation to show the reliability of the report by testifying about the procedure followed in collecting the sample, sending it to the laboratory, and receiving the report.

JONES V. UNITED STATES, 548 A.2d 35 (D.C. 1988)

Facts: Defendant was convicted of possession of drugs. His urine had tested positive for cocaine the day after his arrest. At trial, a pretrial officer testified that Defendant's urine had tested positive, and about the pretrial agency's drug testing procedures, the test itself, and his knowledge of the general accuracy of the test results. On appeal, Defendant argued that evidence of the drug test should have been excluded because the EMIT™ test was not proved generally accepted in the scientific community and because he could not adequately confront the drug test evidence because the pretrial officer lacked the necessary scientific expertise.

Held: (1) Although the record in the present case did not include sufficient testimony on the general acceptance of the EMIT™ test in the scientific community, the court took judicial notice of another trial court decision in the same jurisdiction and of the opinions of courts in other jurisdictions and held that EMIT™ test results are presumptively reliable and admissible into evidence; (2) the agency's record reporting the test result falls within the business exception to the hearsay rule because it contains objective facts rather than expressions of opinion and bears sufficient indicia of reliability.

STATE V. QUELNAN, 767 P.2d 243 (Hawaii 1989)

Facts: Probationer's January 26, 1988, and February 11, 1988, urine samples tested positive for drugs. On April 4, 1988, defense counsel requested the urine samples for the purpose of conducting independent testing of the specimens. The samples at that time were in the possession of an independent testing laboratory which retained positive samples for six months. The probation office responded to defense counsel's request by stating that the samples had not been saved. After probation had been revoked, defense counsel learned that the samples had been preserved by the laboratory.

Held: (1) Upon defense counsel's timely request for production, the State should have produced the urine samples in order to give probationer the opportunity to conduct independent testing; (2) Admission of probationer's positive urinalysis results into evidence solely through probation officer's testimony violated probationer's right of confrontation.

McDONALD V. STATE, 550 A.2d 696 (Md. 1988)

Facts: (1) At Defendant's probation revocation hearing, two laboratory reports indicating positive urine tests were introduced without requiring the State to produce the technicians who performed the tests. The laboratory department head testified as to normal procedures, but he did not perform tests on the samples in question nor did he have specific knowledge of how the samples were processed; (2) there was no testimony as to how the urine samples were obtained, labeled, and stored, or how they were delivered to the laboratory.

Held: (1) State statute provided for the admission of laboratory reports into evidence and permits confrontation of the chemists who conducted the tests; (2) the State failed to establish with the requisite degree of certainty that the urine tested was in fact the urine of defendant.

WILSON V. STATE, 521 A.2d 1257 (Md. Ct. Spec. App. 1987)

Facts: Probationer's urine sample indicated marijuana use. At the revocation hearing, the court made a finding that it would be cost prohibitive to call a representative of the out-of-State laboratory to testify, and admitted the laboratory report into evidence. The probation officers who testified did not know what kind of urine test was administered nor the effect of probationer's twice-a-day insulin shots on the test results. Probationer argued on appeal that the report was hearsay, that he was denied the right to confront adverse witnesses, and that because there was no evidence of what test was used, reliability was assumed, not proven.

Held: Where no evidence of testing procedure was introduced, and no evidence was presented by the State as to effects of insulin shots, and there was no corroborating evidence, the unidentified laboratory report was not sufficiently reliable to justify revocation of probation.

COMMONWEALTH V. JORASKIE, 519 A.2d 1010 (Pa. Super. Ct. 1987)

Facts: In a parole revocation hearing, Defendant's parole officer testified to obtaining a sample of Defendant's urine and then produced a urinalysis report prepared by a laboratory, showing the presence of cannabinoids. The person preparing the report did not appear in person or by deposition. Defendant argued that the laboratory report was hearsay evidence and its admission into evidence violated his rights of confrontation and cross-examination.

Held: In the absence of good cause sufficient to abridge a defendant's rights of confrontation and cross-examination, an order revoking parole may not rest solely on inadmissible hearsay evidence. In the absence of good cause, the presence of the person making the urinalysis and preparing the report was essential.

WARD V. COM., PA. BD. OF PROBATION & PAROLE, 538 A.2d 971 (Pa. Commw. Ct. 1988)

Facts: Parolee challenged on hearsay grounds the admissibility of laboratory reports indicating positive urine tests.

Held: Laboratory reports containing the laboratory letterhead, signed by a doctor, and stamped with the types of drugs found, have sufficient indicia of reliability to support the finding of good cause for not allowing confrontation.

DAMRON V. COM., PA. BD. OF PROBATION & PAROLE, 531 A.2d 592 (Pa. Commw. Ct. 1987)

Facts: Defendant was found to have violated a condition of his parole to refrain from unlawful possession, use or sale of controlled substances. At the parole revocation hearing, the examiner stated that there was good cause to admit urinalysis reports from a Virginia laboratory into evidence without testimony from anyone from the laboratory as to accuracy and reliability because the persons with such knowledge were beyond the subpoena powers of the Pennsylvania parole board. Defendant argued that the revocation of parole was not based on substantial evidence because the parole board relied upon inadmissible hearsay.

Held: (1) The parole board's good cause ruling was not in error; (2) the laboratory reports contained the necessary letterhead and signature of the pathologist director so as to qualify them as business records, and, therefore, an exception to the hearsay rule. The laboratory reports constituted substantial evidence sufficient to support revocation of parole.

JONES V. COM., PA. BD. OF PROBATION & PAROLE, 520 A.2d 1258 (Pa. Commw. Ct. 1987)

Facts: Parolee who was recommitted after positive urine test argued that the laboratory report was inadmissible hearsay evidence. At the revocation hearing, parolee's parole officer first testified that parolee had admitted using marijuana, but the officer recanted later in his testimony. The laboratory report in question did not include the letterhead of the laboratory and was not signed by a laboratory staff member.

Held: The Board erred in admitting the laboratory report into evidence because under Pennsylvania law, hearsay evidence is admissible in revocation proceedings only upon a showing of good cause, and must contain some "indicia of reliability."

NEAL V. COM., PA. BD. OF PROBATION & PAROLE, 531 A.2d 119 (Pa. Commw. Ct. 1987)

Facts: At Defendant's parole revocation hearing, the parole officer introduced a computer-generated laboratory report that had no signature or letterhead establishing the laboratory's attestation to its work. The parole officer testified that he had received the report in the mail after sending Defendant's urine sample to the laboratory and conferring with laboratory employees by telephone.

Held: Due process does not require that laboratory personnel be produced at the hearing for firsthand authentication where the hearing officer has found good cause for not doing so. There is, however, a need for some indicia of reliability in the form of a responsible person's signature certifying the identity of the report's subject and the correctness of the result.

JEFFERSON V. COM., PA. BD. OF PROBATION & PAROLE, 506 A.2d 495 (Pa. Commw. Ct. 1986)

Facts: Parolee submitted a urine sample which tested positive. At the revocation hearing, the parole officer entered into evidence a laboratory report indicating that the parolee's urine proved positive. The

hearing officer found that there was good cause to admit the report because the Board had a contract with the laboratory to conduct drug screens. Parolee argued on appeal that the laboratory report was inadmissible hearsay.

Held: Under Pennsylvania law, hearsay evidence is admissible in parole revocation proceedings upon a finding of good cause to deny the parolee the right to confront and cross-examine witnesses. The court did not consider the adequacy of the good cause found by the examiner because the question was not properly raised on appeal. Citing a Pennsylvania statute allowing the Board to rely on reports submitted by agents and employees, the court held that the laboratory report was admissible.

POWELL V. COM., PA. BD. OF PROBATION & PAROLE, 513 A.2d 1139 (Pa. Commw. Ct. 1986)

Facts: At Defendant's parole revocation hearing, the hearing examiner allowed into evidence an unsigned computer printout from a private laboratory which indicated that Defendant's urine sample tested positive for drugs. The hearing examiner made a "good cause" finding that the persons performing the test did not have to testify in person because the laboratory report indicated that five different people worked on the test at the laboratory. Defendant challenged the adequacy of the finding that there was good cause for not requiring the presence of any witness from the laboratory.

Held: (1) To admit a laboratory report without witness confrontation, the report must contain indicia of reliability and regularity such as letterhead and signature; (2) The hearing examiner cannot rely upon the laboratory report itself to determine whether or not good cause exists.

WHITMORE V. COM., PA. BOARD OF PROBATION & PAROLE, 504 A.2d 401 (Pa. Commw. Ct. 1986)

Facts: At Defendant's parole revocation hearing, the only evidence of his drug use was a laboratory report indicating that his urine sample tested positive for illegal substances, and a letter from the state health department stating that the laboratory was approved.

Held: The admission of the report was in error because the report was hearsay, no one from the laboratory testified, and the Board did not make a finding that good cause existed for not allowing witness confrontation.

ISAACKS V. STATE, 646 S.W.2d 602 (Tex. Ct. App. 1983)

Facts: Probationer submitted urine samples which tested positive for controlled substance. At the revocation hearing, EMIT™ test system operator testified that she had been trained to operate the EMIT™ test results system machine by the manufacturer and the American Correctional Association. She described the four machines that make up the EMIT™ test results system and testified that she tested the machine for accuracy before testing probationer's sample, and that the sample in question tested positive for an active ingredient of controlled substances. The operator acknowledged that she did not have knowledge of the scientific theory enabling the system to detect a controlled substance. Finally, she testified that the EMIT™ test system is scientifically recognized, but she did not say by what persons or organizations.

Held: "For the results of the EMIT™ test system test to be admissible, it must be shown that the machine has attained scientific acceptance, that properly compounded chemicals were used, that the machine has been periodically checked for accuracy by one who understands its scientific theory, and proof must be offered by one qualified to translate and to interpret the result so as to eliminate hearsay."

2. Chain of Custody

UNITED STATES V. BURTON, 866 F.2d 1057 (8th Cir. 1989)

Facts: At Defendant's probation revocation hearing, the laboratory report indicating positive results was introduced into evidence without testimony from laboratory personnel. After urine samples were taken from Defendant, they remained throughout the day in an unlocked box on the desk of a secretary, who occasionally was away from her desk and office. The samples were stored in a locked refrigerator for two weeks before mailing.

Held: (1) Admission of laboratory reports supported by affidavit from the laboratory director bore sufficient indicia of reliability and did not violate probationer's

right to confront witnesses; and (2) although lax, the chain of custody of urine samples was adequate because the samples retained identification labels from receipt of samples from probationer to their delivery to laboratory and return of reports.

SOTO V. LORD, 693 F. Supp. 8 (S.D N.Y. 1988)

Facts: Disciplinary sanctions were imposed against prison inmate whose urine tested positive for marijuana use. A single EMIT™ test was performed on the sample by a private laboratory and the laboratory report was the only evidence. The laboratory report included this statement: "A positive cannabinoid result should be confirmed by an alternative method." The checklist form designed to establish chain of custody had been incompletely filled out and contained erroneous information. Inmate brought civil rights action against prison official.

Held: (1) Assuming that reliance on an unconfirmed EMIT™ test violates due process, prison official was entitled to qualified immunity because the law requiring use of a confirmatory test is not clearly established; (2) Prison official was not entitled to qualified immunity for failure to establish a chain of custody because his conduct was unreasonable in relying upon the inaccurate, incomplete checklist.

WYKOFF V. RESIG, 613 F. Supp. 1504 (N.D. Ind. 1985)

Facts: Inmate challenged the validity and constitutionality of imposing disciplinary sanctions based upon an EMIT™ test confirmed with a TLC test. He also contended that the chain of custody in handling the sample was inadequate because 3 to 4 hours elapsed from the time he gave the sample until it was transported to the sheriff's office and locked in a refrigerator.

Held: (1) Because positive EMIT™ test was confirmed by TLC test, the EMIT™ test was sufficiently reliable. The court held, however, that in the future a positive EMIT™ test should be confirmed by a second EMIT™ test or its equivalent; (2) the chain of custody was adequate because although urine samples were left in an unlocked refrigerator for 3 hours, the door to the room where the refrigerator was located was kept locked and only department personnel had access. The court recommended that urine samples be sealed in the presence of the inmate, that a written record on the location and transportation of samples be kept, and while the samples are in the DOC's possession, they be stored in locked refrigerators with limited access.

McDONALD V. STATE, 550 A.2d 696 (Md. 1988)

Facts: (1) At Defendant's probation revocation hearing, two laboratory reports indicating positive urine tests were introduced without requiring the State to produce the technicians who performed the tests. The laboratory department head testified as to normal procedures, but he did not perform tests on the samples in question nor did he have specific knowledge of how the samples were processed; (2) there was no testimony as to how the urine samples were obtained, labeled, and stored, or how they were delivered to the laboratory.

Held: (1) State statute provided for the admission of laboratory reports into evidence and permits confrontation of the chemists who conducted the tests; (2) the State failed to establish with the requisite degree of certainty that the urine tested was in fact the urine of defendant.

STAHL V. COM., PA. BD. OF PROBATION & PAROLE, 525 A.2d 1272 (Pa. Commw. Ct. 1987)

Facts: Parolee whose parole was revoked after a positive urine test challenged the custodial procedure followed for the urine sample. The labeled urine sample was left in a prison official's office or in a refrigerator before being mailed to a private laboratory.

Held: All that is required to establish "chain of custody" is that the evidence remain unaltered or untainted during the period in which it changed hands and it is not necessary to preclude possibility of doubt. Urinalysis report was properly admitted despite objection as to lack of safeguards eliminating access by other inmates.

3. Duty to Preserve Specimens

STATE V. QUELNAN, 767 P.2d 243 (Hawaii 1989)

Facts: Probationer's January 26, 1988, and February 11, 1988, urine samples tested positive for drugs. On April 4, 1988, defense counsel requested the urine

samples for the purpose of conducting independent testing of the specimens. The samples at that time were in the possession of an independent testing laboratory which retained positive samples for 6 months. The probation office responded to defense counsel's request by stating that the samples had not been saved. After probation had been revoked, defense counsel learned that the samples had been preserved by the laboratory.

Held: (1) Upon defense counsel's timely request for production, the State should have produced the urine samples in order to give probationer the opportunity to conduct independent testing; (2) admission of probationer's positive urinalysis results into evidence solely through probation officer's testimony violated probationer's right of confrontation.

PEOPLE V. MOORE, 666 P.2d 419 (Cal. 1983)

Facts: Defendant probationer submitted a urine sample on January 20, 1981, which tested positive. On April 2, 1981, his motion to substitute counsel was granted and the matter was continued until May 4, 1981. On that date the State moved for a continuance and Defendant's counsel requested inspection of the urine sample. The testing laboratory, however, only retained samples for 3 months. No request had been made by the probation officer to retain the sample for longer than 3 months.

Held: The probation department, having requested a revocation based upon the test results of a urine sample, had a duty to preserve and disclose the sample even in the absence of a request therefor. Failure to preserve the sample denied Defendant the opportunity to independently examine the sample and therefore deprived him of a fair hearing.

4. Reliability/Confirmation of Test Results

PERANZO V. COUGHLIN, 850 F.2d 125 (2d Cir. 1988)

Facts: Prison inmates brought action challenging the reliability of EMIT™ test results as evidence of drug use. Evidence was presented that the testing procedure (an initial test and a subsequent confirming test) had a 98 percent accuracy rate.

Held: The use of the test results may be relied upon as sufficient evidence to warrant prison discipline.

SPENCE V. FARRIER, 807 F.2d 753 (8th Cir. 1986)

Facts: Inmates brought civil rights action challenging constitutionality of urine testing program. Tests were performed both randomly and on inmates suspected of drug use. The prison used the EMIT™ test, and positive results were tested twice. Inmates could not call upon expert witnesses and could not have a confirmatory test by another method.

Held: (1) A urinalysis is a search and seizure, but the random testing procedures are reasonable under the Fourth Amendment; (2) refusal to allow inmates to have independent confirmatory tests and expert witnesses does not violate the right to due process; (3) the EMIT™ test results have been shown to be widely accepted in the scientific community and are thus admissible.

SOTO V. LORD, 693 F. Supp. 8 (S.D.N.Y. 1988)

Facts: Disciplinary sanctions were imposed against prison inmate whose urine tested positive for marijuana use. A single EMIT™ test was performed on the sample by a private laboratory and the laboratory report was the only evidence. The laboratory report included this statement: "A positive cannabinoid result should be confirmed by an alternative method." The checklist form designed to establish chain of custody had been incompletely filled out and contained erroneous information. Inmate brought civil rights action against prison official.

Held: (1) Assuming that reliance on an unconfirmed EMIT™ test violates due process, prison official was entitled to qualified immunity because the law requiring use of a confirmatory test was not clearly established; (2) prison official was not entitled to qualified immunity for failure to establish a chain of custody because his conduct was unreasonable in relying upon the inaccurate, incomplete checklist.

ADKINS V. MARTIN, 699 F. Supp. 1510 (W.D. Okla. 1988)

Facts: Prison inmate challenged the institutional urinalysis program, alleging a false positive due to medication. Laboratory double tested positive readings of thin layer chromatography or enzyme immunoassay test with gas chromatography test.

Held: The utilization of two separate and independent tests each having a different scientifically accepted methodology satisfies the requirements of due process.

WYKOFF V. RESIG, 613 F. Supp. 1504 (N.D. Ind. 1985)

Facts: Inmate challenged the validity and constitutionality of imposing disciplinary sanctions based upon an EMIT™ test confirmed with a TLC test. He also contended that the chain of custody in handling the sample was inadequate because 3 to 4 hours elapsed from the time he gave the sample until it was transported to the sheriff's office and locked in a refrigerator.

Held: (1) Because positive EMIT™ test was confirmed by TLC test, the EMIT™ test was sufficiently reliable. The court held, however, that in the future a positive EMIT™ test should be confirmed by a second EMIT™ test or its equivalent; (2) the chain of custody was adequate because although urine samples were left in an unlocked refrigerator for 3 hours, the door to the room where the refrigerator was located was kept locked and only department personnel had access. The court recommended that urine samples be sealed in the presence of the inmate, that a written record on the location and transportation of samples be kept, and while the samples are in the DOC's possession, they be stored in locked refrigerators with limited access.

HIGGS V. BLAND, 888 F.2d 443 (6th Cir. 1989)

Facts: Inmates appealed from denial of moton for preliminary injunction seeking to enjoin prison officials from taking disciplinary action based on urinalysis tests. Prison procedure required EMIT™ test, with repeat testing by EMIT™ system for positive results.

Held: A positive EMIT™ test result is sufficient evidence to satisfy due process requirements in a prison disciplinary proceeding.

JENSEN V. LICK, 589 F. Supp. 35 (D.N.D. 1984)

Facts: Defendant inmate challenged the constitutionality of random urine screening program. Under the prison's program, testing was random unless an inmate was suspected of drug abuse; the inmate was notified the night before the test; samples were tested using the EMIT™ test system; and repeat tests were made on samples testing positive. Defendant refused to submit to testing and was disciplined for his refusal. He argued on appeal that the EMIT™ test system was unreliable.

Held: Evidence established that EMIT™ test was 95 percent accurate, which the court concluded was "tantamount to almost complete certainty" and was thus sufficiently reliable to support disciplinary action against inmates.

STATE V. JOHNSON, 527 A.2d 250 (Conn. App. Ct. 1987)

Facts: At Defendant's probation revocation hearing, his probation officer testified that Defendant's urine sample twice tested positive for cocaine metabolites using the EMIT™ test results. Defendant's expert witness, a pharmacologist, testified that the percentage of error in the EMIT™ test was 5 - 10 percent, and that dual testing using the same test was not an effective method of confirmation.

Held: The court was not required to accept as conclusive the pharmacologist's testimony on the reliability of the EMIT™ test. The court did not abuse its discretion in determining from the evidence that Defendant violated his probation.

JONES V. UNITED STATES, 548 A.2d 35 (D.C. 1988)

Facts: Defendant was convicted of possession of drugs. His urine had tested positive for cocaine the day after his arrest. At trial, a pretrial officer testified that Defendant's urine had tested positive, and about the pretrial agency's drug testing procedures, the test itself, and his knowledge of the general accuracy of the test results. On appeal, Defendant argued that evidence of the drug test should have been excluded because the EMIT™ test was not proved generally accepted in the scientific community and because he could not adequately confront the drug test evidence because the pretrial officer lacked the necessary scientific expertise.

Held: (1) Although the record in the present case did not include sufficient testimony on the general acceptance of the EMIT™ test in the scientific community, the court took judicial notice of another trial court decision in the same jurisdiction and of the opinions of courts in other jurisdictions and held that EMIT™ test results are presumptively reliable and admissible into

evidence; (2) the agency's record reporting the test result falls within the business exception to the hearsay rule because it contains objective facts rather than expressions of opinion and bears sufficient indicia of reliability.

SMITH V. STATE, 298 S.E.2d 482 (Ga. 1983)

Facts: As a condition of probation, Defendant had to refrain from using controlled substances. EMIT™ test results indicated use of drugs. Defendant argued that the requirement that he submit to urine testing was unreasonable and that the EMIT™ test was unreliable.

Held: (1) Request for urine specimen clearly arose out of Defendant's probationary status and thus was reasonable; (2) trial court considered expert testimony concerning the operation and accuracy of the EMIT™ test and that the test results were admissible was supported by the evidence.

PEOPLE V. WALKER, 517 N.E.2d 679 (Ill. App. Ct. 1987)

Facts: Defendant's probation was revoked after his urine sample tested positive for marijuana use. The sample was analyzed twice using the EMIT™ test and the results were positive both times. Defendant contended that the EMIT™ test was unreliable and therefore the evidence was insufficient to support the revocation.

Held: "[W]here the EMIT™ test procedure is performed twice, it is sufficiently reliable where it is the only evidence of drug use in a probation revocation proceeding."

LAHEY V. KELLY, 524 N.Y.S.2d 30 (N.Y. 1987)

Facts: Inmates argued that the EMIT™ drug test was not sufficiently reliable to support the determination that an inmate had used drugs.

Held: Positive EMIT™ test results, when confirmed by a second EMIT™ test or its equivalent, are sufficiently reliable to support a determination that an inmate has used illegal drugs.

VASQUEZ V. COUGHLIN, 499 N.Y.S.2d 461 (N.Y. App. Div. 1986)

Facts: Defendant inmate's urine samples tested positive under the EMIT™ test system. He argued that EMIT™ test results were not reliable enough to constitute substantial evidence.

Held: The reliability of EMIT™ test results for use in prison disciplinary proceedings has been established by ample scientific evidence.

BROWN V. SMITH, 505 N.Y.S.2d 743 (N.Y. Sup. Ct. 1985)

Facts: Inmates brought action challenging the reliability of dual EMIT™ tests, the proficiency of the employees assigned to administer the test, and the adequacy of the foundation presented to admit the results into evidence. They presented expert testimony that the EMIT™ test should be confirmed by an alternate method. Expert testimony conflicted on whether ingestion of drugs such as aspirin might produce false positives.

Held: (1) EMIT™ testing system was not sufficiently reliable to justify imposition of disciplinary penalty on sole basis of two positive readings: positive reading should be confirmed by alternate test and at least one of the test operators should by interviewed by the hearing officer; (2) inmates should receive copies of documents to be introduced at hearing and should have opportunity to present questions to be asked the test operator.

McQUEEN V. STATE, 740 P.2d 744 (Okla. Crim. App. 1987)

Facts: Defendant's probation was revoked based upon positive laboratory test results and his admission to probation officer of drug use. Defendant argued on appeal that there was insufficient evidence to revoke his probation and that the chain of custody as to the urine samples was inadequate.

Held: Probationer's admissions of drug use were sufficient to establish violations of conditions of probation, even without laboratory analysis or with an inadequate chain of custody.

IN RE JOHNSTON, 745 P.2d 864 (Wash. 1987)

Facts: Prison inmates challenged use of single positive EMIT™ test result as sole basis for imposition

of disciplinary sanctions, arguing such evidence is insufficient to satisfy due process requirements.

Held: (1) The evidentiary requirements of due process are satisfied if there is "some evidence" in the record to support a prison disciplinary proceeding; (2) the "Frye test" (under which evidence derived from a scientific principle or theory is admissible only if the principle has achieved general acceptance in the community) is inapplicable in the context of prison disciplinary proceedings; and (3) a single positive result to an EMIT™ test is "some evidence" of drug use, and the use of such test as the basis for disciplinary sanctions does not violate due process requirements.

5. Drug Testing as a Condition of Probation

UNITED STATES V. DUFF, 831 F.2d 176 (9th Cir. 1987)

Facts: Although conditions of probation did not expressly authorize drug testing, Defendant's probation officer ordered him to submit to drug testing based upon probationer's conduct, which suggested drug use. Probation was revoked after three separate samples tested positive.

Held: The probation officer had the power to order Defendant to submit to drug testing even though the court had not explicitly imposed such a condition. Urine testing was consistent with the condition of probation requiring Defendant to refrain from violating the law and the probation officer had a reasonable suspicion that Defendant might be using drugs.

SPENCE V. FARRIER, 807 F.2d 753 (8th Cir. 1986)

Facts: Inmates brought civil rights action challenging constitutionality of urine testing program. Tests were performed both randomly and on inmates suspected of drug use. The prison used the EMIT™ test, and positive results were tested twice. Inmates could not call upon expert witnesses and could not have a confirmatory test by another method.

Held: (1) A urinalysis is a search and seizure, but the random testing procedures are reasonable under the Fourth Amendment; (2) refusal to allow inmates to have independent confirmatory tests and expert witnesses does not violate the right to due process; (3) the EMIT™ test has been shown to be widely accepted in the scientific community and is thus admissible.

UNITED STATES V. WILLIAMS, 787 F.2d 1182 (7th Cir. 1986)

Facts: Condition of probation required Defendant to submit to urine tests because a presentence test was positive for illegal substances. Defendant challenged the constitutionality of the drug testing condition, arguing that the taking of a urine sample was an unreasonable search and seizure.

Held: The drug testing condition bears a reasonable relationship to the purposes of the Probation Act and the needs of Defendant and was thus permissible under the Fourth Amendment.

STATE V. SMITH, 540 A.2d 679 (Conn. 1988)

Facts: The trial court entered order 1 year after the original sentence modifying probation to include urine testing. Defendant's urine sample tested positive and, at revocation hearing, he admitted drug use.

Held: Trial court had continuing authority to modify terms of probation 1 year after sentencing and the modification did not have to be imposed by the sentencing judge.

SMITH V. STATE, 298 S.E.2d 482 (Ga. 1983)

Facts: As a condition of probation, Defendant had to refrain from using controlled substances. EMIT™ test indicated use of drugs. Defendant argued that the requirement that he submit to urine testing was unreasonable and that the EMIT™ test was unreliable.

Held: (1) Request for urine specimen clearly arose out of Defendant's probationary status and thus was reasonable; (2) trial court considered expert testimony concerning the operation and accuracy of the EMIT™ test and that the test results were admissible was supported by the evidence.

PEOPLE V. ROTH, 397 N.W.2d 196 (Mich. Ct. App. 1986)

Facts: Probationer argued that condition of probation requiring him to submit to urine tests was unconstitutional.

Held: The condition of probation requiring submission to unannounced urine tests is both lawful and rationally tailored to probationer's rehabilitation.

STATE V. SIGLER, 769 P.2d 703 (Mont. 1989)

Facts: Probationer failed to appear for a urine test as required by conditions of probation. Although probationer had been convicted on drug charges, his probation officer had no specific reason for believing probationer was using drugs when he requested the urine sample. Probationer contended that there was no "articulable reason" for requiring him to submit to the urine test.

Held: Because Defendant had failed several prior drug tests and because the probation officer believed the rehabilitation process could not begin until he was sure Defendant was free from drugs, there were reasonable grounds to require that Defendant submit to urine testing.

CLAY V. STATE, 710 S.W.2d 119 (Tex. Ct. App. 1986)

Facts: As a condition of probation, Defendant was to submit a urine sample to the probation officer upon demand. Defendant failed to submit urine samples on three occasions and his probation was revoked.

Held: The condition of probation that Defendant submit a urine sample at any time requested by the probation officer is reasonably related to the purposes of probation and does not violate Defendant's right against unreasonable search and seizure.

MACIAS V. STATE, 649 S.W.2d 150 (Tex. Ct. App. 1983)

Facts: Defendant, who had been convicted of a drug offense, was required as a condition of probation to submit to weekly urine testing. Probation was revoked because Defendant tested positive and because he failed to submit to testing as scheduled. On appeal, Defendant argued that the mandatory urine test as a condition of probation was a warrantless and unreasonable search in violation of the Fourth Amendment.

Held: The requirement that Defendant submit to weekly urine testing is reasonably related to the purposes of probation because it dissuades him from drug use and allows his probation officer to determine if rehabilitation is occurring. The condition does not constitute an unreasonable search and seizure.

STATE V. PARRAMORE, 768 P.2d 530 (Wash. Ct. App. 1989)

Facts: Defendant, who had been convicted of selling marijuana, was required as a condition of probation to submit to urine testing.

Held: Condition that defendant who was convicted of selling marijuana submit to urine testing was permissible crime-related prohibition related directly to his conviction.

APPENDIX B: FORMS

Attachment 1

INSTRUCTIONS TO OFFENDERS

1. Cooperate with the Probation/Parole Officer and answer all questions honestly.

2. Provide or authorize release of any records requested by the Probation/Parole Officer. These may include: legal, medical, psychological, substance abuse treatment, educational, military employment, financial, Juvenile Court, or other records.

3. As a condition of supervision, client is subject to random urine testing for alcohol and drug usage at such times as client is ordered to submit to these by Probation/Parole officer.

4. Client is advised that failure or refusal to submit to such testing or tampering with a urine sample shall be considered the same as a "positive" test.

5. Any positive result can lead to revocation and incarceration or such lesser penalty as may be appropriate.

6. Client will inform the Probation/Parole Officer of all arrests and convictions. Inform the Probation/Parole Officer of any new arrests that occur prior to sentencing in this case.

ACKNOWLEDGEMENT

I, the undersigned, have read or had read to me the above information and understand these instructions. I understand that the Court will be informed if I fail to cooperate or provide false, incomplete, or misleading information.

_____

Probation/Parole Officer

_____

Signature of Client

_____

Date

Attachment 2

DRUG TESTING AGREEMENT

I, _____
(probationer/parolee)

understand that I have been court ordered to undergo urinalysis drug testing throughout my probation. I further understand that the results of this test will be confidential, with the exception that these results may be made available to my probation officer or the court system when appropriate. I understand that repeated positive drug tests may result in a violation of my probation.

_____
Probationer/Parolee Signature

_____
Probation/Parole Officer

_____
Date

Attachment 3

REQUEST FOR DRUG TEST(S)

CLIENT IDENTIFICATION INFORMATION:

Probationer/Parolee:_____ Age _____ Sex _____

Social Security #:_____ Agency #:_____

Officer Name:_____ Officer District:_____

STATEMENT:

I am neither under the influence of any drugs or medication, nor have I taken any drugs or medication in the past three (3) weeks, other than those listed below. I certify that the urine sample is my own, has not been tampered with by myself or anyone else, and I have sealed the container.

Medication within the past three (3) weeks:_____

as prescribed for me by: (Physician's Name)_____

Date:_____Time:_____Container sealed by:_____

Collection Observer:_____Probation/Parolee Signature:_____

CONFESSION:

I acknowledge that I have used the following illegal drugs within the past three (3) weeks:_____

_____

Probationer/Parolee Signature:_____Date:_____

REFUSAL TO SUBMIT TO DRUG SCREEN: Date:_____

Probationer/Parolee Signature:_____Officer Signature:_____

TYPE OF DRUG SCREEN REQUESTED:

Reason for Request:____Intake ____ Suspected Drug Use ____ Random Test ____ Scheduled Test ____Other, Specify:_____

_____ Full Drug Screen (Tests for 5 categories) _____ Partial Drug Screen (Tests for 1-3 categories) Specify Drugs:_____

CHAIN OF CUSTODY:

Date/Time	Released By	Received By	Purpose of Change

TEST SITE USE ONLY:

Test Methodology:_____ Test Date:_____

Test Performed:

____Barbiturate ____Benzodiazpine ____THC ____Cocaine ____Amphetamine ____Opiate ____ Other, Specify:_____

Location Sent_____

Container Received by:_____Time:_____

Sample Tested and Results Were: ____NEGATIVE ____POSITIVE for_____

Sample Tray #_____ Position #_____

Operator:_____Date:_____

Date Results Received_____

Confirmation Test: Yes_____ No _____ Confirmation Methodlogy:_____

Test Performed:

____Barbiturate ____Benzodiazpine ____THC ____Cocaine ____Amphetamine ____Opiate ____Other

Sample Tested and Results Were: ____NEGATIVE ____POSITIVE for_____

Container Received by:_____ Time:_____

Location Sent:_____ Date Sent:_____

Date Results Received:_____

Operator:_____Date:_____

SUBSTANCE/MEDICATION SCREEN RECORD

Attachment 4

Probationer/Parolee
Name:_____Social Security #:_____

Ht:_____WT:_____Sex:_____Age:_____DOC #:_____

Is the client taking any of the following medications or prescriptions? If yes, please list time and amount of last dosage.

	Time/Amount
_____Allergy Medication (Primatine, etc.)	_____
_____Antibiotics	_____
_____Over the Counter Stimulants	_____
_____Blood Pressure Medicine	_____
_____Cortisone/Steroids	_____
_____Arthritis Medication (Advil, Nalfon, etc.)	_____
_____Water Pills (Diuretics)	_____
_____Heart Medicine	_____
_____Sleeping Pills/Sedatives	_____
_____Food Containing Poppy Seeds (w/in 24 hrs)	_____
_____Tranquilizers/Antidepressants	_____
_____Appetite Depressant	_____
_____Decongestants/Nasal Spray	_____
_____Cold Medication	_____

Any other drugs or medication? If yes, please list _____

_____

_____
Signature of Client Date

_____
Witness Date

_____
Name of Physician(s)

Attachment 5

SPECIMEN COLLECTION CHECKLIST

Name of Specimen Provider	DOC#
Test Conducted By	Date/Time

INITIAL EACH STEP UPON COMPLETION

_____ 1. Verify ID of Specimen Provider.

_____ 2. Have Provider sign Consent and Release of Information Form and Substance/Medication Screen Record.

_____ 3. Place Name, DOC#, Agency and Office Number on Container Label, Provider Initials Label.

_____ 4. Give Provider container. Supervising officer present.

_____ 5. Collection observed.

_____ 6. Seal container top tightly. Place Providers Name and DOC# on evidence tape with marker pen. Provider initials evidence tape next to name.

_____ 7. Specimen stored immediately or sent to in-house lab.

_____ 8. Complete Chain of Custody Form to accompany specimen to lab.

Attachment 6

SEAL PLACE **SEAL** OVER TOP OF CONTAINER

LABEL Wrap around container, overlapping ends of seal strip.

CLIENT NAME _____ CLIENT #_____

Signature

PROBATION/PAROLE OFFICER _____

DATE/TIME COLLECTED _____

MONITORED BY _____

Signature

Attachment 7

CHAIN OF CUSTODY FORM

Client's Name _____

Client's Signature _____

Client's I.D. Number _____

Specimen Collected By _____

Collection Observed By _____

Date and Time _____

For the Analysis of _____

VERIFICATION, IDENTITY AND CUSTODY
OF THE SAMPLE MAINTAINED BY:

Released By	Received By	Date/Time

TO BE FILLED OUT BY LABORATORY PERSONNEL ONLY

Seal Broken By _____ Date/Time _____

Test Performed By _____ Date/Time _____

Test Verified By _____ Date/Time _____

Attachment 8

URINALYSIS REPORT

Date:_____

Time:_____

Offender
Name:_____

Probation/Parole
Officer's
Name:_____

CHECK AND INITIAL APPROPRIATE BOX BELOW:

This specimen is being tested for narcotic, dangerous drug or marijuana:

_____ I HAVE NOT taken any medication, narcotic or over-the-counter drug 72 hours prior to producing this urine specimen.

_____ I HAVE taken medication, narcotic or over-the-counter drug 72 hours prior to producing this urine specimen. I took:

_____

_____

as prescribed for me
by:_____
Physician's name

In producing this urine specimen, I certify: 1) I do not have on my person nor am I using any other urine or device which will cause the substitution of another's urine for my own; 2) I have not taken any substance which will cause any change in my urine for the purpose of avoiding detection of illegal drugs I have used.

I certify the above information is true and understand that giving false or misleading information shall constitute a violation of my probation.

_____
Probationer's Signature

Specimen Collected
at_____

Monitored
by_____

Attachment 9

POSITIVE DRUG TEST STATEMENT

I, _____
(Probationer/Parolee)

understand that I have received a positive urinalysis drug test

for _____ on _____
(Drug) (Date)

I further understand that I have 30 days to request a re-test of the specimen which yields the positive result and that if I do not request a re-test within 30 days, that this represents an acceptance by me that the result is, in fact, positive. If I do request a re-test, I understand that I will pay all costs associated with the confirmation test, provided the confirmation test is also positive. If the confirmation test is negative, the agency will pay the costs for the re-test.

_____ I do hereby waive my option of a confirmation test and accept the positive result of the initial screen. I recognize that this acceptance constitutes a full confession of drug use during the period covered by the specimen.

_____ I do hereby request a re-test (confirmation test) of the specimen which yielded the above positive result. I will pay the cost for the re-test if the initial positive test is confirmed.

_____
(Probationer/Parolee Signature) (Date)

_____
(Probation/Parole Officer Signature)

Attachment 10

AUTHORIZATION FOR RELEASE OF DRUG TEST AND RESULT INFORMATION

Offender's Name_____ Birthdate_____

I,_____ and/or_____
(Client's Name) (Name of Parent or Conservator)

Authorize_____
(Releasing Agency)

Disclose To:_____
Name

_____
Street Number Street Name

_____
City State Zip

_____
Name, if any, of person to whom attention should be made

The Following information:_____
(Specify the nature and extent of information to be released)

For the Following Purpose:_____
(State Purpose of Disclosure)

This authorization and consent is made for the purpose of reporting my drug test(s) and drug test result(s) to the above designated individual and/or organization.

This authorization and consent is subject to revocation by the undersigned at any time except to the extent that action has been taken in reliance thereon. If not earlier revoked, this consent terminates on:

_____
Month Day Year

Releasor, its agents and its employees are hereby relieved of any responsibility and liability that may arise from the release or reproduction of such records and/or information.

_____
(Signature of Client) (Date)

_____
(Signature of Parent or Conservator) (Date)

_____
(Witness) (Date)

Prohibition on redisclosure: This information has been disclosed to you from records whose confidentiality is protected by Federal Law. Federal regulations (42 CFR Part 2) prohibit you from making any further disclosure of this information except with the specific written consent of the person to whom it pertains. A general authorization for the release of medical or other information if held by another party is not sufficient for this purpose. Federal regulations state that any person who violates any provision of this law shall be fined not more than $500, in the case of a first offense, and not more than $5,000 in the case of each subsequent offense.

Attachment 11

URINALYSIS TEST RECORD

Agency Submitting Specimen

Date of Run

Lab Tech

Operator's Initials

Calibration Expiration Date

Lot Number of Reagent

Expiration Date of Reagent

Negative Cal. Rate

Low Cut Off

Control Number	IRS	Assay Results	Pos.	Neg.	If Positive, Confirmation Results

Attachment 12

PROBATIONER/PAROLEE STATUS REPORT

To Judge:_____

From:_____
Probation Officer

Approved:_____
Chief Probation Officer

RE: Probationer/Parolee_____

Docket No(s)_____ Probation No._____

Offense_____

Probation Date_____ Expiration Date_____

Date:_____ Attachments:_____

PURPOSE:

NOTIFICATION THAT URINE SAMPLE WAS TAKEN_____

WAS POSITIVE FOR:_____

WAS NEGATIVE_____

SUMMARY:

Another positive for illicit drugs, within the next six months, will result in a request for Probation/Parole Violation Hearing.

Please respond if this course of action is unacceptable.

Judge's Response: Please indicate any decision below and return it to the probation department.

DECISION JOURNALIZED? Yes_____ No_____
(Note: Decisions such as capias, extension, and early relase must be journalized.)

Judge's Signature_____ Date_____

Attachment 13

AGENCY MONTHLY DRUG TESTING SUMMARY LOG

Test Site: ______________________________

Report for tests performed
during the month of ____________________ Facility ____________________

	Initial		Random		Suspect	
	#Pos	#Neg	#Pos	#Neg	#Pos	#Neg
Drug Tested: ____________	___	___	___	___	___	___
Drug Tested: ____________	___	___	___	___	___	___
Drug Tested: ____________	___	___	___	___	___	___
Drug Tested: ____________	___	___	___	___	___	___
Drug Tested: ____________	___	___	___	___	___	___
Drug Tested: ____________	___	___	___	___	___	___
Drug Tested: ____________	___	___	___	___	___	___
Drug Tested: ____________	___	___	___	___	___	___
Drug Tested: ____________	___	___	___	___	___	___
Drug Tested: ____________	___	___	___	___	___	___
Total: ____________	___	___	___	___	___	___

DRUG TESTING CONTROL LOG

Probation Officer	Collection Personnel	Offender	Case ID#/ SS#	Time/Date Urine Collected	Time/Date Urine Transferred to Test Site	Date Test Results Received	Results POS/NEG Code	Confirmed YES/NO	Final Action Code

POSITIVE TEST CODES:

1 Opiates
2 Amphetamines
3 Barbiturates
4 Bensodiazepines
5 Cocaine
6 Cannabis (THC)
7 Methaqualone
8 Phencyclidine
9 Alcohol

FINAL ACTION CODE:

A - Verbal Warning
B - Written Warning
C - In-House Sanction
D - Increase Testing Frequency
E - Treatment Ordered
F - Partial Revocation
G - Full Revocation

APPENDIX C: DRUG TESTING METHODOLOGIES

Radioimmunoassay (RIA) measures the free or bound radioactivity after urine and radioactively labeled drugs are mixed with antibodies. The measurement indicates the presence of drugs because both sets of drugs, those in the urine and those radioactively labeled, compete for binding sites on the antibody, and hence can be measured by the amount of radioactivity present after an incubation period (del Carmen, Sorenson, 1988: 3). This type of immunoassay test is not usually as feasible for implementation into onsite testing because of the radioactive materials used and the expense involved.

The latex agglutination inhibition immunoassay technique is currently available in compact, onsite, and immediate result test form. This test relies on the competition for binding to antibody between latex-drug conjugate and drug which may be present in the urine being tested.

Fluorescence polarization immunoassay (FPIA) methodology employs fluorescent tracers that compete with drugs in the urine to bind with antibodies. The presence of drugs is measured by the polarization of light that occurs when the tracer is unable to locate binding sites.

Enzyme immunoassays methodologies involve enzyme-labeled drugs that are injected into the urine along with antibodies. Presence of drugs is measured by the binding of enzymes, which compete with the drugs in the urine for binding sites. If drugs are present, the antibodies bind with them. This methodology is currently available in field test as well as laboratory form (del Carmen, Sorenson, 1988: 3).

Those agencies planning to contract out for testing services may use forensic laboratories which use thin-layer chromatography (TLC). TLC is a procedure whereby different chemical structures are separated and are then identified on the basis of the distance the substance travels through a membrane in comparison to a solvent, the Rf value. The Rf value, color, and appearance after various applications make the identification of many types of drugs possible. However, the accuracy of the technique depends to a large extent on the ability of the technician (del Carmen, Sorenson, 1988: 4). Because this is a very subjective and relatively insensitive procedure and is not a methodology recommended by the NIDA guidelines for initial screening, it is strongly recommended that probation or parole agencies contracting out for testing services require that an immunoassay technique is used for initial screens.

Two confirmatory methods used by forensic laboratories include gas chromatography (GC) and high-performance liquid chromatography (HPLC). Both of these methods have significant disadvantages and are not considered to be an acceptable confirmatory method by the NIDA guidelines. Therefore, according to NIDA the only acceptable confirmatory method is mass spectrometry used in conjunction with gas chromatography (GC/MS).

GC/MS operates by separating and fragmenting substances and then recording the response of this fragmentation. The recording of peaks upon which the substances lose their ionization charge identifies them. This method is considered to be the gold standard in confirmatory testing and has up to a 99-percent accuracy rating. However, this method requires a skilled technician to operate the equipment and accurately identify the peaks. In addition, this elaborate procedure is extremely expensive (del Carmen, Sorenson, 1988: 5). Therefore, it is not feasible for probation or parole agencies at this time to operate their own GC/MS systems. When determined to be needed in a criminal justice setting, GC/MS confirmations will require agencies to contract out for services.

In March 1988 the Bureau of Justice Assistance and the National Institute of Justice jointly funded a research project that compared the proficiency of three of these immunoassay methodologies and thin-layer chromatography (TLC) in detecting the five drugs most commonly used by persons under arrest

or supervision by the criminal justice system. Latex agglutination inhibition (developed by Roche) was not FDA-approved at the time the study was begun and therefore was not included in the study. The study was made possible through the cooperation of the drug testing manufacturers.

APPENDIX D: NIJ/BJA DRUG TESTING TECHNOLOGIES STUDY[1]

The general outline of the study was quite simple. Urine specimens from persons under parole supervision in Los Angeles were divided into five parts, each of which was tested using one of four technologies: thin layer chromatography (TLC), enzyme immunoassay (EIA) as manufactured by Syva (EMIT), fluorescence polarization immunoassay (FPIA) as manufactured by Abbott (TDX), and radioimmunoassay (RIA) as manufactured by Roche (Abuscreen). The findings for each of the four were compared to those of GC/MS, which, for the purpose of this study, was regarded as the "gold standard" or the "true" measure of the contents of the divided specimen. The five drugs screened were those most commonly found among criminal justice populations: opiates, marijuana, cocaine, phencyclidine, and amphetamine/methamphetamine.

The conclusions from the study were as follows:

- Standard thin-layer chromatography was demonstrated to be seriously deficient in its ability to detect the five substances examined in this study; hence, it should not be used in screening or confirming urine samples for illegal drug use from criminal justice populations.
- When using the Federal guidelines for establishing cutoff levels for immunoassays (or the manufacturer cutoff if different), no technology is superior to the others in detecting all five drugs. Although there are some specific differences by drug type, these results are unlikely to be helpful to agencies choosing a technology, since populations are usually screened for several drugs.
- Among the immunoassays, the three examined in this study—EMIT™, RIA, and TDx™—are about equally effective in limiting false positives for the substances tested. Overall, about 1 to 2 percent of screened samples were falsely identified as positive.
- Although using an immunoassay as a drug screening technology generates few false positive errors, confirmation of screened positives should be required, especially if one positive drug test will result in serious punitive action.
- The three immunoassays examined are likely to overlook drug use about 20 percent of the time when illegal substances are actually present. In some instances, principally marijuana, lowering the cutoff may reduce the rate of these false negative results.
- To ensure the highest level of accuracy, users of urine screening technologies should carefully follow the manufacturer's instructions for determining whether a urine sample is positive or negative and refrain from deviating from the manufacturer's suggested cutoff level.
- Given the high rate of false negative test results in screening urine for marijuana, manufacturers of urine screening technologies should make available screening tests which can detect marijuana at lower levels. Similar changes in the screening test for opiates and cocaine do not appear necessary at this time.
- Drug testing performed in an onsite testing facility can be just as accurate as testing performed in a full-service laboratory.

Selecting the most appropriate methodology does not require a degree in toxicology. However, it does require that an agency examine current testing technologies and become familiar with them in order to select the methodology that best fits the needs of the agency.

1. C.A. Visher and K.E. McFadden. A Comparison of Urinalysis Technologies for Drug Testing in Criminal Justice, *Research in Action*, National Institute of Justice, Washington, D.C., 1991

APPENDIX E: APPROXIMATE DURATION OF DETECTABILITY OF SELECTED DRUGS IN URINE

Substance	Duration of Detectability*
Amphetamine	48 hours
Methamphetamine	48 hours
Barbiturates	
Short acting	24 hours
Intermediate acting	48–72 hours
Long acting	7 days or more
Benzodiazepines	3 days (therapeutic dose)
Cocaine Metabolites	2–3 days
Methadone	3 days (approximate)
Codeine/Morphine	48 hours
Propoxyphene/ Norpropoxyphene	6–48 hours
Cannabinoids (marijuana)	
Single use	3 days
Moderate use (4 times per week)	4 days
Heavy use (daily)	10 days
Chronic heavy use	21–27 days
Methaqualone	7 days or more
Phencyclidine (PCP)	8 days (approximate)

SOURCE: Journal of the American Medical Association's Council on Scientific Affairs (1987, pp. 3,112).

* Interpretation of the duration of detectability must take into account many variables, such as drug metabolism and half-life, subject's physical condition, fluid balance and state of hydration, and route and frequency of ingestion. These are general guidelines only.

GLOSSARY OF TERMS

Abuse	Prolonged, persistent or sporadic, excessive drug use which is inconsistent with or unrelated to accepted medical practice.
Accuracy	The ability of a testing method to produce the true identity and/or quantity of the measured substance.
Addict	An individual who habitually uses drugs so as to endanger the morals, health, safety, and welfare of the public and who has lost the power of self-control with reference to his or her addiction.
Addiction	A style of living in which there is continuing use and overwhelming involvement with a drug, and in which dependence is both psychological and physiological.
Agglutination	The process of particles forming from the competition for binding of latex drug conjugate and drug to the antibody. Agglutination occurs with a negative urine specimen.
AIDS	Acquired immune deficiency syndrome, a final stage of a series of health problems caused by a virus (germ) that can be passed from one person to another chiefly during sexual contact or through the sharing of intravenous drug needles and syringes used for "shooting" drugs. AIDS is a deadly disease which destroys the body's immune (defense) system, allowing otherwise controllable infections (opportunistic diseases) to invade the body and cause additional diseases. The AIDS virus may also attack the nervous system, causing delayed damage to the brain. AIDS cannot be transmitted through urine.
Aliquot	A portion of a specimen used for testing.
Amobarbital	A moderately long-acting barbiturate used both as a sedative and to control convulsions.
Amphetamines	Class of drugs that have pronounced stimulant effects on the central nervous system. Street names include speed, uppers, bennies, pep pills and the so-called "designer drugs," e.g., "ecstacy."
Analyte	Substance to be measured.
Antagonist	A drug that blocks or counteracts the effect of another drug.
Antibody	A substance which binds to a specific drug or drug metabolite.
Antidepressant	A major classification of drugs used medically to improve mood in severely depressed patients. Included are the tricyclic compounds, Amitriptyline (Elavil) and Imipramine (Trofranil). These are rarely used for nonmedical purposes since they have little immediate pleasurable effect on normal mood states.
Antigen	A substance, alien to the body, which triggers the formation of an antibody.
Barbiturates	The largest and most common group of the synthetic sedative/hypnotics. In small doses, as tranquilizers, they are effective in sedation and in relieving tension and anxiety. In larger doses, they are used as hypnotics (sleep inducers). When large

	dosages are not followed by sleep, signs of mental confusion, euphoria, and even stimulation may occur, i.e., effects similar to alcohol. Hence, barbiturates are often used or abused "recreationally" by people seeking similar effects to those produced by alcohol. Barbiturates are also used in combination with, or as a substitute for, other depressants such as heroin and are often taken alternately with amphetamines, as they tend to enhance the euphoric effects of amphetamines while calming the nervous states they produce. Barbiturates are classed by their clearance time as long-acting, intermediate-acting, short-acting, or ultrashort-acting. The ultrashort (Thiopental) is generally used as an anesthetic. The most commonly abused are the short-acting agents such as pentobarbital (Nembutal), secobarbital (Seconal), amobarbital (Amytal), and the seco-amobarbital mixture known as Tuinal. In large dosage, they cause severe poisoning, deep comas, respiratory and kidney failure, and death. Slang names include rainbows, blue devils, reds, yellows, yellow jackets, blues, and blue heavens.
Benzodiazepines	Class of drugs used as antianxiety tranquilizers. Some are used to treat muscle spasms, convulsions, and alcohol withdrawal syndrome. The most common side effects are drowsiness, confusion, and loss of coordination. In combination with alcohol or barbiturates, these effects are additive. Included in this class are chlordiazepoxide (Librium), diazepam (Valium), oxazepam (Serax), and chlorazepate dipotassium (Tranxene).
Benzoylecgonine	The principal metabolite of cocaine found in urine and used for detection and evidence of cocaine use.
Blind Testing	The practice of submitting urine specimens containing known drugs to determine laboratory accuracy.
Bluing Agent	A chemical used to artificially color toilet tank water blue.
Butabarbital	An intermediate-action barbiturate used in sedative preparations.
Butalbital	A barbiturate used in various sedative preparations.
Cannabinoids	The constituents of marijuana (cannabis sativa).
Case Management	An individualized plan for securing, coordinating, and monitoring the appropriate treatment interventions and ancillary services for each drug testing offender's successful treatment and justice system outcomes.
Chain of Custody	The policies and procedures that govern collection, handling, storage, transportation, and testing of a urine specimen and dissemination of test results in a manner that ensures that the specimen and the results are correctly matched to the person who donated the specimen and that the specimen is not altered or tampered with from the point of collection through the reporting of test results.
Chromatography	A procedure used to identify substances—such as drugs of abuse in urine—based on separating or extracting the substances, allowing them to move or migrate along a carrier, and then identifying them.
Class of Drugs	A group of drugs with a related chemical structure.
CNS	Central nervous system.
Cocaine	An alkaloid refined from the coca plant that acts as a powerful short-acting stimulant, pharmacologically similar to amphetamines. Effects include euphoria, restlessness, excitement, and a feeling of well-being. Slang names include coke, flake, star dust, and snow. Freebasing involves heating with either lighter fluid or other solvents.

Codeine	An alkaloid of opium which is extracted from morphine. Codeine's effects resemble those of morphine but with only 1/6 to 1/10 of the analgesic action. Codeine is commonly found in cough medicine and minor prescription pain relievers.
Collection Site	The place where individuals present themselves for the purpose of providing urine specimens to be analyzed for illegal drugs.
Concentration	Amount of a drug in a unit volume of biological fluid, expressed as weight/volume. Urine concentrations are usually expressed either as nanograms per milliliter (ng/ml), as micrograms per milliliter (ug/ml), or milligrams per liter (mg/l). (There are 28,000,000 micrograms in an ounce, and 1,000 nanograms in a microgram.)
Confirmation Test	A second test which is used to confirm positive results from an initial screening test. A confirmation test is made by a method more specific than a screening test and provides a greater margin of certainty.
Crack	Freebase form of cocaine (cocaine hydrochloride) that is usually smoked. "Freebase" refers to the absence of inert ingredients used to "cut" cocaine.
Cutoff Level	The concentration of a drug in urine, usually in nanograms per milliliter (ng/ml) used to determine whether a specimen is positive (at or above the cutoff level) or negative (below the cutoff level) for the drug in question.
Drug Abuser	An individual who abuses drugs, i.e., illegal drugs or legal drugs in excess.
Drug Addict	An individual who is unable to discontinue use of drugs despite the negative consequences of that use to the public and him/herself.
Drug Screen	Full— testing a specimen for the presence of all categories of drugs.
Drug Screen	Partial— testing a specimen for the presence of only those drugs which were found in a particular individual's initial full drug-screen, or for the presence of the most abused drugs in the local area.
Drug Testing	In this document, drug testing refers solely to urinalysis and not to any other form of analysis, such as blood, hair, saliva, voice inflections, etc.
Elimination	The process by which drugs and metabolites are removed from the body.
EMIT	Enzyme Multiplied Immunoassay Technology: Syva's basic immunoassay technology for abused drugs tests whether in the st, Qst, or dau configuration.
Enzyme Immunoassay	An immunoassay (EIA) procedure used to identify drugs of abuse in urine by attaching an enzyme tag to the drug in question.
Exigent Circumstances	Unusual or irregular circumstances requiring urgent and immediate intervention.
External Testing	The testing of urine specimens by professional technologists or technicians at a commercial laboratory located away from probation or parole facilities.
False Negative	Reporting drug or metabolite has not been detected when drug or drug metabolite is present in the specimen.
False Positive	Reporting drug or metabolite has been detected when drug or drug metabolite is not present in the specimen.
Non-Instrument Test	A portable test requiring no calibration or formal instrumentation of any kind. This methodology can be used at any office or facility and can be employed at a location outside of a probation and parole office or facility such as a(n) jail, offender's home or place of employment.

FPIA	Fluorescence Polarization Immunoassay is an immunoassay procedure used to identify drugs of abuse in urine by attaching a tag that glows or fluoresces to the drug in question.
Gas Chromatography/ Mass Spectrometry	A chromatographic procedure used to identify drugs of abuse in urine, using a helium or (GC/MS) nitrogen carrier to move the drug in question to a detector for identification and measurement. The detector, a mass spectrometer, identifies the drug by its mass-to-charge ratio.
Hallucinogens	A major classification of natural and synthetic drugs whose primary effect is to distort the senses; they can produce hallucinations or experiences that depart from reality. Included in this classification are DMT, LSD, MDA, mescaline, peyote, PCP, psilocybin, and STP.
Heroin	A semisynthetic opiate derivative used in a variety of cough and cold preparations. Its abuse potential is between that of codeine and morphine.
HIV	Human Immunodeficiency Virus. The term "HIV" has been internationally accepted in the scientific community as the appropriate name for the retrovirus that is the causative agent of AIDS. HIV replaces the previously used terminology of: HTLV-III (Human T-Lymphotropic Virus Type III) LAV (Lymphadenopathy Associated Virus) ARC (AIDS-Related Complex).
HPTLC	High-performance thin-layer chromatography represents a specialized form of TLC which has been developed for drugs that appear in low concentrations in urine.
Hydromorphine Hydrochloride	A morphine derivative used as a narcotic or analgesic. Like morphine, it is addictive but is five to ten times more toxic. Sold under the trade names of Dilaudid or Hydromorphine.
Immunoassay	A procedure used to identify substances, such as drugs of abuse in urine, based on the competition between tagged and untagged antigen to combine with antibodies. The uncombined, tagged antigen is an indicator of the drug present in the urine specimen.
Laboratory Testing	The testing of urine specimens by professional technologists or technicians at a commercial laboratory.
Local Agency	The organization(s) legally responsible for directing the probation and/or drug testing program.
Mass Spectrometry	A detection device usually used in conjunction with a gas chromatograph (GC/MS) that specifically identifies and quantifies the constituents of complex fluid mixtures.
Metabolism	The action of enzymes to alter a drug chemically and facilitate its removal from the body.
Metabolite	The product of metabolism.
Methadone	An opioid used in the maintenance treatment of heroin dependency because it prevents heroin withdrawal symptoms and fulfills the addict's physical need for the drug.
Methamphetamine	A central nervous system stimulant similar to amphetamine sulfate but more potent. It is a member of the amphetamine class and is preferred by habitual amphetamine users. In IV form, it produces an almost instantaneous onset of the drug's effect. Slang names include meth, speed, crystal.

Methaqualone	Nonbarbiturate sedative/hypnotic that produces sleep for about 6 to 8 hours. It also produces muscular relaxation, feelings of contentment, and total passivity.
MDA	A synthetic hallucinogen related to both mescaline and amphetamines. Also called MDMA.
Morphine	The principal active ingredient in opium. It is considered by some to be superior to other pain relievers.
Nanogram	One-billionth of a gram.
Narcotic	Medically, usually refers to any drug that dulls the senses and produces a sense of well-being in small doses and causes insensibility, stupefaction, and even death in large doses.
Negative Result	Test result indicating a drug is not detected at or above the threshold of a test.
Offender	Any individual placed under institutional or field supervision by a probation department, a parole board, or a court.
Officer	For the purposes of this document, "officer" refers to both probation and parole officers.
Onsite Testing	The testing of urine specimens within criminal justice facilities using paraprofessional technicians.
Opiates	A major class of drugs that depress the central nervous system, principally used to relieve pain (e.g., morphine, heroin, codeine).
OTC	Over-the-counter drugs available without a prescription.
Oxazepam	A tranquilizer member of the benzodiazepines class.
Oxycodone	A semisynthetic morphine derivative used as a pain reliever. Trade names include Percodan, Percocet-5, and Tylox.
Oxymorphine	A semisynthetic narcotic analgesic; similar to morphine but produces less nausea, constipation, and respiratory depression.
PCP	Phencyclidine—a powerful depressant used illicitly for its hallucinogenic properties. It is most often smoked after being sprinkled on parsley, marijuana, or tobacco. Side effects include agitation, irritability, extreme excitation, visual disturbances, and delirium. Slang terms include angel dust, crystal, superweek, rocket fuel, and goon.
Phenmetrazine	A CNS stimulant member of the amphetamines class used to suppress the appetite.
Phentermine	A sympathomimetic amine used in OTC preparations as a vasoconstrictor and bronchodilator usually in combination with an antihistamine drug.
Physiological Dependence	A state of adaptation to a drug accompanied by the development of tolerance.
Pipette	A syringelike devise used to pick up and dispense a measured amount of a urine specimen.
Policy(ies)	A high-level overall plan which embraces the general goals of a drug testing program. Policies provide the theoretical framework for deciding what is or is not an acceptable procedure for an agency's drug testing program.
Positive Result	Drug detected at or above the threshold of a test.
Precision	The ability of a testing method to obtain the same results consistently and to be free from external and internal sources of variation.

Presumed Positive	A specimen identified at or above the screening test threshold but not yet subjected to confirmation testing.
Procedure(s)	A series of steps to be performed in a regular, definite order under specified conditions.
Psychological Dependence	A mental state involving a drive to repeated or continuous drug use to achieve pleasure or satisfaction and to avoid discomfort.
Qualitative	Analysis to identify the components of a mixture.
Quality Assurance	Planned, systematic activities, both operational and organizational, that ensure that a testing system routinely produces reliable results.
Quality Control	The routine operational procedures that a laboratory institutes to ensure that its results are continually reliable.
Quantitative	Analysis to determine the amount present.
Random Sampling (Collection)	Obtaining offender urine specimens for testing without the offender's prior knowledge of when a specimen will be requested. This means unscheduled testing and should not be confused with the classic research design definition.
Reagent	A substance that takes part in a chemical reaction.
RIA	Radioimmunoassay is an immunoassay procedure used to identify drugs of abuse in urine by attaching a radioactive tag to the drug in question.
Safety Zone	The concentration range between the minimum sensitivity of an assay and the threshold.
Schedule Collection	Obtaining offender urine specimens for testing according to an established schedule.
Screening Test	An initial test which is used to detect drugs of abuse in urine. Screening tests are less expensive and not as accurate as confirmation tests.
Sensitivity	The ability of a procedure to detect minute amounts of substances. This describes the lower limit of detection of a drug testing method and is expressed in concentration units. Because a sensitive procedure will rarely fail to detect a substance if it is present, few false negative results will occur.
Secobarbital	A short-acting barbiturate.
Specificity	The ability of a procedure to react only with the drugs or metabolites being tested and to exclude other substances. Because a specific procedure is rarely positive if a substance is truly absent, few false positive results will occur.
Test Site	A laboratory or other such place designated by the agency where offenders' urine specimens are analyzed for the presence of illegal drugs.
THC	Tetrahydrocannabinol—the primary psychoactive compound present in marijuana.
Threshold	Defined urine drug or metabolite concentration; a value at or above indicates a positive result, and a value below indicates a negative result. Also called the "cutoff."
TLC	Thin-layer chromatography (TLC) is a chromatographic procedure used to identify drugs of abuse in urine using a thin layer of material such as silicon as a carrier. The separated substances are dyed, and the resultant color and migration patterns are used to identify the drugs in question.
Tolerance	A physiologic state in which there is a need to progressively increase drug dosage to produce the effect originally achieved by a smaller dose.

Turnaround Time	The amount of time that elapses between receipt of a urine specimen and the availability of test results.
Urinalysis	The chemical analysis of urine to determine the presence or absence of substances. In the criminal justice setting, the substances being determined are drugs of abuse.
Withdrawal Syndrome	Unpleasant physiologic changes that occur when the drug is discontinued abruptly or when its effect is counteracted by a specific agent like a drug antagonist.

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