



# BJA Bureau of Justice Assistance Bulletin

Nancy E. Gist, Director

## Pretrial Drug Testing: An Overview of Issues and Practices

by D. Alan Henry and John Clark, Pretrial Services Resource Center

In December 1995, President Bill Clinton directed Attorney General Janet Reno to develop and implement a universal policy providing for the drug testing of all federal arrestees before the decision is made to release them to the community pending trial. He also directed the Attorney General to take steps to encourage states to adopt and implement the policy.

The President's rationale for developing a universal policy was that "too often, the same criminal drug users cycle through the court, corrections, and probation systems still hooked on drugs and still committing crimes to support their habit." We should react, he argued, "at the earliest possible stage in a person's interaction with the criminal justice system—following arrest."<sup>1</sup>

As a step toward implementing the policy at the federal level, in 1996 the Attorney General reached an agreement with the federal courts to implement pretrial drug testing in 24 of the 94 federal districts. To begin implementing the policy at the state level, Congress increased funding for the Byrne Formula Grant program in FY 1997 by \$25 million specifically to encourage state and local jurisdictions to support effective drug testing initiatives at all stages of the criminal justice process, beginning with the pretrial stage.

To support this effort, the Bureau of Justice Assistance (BJA), a grant-making agency of the Office of Justice Programs in the U.S. Department of Justice, awarded a grant to the Pretrial Services Resource Center (PSRC) to provide technical assistance to jurisdictions using federal funds from the Byrne program to implement or

expand pretrial drug testing functions or to integrate testing throughout all stages of the criminal justice system.

This BJA bulletin, prepared by PSRC as part of that grant, provides an overview of drug testing issues and practices at the pretrial stage of the criminal justice system.

### The Evolution of Drug Testing in the Criminal Justice System

#### Drug Testing as a Treatment Tool

The first use of drug testing in the criminal justice system was as an adjunct to treatment—an aid in identifying heroin users in need of treatment and then monitoring their progress. One of the first recorded applications of drug testing occurred in the mid-1960s with the California Civil Addict Program. Under this program, persons convicted of certain offenses could opt to enter inpatient drug treatment, followed by outpatient treatment, in lieu of sentencing. Offenders entering the program were assigned to one of two groups: those who were tested for heroin use and placed in drug treatment in addition to other supervision services, and those who were supervised but not tested for drugs. An evaluation of the program showed that those who underwent drug testing and treatment in addition to other supervision services while in the outpatient phase had much lower rates of subsequent criminal activity than both those who were supervised but not tested or treated and those who received no services.<sup>2</sup>

The idea that drug testing and treatment could help reduce criminality led to the establishment in 1972 of the Treatment Alternatives to Street Crimes (TASC) program, a federally funded effort that focused on providing treatment for drug users involved in the criminal justice system and bridging the gap between the criminal justice system and the drug treatment community. Under the TASC model, all arrestees underwent a drug test and a drug use assessment upon booking. Those identified as drug users who met the eligibility criteria were placed in drug treatment. If treatment was completed, the charges were dropped. The TASC model soon evolved to include posttrial processing, in which individuals were identified and referred to TASC as a condition of probation.<sup>3</sup> By 1982, TASC projects were operating in 130 jurisdictions in 39 states.<sup>4</sup> Many still operate today.

The benefits of drug testing as a treatment tool were further recognized in the 1975 *White Paper on Drug Abuse*, prepared for the President by the Domestic Council Drug Abuse Task Force. The drafters of this document noted that the Speedy Trial Act of 1975, which established pilot pretrial services programs in 10 federal judicial districts, might “provide the vehicle [to] screen people entering the federal criminal justice system for drug abuse.” The Task Force suggested that drug testing of arrestees could be an effective way to identify drug-abusing defendants. A pretrial services officer could then help them secure drug treatment, employment and job training, and medical and legal services.<sup>5</sup>

### **Drug Testing as a Tool To Monitor Offenders Under Supervision**

Drug testing in the criminal justice system expanded in the late 1970s and early 1980s as criminal justice officials began using it as a tool to enforce compliance with the requirements of supervision, which generally included abstinence from drug use. Two developments influenced this expansion. First, advances in drug testing technology allowed criminal justice officials to set up their own onsite drug testing programs. In 1977, the West Texas Regional Adult Probation Department established one of the first onsite drug testing programs in the nation, using technology—the Enzyme Multiple Immunoassay Technique (EMIT)—that allowed staff with limited technical training to conduct the tests.<sup>6</sup> The experience demonstrated that criminal justice agencies did not need to rely on the drug testing resources available from TASC or other treatment programs.

Second, mounting evidence of the link between drug use and crime and the devastating impact that drug use

was having on society led to a renewed war on drugs in which zero tolerance of drug use was an important aspect. Law enforcement efforts focused on arresting drug users as well as those who sold drugs, leading to significant increases in the number of drug arrests.<sup>7</sup> Identification and monitoring of drug use by those under the jurisdiction of the criminal justice system became a major concern of the system, with testing used widely by probation, parole, and correctional agencies.

### **Drug Testing as a Tool To Predict and Reduce Pretrial Misconduct**

Historically, pretrial programs have inquired about drug use in their interviews of defendants, believing that such information is useful to judicial officers when setting conditions of release. The introduction of onsite testing provided the opportunity to supplement this information with an accurate and objective measure of recent drug use. The District of Columbia Pretrial Services Agency (DCPSA) was the first to take advantage of this opportunity when it implemented an onsite pilot pretrial drug testing program in 1984 with initial funding from the National Institute of Justice (NIJ). The program offered two types of urine immunoassay testing for defendants:

- ❑ Testing before the initial bail-setting appearance and incorporating the results into the risk assessment presented to the judicial officer at the defendant’s bail hearing (preinitial appearance testing).
- ❑ Testing on a regular basis during pretrial supervision (pretrial drug monitoring) after a defendant had been identified as a drug user in initial screening.

Two assumptions underlay this approach. First, DCPSA believed that knowledge of a defendant’s drug use at the time of arrest—obtained through a drug test—would provide an important predictor of pretrial misconduct. Second, DCPSA believed that monitoring during the pretrial period, coupled with sanctions, could reduce any risks of pretrial misconduct.

Based on the success of the Washington, D.C., project, between 1987 and 1991 BJA provided funding to five jurisdictions—Maricopa County, Arizona; Milwaukee County, Wisconsin; Multnomah County, Oregon; Pima County, Arizona; and Prince George’s County, Maryland—to establish pretrial drug testing demonstration projects. These projects were designed to replicate the D.C. model, incorporating both preinitial appearance testing and pretrial drug monitoring. Several of the jurisdictions set up their own

onsite testing facilities, while the others contracted with outside laboratories.

To determine whether drug testing helped predict and reduce pretrial misconduct, each of the testing programs, including the pilot project in D.C., underwent evaluations under the auspices of NIJ. In testing the predictive value of preinitial appearance test result information, researchers sought to determine whether having knowledge of drug test results when making bail decisions improved the ability to predict pretrial misconduct.

The results were mixed. For example, when controlling for other factors, testing positive for cocaine was related to higher failure-to-appear rates in some, but not all, jurisdictions. In some jurisdictions, testing positive for opiates was related to a higher likelihood of rearrest. There were inexplicable findings as well, such as the correlation between testing positive for PCP in D.C. and a risk of failure to appear that was lower than the risk for persons testing negative for all drugs. In short, there were no consistent findings showing that drug use predicted pretrial misconduct. An NIJ-sponsored review of the findings speculated that a drug test's inability to distinguish between heavy and casual users may be the explanation.<sup>8</sup>

An experimental design was used to test the effectiveness of pretrial drug monitoring in reducing risks of pretrial misconduct in each of the jurisdictions. This design randomly assigned identified drug users to one of two groups: a control group and an experimental group. Those in the control group did not undergo pretrial drug monitoring as a condition of release; those in the experimental group did. Researchers compared rearrest and failure-to-appear rates for both groups and once again found mixed results. The researchers noted, however, that a number of implementation problems may have contributed to this result.<sup>9</sup>

Although many pretrial programs throughout the country have the authority to test defendants who are on supervised release, the use of pretrial drug testing to predict and reduce the risk of pretrial misconduct has not spread to other jurisdictions. Even the demonstration jurisdictions have substantially reduced, or in some cases eliminated, their testing services; the District of Columbia is the only jurisdiction that still conducts preinitial appearance testing.

The question then arises: Why do pretrial programs continue to be interested in defendant drug use but not use drug testing as a tool to identify and monitor drug

users? Research and the experience of practitioners suggest many reasons:

- ❑ The expense of testing.
- ❑ Inconclusive research findings on the value of testing in predicting and reducing risk.
- ❑ Objections to intruding on a defendant's privacy during specimen collection.
- ❑ Objections to imposing sanctions on drug users who continue to test positive.
- ❑ The belief among some pretrial programs that a testing program, with its requirements for strict chain of custody, is too difficult to implement.

To address these concerns, pretrial programs need a fresh opportunity to implement drug testing applications. The President's directive and the funding being made available by Congress for pretrial drug testing are critical steps toward that goal.

## Drug Testing Technologies

The state of the art of drug testing technology has changed rapidly in the past 25 years. In the early 1970s, testing was conducted exclusively in laboratories with highly skilled technicians using expensive, labor-intensive technologies. Typically, the testing technique employed was Thin Layer Chromatography (TLC).

With the development of immunoassay methodologies in the late 1970s and early 1980s, new drug testing technologies were introduced that simplified the testing process and made results available much more quickly. Two such technologies, the Syva Company's Enzyme Multiplied Immunoassay Technique (EMIT) and Abbott Laboratories' TDX, utilized analyzers (testing machines) that were simple enough to be used outside laboratory settings by laypersons with minimal training.<sup>10</sup> Many criminal justice agencies set up onsite testing facilities using these technologies.

In 1991, NIJ published results of a study examining these immunoassay technologies, plus Roche Diagnostics' Radioimmunoassay (RIA) and TLC.<sup>11</sup> The purpose of the study was to determine how these technologies rated for false positive (labeling a specimen positive when it is in fact negative) and false negative (labeling a positive specimen negative) results.

Testing specimens collected from more than 2,500 parolees and arrestees in California for opiates, cocaine, amphetamines, PCP, and marijuana, the study found that EMIT, TDX, and RIA were equally effective in correctly identifying drug use, but the accuracy of TLC

was “seriously deficient.”<sup>12</sup> The results of this study gave confidence to criminal justice officials that immunoassay technologies, with their time- and cost-saving qualities, could be relied on for criminal justice decisionmaking.

About the time this study was completed, the technology to test urine specimens for drugs advanced with the introduction of disposable hand-held devices that could be carried into the field to conduct drug tests in the presence of the defendant or offender. Results were available within minutes. Early studies of these devices showed that they could be effective in detecting drug use.<sup>13</sup>

Newer technologies are using specimens other than urine. One product developed in recent years, a sweat patch, tests perspiration for the presence of drugs in the body. Another technology tests hair.

### **Analyzer-Based Urine Testing**

Analyzer-based urine testing is conducted either in a commercial laboratory or in an onsite testing facility.

**Commercial Laboratory Urine Testing.** Pretrial programs using a private, local laboratory to conduct testing should contract only with laboratories that have been certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services. SAMHSA certification provides a greater degree of assurance that the results will be as accurate as possible.

Assuming that care is taken in the selection of a commercial laboratory, contracting with such a facility offers several advantages. Reputable commercial laboratories will likely have a highly trained staff of technicians experienced in testing specimens, including a toxicologist who ensures quality control and is available for expert testimony if the results are challenged in court. Moreover, commercial laboratories have the instrumentation to confirm test results. Laboratories that are certified by SAMHSA and the College of American Pathologists have undergone extensive auditing to ensure that quality testing services are provided.

Many jurisdictions use commercial laboratories for a portion of their testing. For example, many conduct initial screening of specimens using either inhouse analyzers or hand-held devices but send all positive specimens to the laboratory for confirmation. Other jurisdictions conduct some testing using hand-held devices (most commonly when visiting a client in the field) but conduct the majority of tests at a laboratory.

**Onsite Urine Testing.** Onsite analyzer-based testing offers two important advantages over testing through a commercial laboratory: Results are available much more quickly, and the chain of custody is simplified. A number of analyzers on the market may be used for onsite testing, each offering a different set of features. Some, for example, are designed for high-volume testing, whereas others feature rapid reporting of results. Some analyzers have the ability to interrupt a batch to test a single specimen immediately. Many can interface with the agency’s information system to provide automated transfer of test results. When space is a problem, desktop models are available.

In many jurisdictions, the various criminal justice agencies operating there share an onsite analyzer-based testing facility. The testing may be conducted by the pretrial services agency, but the agency may also test other populations such as probationers, drug court clients, and work-release residents.<sup>14</sup>

An advantage of analyzer-based urine testing, whether conducted in a commercial laboratory or onsite at a criminal justice agency, over newer testing technologies is that the results obtained through these analyzers have been accepted in a number of court cases. The newer technologies, although the subject of many clinical studies, have not yet faced the same level of scrutiny from the courts.

### **Hand-Held Urine Testing**

A variety of disposable, hand-held testing devices are currently available. Most are similar in appearance—about the size and shape of a credit card—and in the procedures required to run a test. A result is obtained by depositing drops of urine into a sample well. The results appear within minutes, usually indicated by a colored line. Several of these devices test for a single drug, whereas others test for multiple drugs simultaneously.

Hand-held devices have become very popular with criminal justice agencies due to their portability, ability to rapidly provide results, and ease of operation. Because they require no machinery to maintain and calibrate, they can be used by criminal justice officers with no formal training in drug testing. Also, it is not necessary to refrigerate hand-held devices before use, as is the case with the reagents used in analyzers.

Another advantage of hand-held devices is that they simplify chain of custody of a specimen by creating a one-step testing process. At least one vendor has developed a plastic stick that shows results after being

dipped into a urine collection cup. Another vendor has created a device that is both collection cup and testing device, with the testing strip embedded into the side of the collection cup. With these devices, the same officer who witnessed the collection of the specimen can also test it, and the test can be conducted in the presence of the person who submitted the specimen. With analyzer-based testing, on the other hand, the specimen is usually collected by one person, taken to the testing facility (which may require transporting it outside the building), and then tested by another individual.

Hand-held devices are being used extensively in the federal courts. The Administrative Office of the United States Courts (AOC) recently commissioned a study to determine whether the devices meet the accuracy and reliability requirements of the courts. Preliminary results found that a number of these devices “showed promise.”<sup>15</sup>

### Testing Perspiration

The PharmChek sweat patch is an adhesive patch attached to the skin, usually on the upper arm, of a testing subject. The patch, which can remain on the skin for up to 1 week, is tamper evident, meaning that any effort by the subject to remove it is obvious. As the subject perspires, the sweat is collected by a pad, which is then tested at the vendor’s laboratory using immunoassay technology.

The sweat patch has certain advantages over urinalysis. Depending on the drug, urinalysis can detect drug use only within 48 to 72 hours, whereas the patch detects any drug use while it is worn. In addition, testing with the patch does not involve the degree of intrusiveness required to collect a urine specimen, nor does it carry the risks of transmitting disease that accompany the handling of urine specimens.

Currently, the sweat patch is being used with urine testing in approximately 40 federal probation agencies. AOC has recommended its trial use as a supervision tool in federal pretrial programs.

### Hair Analysis

Because drugs are absorbed into hair shafts, a history of drug use is produced as each hair strand grows. In 1977, researchers developed the means to detect drug metabolites in hair through RIA. Studies have shown hair analysis to be very effective in detecting drug use within 1 week of ingestion. The only limit on the length of time in which drug use can be detected is the length of the hair—1 inch of hair can track any drug use over a 60-day period.<sup>16</sup>

Moreover, as is the case with the sweat patch, hair analysis does not involve the privacy issues and concerns about disease transmission associated with urinalysis. Hair analysis, however, is not widely used in criminal justice settings because it is very expensive and can only be conducted at qualified laboratories. Another obstacle is presented by individuals with very short hair.<sup>17</sup>

In addition, several issues regarding the reliability of hair analysis have yet to be resolved. It is not clear whether exposure to smoked drugs by a nonusing testing subject would produce a positive result. It is also not clear whether some types of hair, such as light, dark, or thick hair, retain drugs more than other types of hair do. Furthermore, there are indications that certain hair treatments hide the use of drugs.

### Estimating Pretrial Drug Testing Costs

A frequently asked question about drug testing in criminal justice settings is: How much will it cost to set up and run? The answer is often frustrating: It depends. Although accurate, this response is hardly helpful. This section seeks to provide a more satisfactory answer by providing actual costs for the various approaches to drug testing, as well as other costs associated with each approach.

As discussed previously, the options for testing currently include:

- ❑ Setting up an inhouse analyzer-based testing facility.
- ❑ Testing inhouse with hand-held devices.
- ❑ Contracting with a local private laboratory.
- ❑ Sending specimens to one of the nation’s larger private laboratories.
- ❑ Testing with the sweat patch.
- ❑ Some combination of the above.

With each option, different cost factors come into play. Programs using inhouse analyzer-based testing find that a urine specimen can be tested for a single drug for an average of \$1. This figure includes only the costs of reagents. It does not include the startup costs associated with an inhouse analyzer-based facility, including the costs of purchasing or leasing equipment<sup>18</sup> or renovating the facility.<sup>19</sup> It also does not include the cost of a maintenance contract for the analyzer(s). Such a contract, which could run into thousands of dollars per

year, depending on the number and type of analyzers, ensures that the instruments are serviced and promptly repaired.<sup>20</sup>

Moreover, the \$1 figure does not include staff costs. In an analyzer-based facility, staff time is needed to calibrate the analyzer, prepare the reagents for testing, perform quality control checks, and conduct daily maintenance procedures. Because these procedures involve multiple steps, staff must be trained thoroughly.

For programs that choose the hand-held testing approach, there are a variety of portable devices on the market. The costs of testing with these devices range from \$2.50 to \$4.50 per test. Programs using hand-held devices avoid the major expenses of analyzer-based testing discussed previously: equipment purchase, facility renovation, and staff time to conduct procedures.

While prices vary, local, private laboratories charge an average of \$20 for each drug for which a test is conducted. Another option is to ship specimens to a larger, nonlocal private laboratory. At PharmChem Laboratories in California, for example, the cost of testing for a high-volume jurisdiction is \$2 to \$3 per drug tested, or \$10 to \$15 for a 5-drug screen.

The sweat patch is available in packages of 50, at a cost of \$7 per patch, for a total of \$350 per package. Each patch comes with the supplies to apply, remove, and ship it to the vendor's laboratory. The laboratory charges \$16 to screen for 5 drugs and an additional \$22 to confirm positive results by Gas Chromatography/Mass Spectrometry (GC/MS).<sup>21</sup>

### Confirmation Testing Costs

In many cases, particularly those in which drug use is not admitted, specimens that test positive should be tested again to confirm the results. Confirmation testing can take one of two forms: retesting the specimen using the same type of test employed for the initial test or confirming the result through the use of a technology that is analytically different from and more specific than the technology used in the initial test. Although courts have generally approved the admittance of positive drug test results confirmed through simple retesting using the same technology,<sup>22</sup> SAMHSA recognizes followup testing by GC/MS to be the most reliable means of confirmation.<sup>23</sup>

Confirmation of positive results through GC/MS can be expensive, with the cost ranging from \$20 to \$50 per test result. Jurisdictions in which a simple retest is insufficient for court proceedings could avoid

incurring these high costs by using GC/MS confirmation tests for only those results that are disputed by defendants and that would lead to a court sanction against the defendant.

### Specimen Collection Costs

When calculating the costs of a drug testing program, it is critical that jurisdictions consider the staff time they will need to collect specimens. If there is a high volume of testing, separate collection staff may be needed.

For urinalysis testing, specimen collectors should always wear disposable gloves. Suitable gloves are available from a number of sources and can be purchased in packages of 100 for between \$10 and \$15. Specimen containers are available from medical supply companies in packages of 100 for \$20 to \$25. Temperature strips, which are attached to a specimen container immediately after a specimen has been collected, measure the specimen's temperature to verify that it has been freshly voided. The strips are available from medical supply companies in packages of 100 for \$20 to \$25.

### Other Cost Factors

There are a number of other factors to be addressed in projecting a jurisdiction's pretrial drug testing costs, including:

- ❑ Who will be tested?
- ❑ How often will they be tested?
- ❑ For which drugs will they be tested?
- ❑ What will happen when they test positive or fail to report for testing?

The answers to these questions will determine the volume of testing.<sup>24</sup> The volume of testing, in turn, will determine the most cost-effective approach to employ. For example, programs with a high volume of testing (at least several hundred specimens per week) find that setting up an analyzer-based testing facility, even with its startup expenses and additional operating costs, is more cost effective over the long run than is testing with hand-held devices.

### Current Applications of Pretrial Drug Testing

As noted earlier in this bulletin, the District of Columbia Pretrial Services Agency established an inhouse pretrial drug testing program in 1984 with NIJ funding. BJA then funded replication sites in five counties (see page 2 for listing) between 1987 and 1991.

At the federal level, the Anti-Drug Abuse Act of 1988 mandated the establishment of pilot pretrial drug testing programs in eight federal judicial districts. In response, pilot programs were established in 1989 in the following eight districts: Eastern District of Arkansas, Middle District of Florida, Eastern District of Michigan, District of Minnesota, District of Nevada, Southern District of New York, District of North Dakota, and Western District of Texas. In 1995, President Clinton directed the Department of Justice to develop a plan for implementing pretrial drug testing of arrestees in all federal districts before decisions are made on whether to release them into the community pending trial. In 1997, 24 federal districts began participating in Operation Drug Test, an effort to demonstrate how such universal testing would work in the federal system.

These pilot programs identified two purposes for pretrial drug testing: to assist in identifying drug users and to monitor users during pretrial release. Several jurisdictions that participated in these projects provided

information for this bulletin on their current drug testing practices.<sup>25</sup> All of the jurisdictions contacted continue to test defendants for drug use during pretrial supervision, but they vary in their use of drug testing as a tool to identify drug users.

At the local level, the District of Columbia Pretrial Services Agency is the only pilot program that currently tests arrestees before their initial court appearance. At the federal level, 18 of the 24 federal pretrial drug testing programs participating in Operation Drug Test screen defendants before initial appearance. In these federal sites and in D.C., the preinitial appearance test is voluntary; that is, the defendant has the right to decline to submit a specimen. Defendants who test positive or who have other indicators of drug use are recommended for participation in drug treatment, ongoing drug testing, or both as a condition of release.

In six of the federal Operation Drug Test programs, the initial test is conducted immediately after the defendant is released, thus saving the cost of testing persons who are

**Table 1. Costs of Testing Approaches for a 5-Drug Screen\***

Testing Approach	Average Cost Per Screen <sup>†</sup>	Included in the Cost	Not Included in the Cost
Inhouse, analyzer-based instrument	\$5–\$10	Chemicals to conduct test.	Equipment purchase or lease. Facility renovation. Maintenance contract for analyzer. Specimen collection supplies. Staff time to collect specimen, calibrate and maintain analyzers, mix chemicals, and run test. Confirmation of positive result.
Inhouse, hand-held device	\$12.50–\$22.50	Testing device.	Specimen collection supplies. Staff time to collect specimen and run test. Confirmation of positive result.
Private, local certified laboratory	\$80–\$120	Conducting test. Confirmation of positive result by GC/MS.	Specimen collection supplies. Staff time to collect specimen. Costs to transport specimen to laboratory.
Private, nonlocal certified laboratory	\$10–\$15	Conducting test.	Specimen collection supplies. Staff time to collect specimen and prepare it for shipment. Shipping expenses. Confirmation of positive results.
Sweat patch	\$23	Price of the patch. Shipment to the laboratory. Conducting the test.	Confirmation of positive results.

\*A 5-drug screen is selected so that more direct cost comparisons can be made among all the approaches. The sweat patch, as currently designed, tests exclusively for 5 drugs: cocaine, opiates, amphetamines, PCP, and marijuana. All the other approaches allow for single- or multiple-screen testing.

<sup>†</sup> It is important to remember that these costs vary depending on a number of factors. For example, as noted in the text, many programs that use analyzer-based inhouse testing find that testing costs average \$1 per test, or \$5 for a 5-drug screen. Other programs with a low volume of testing might pay higher costs for reagents. Volume may also affect the prices of testing at an outside laboratory.

**Table 2. Summary of Current Pretrial Drug Testing Applications**

Site	Contact Person	Test To Identify Users	Drug Panel	Testing Approach
<b>Federal*</b>				
Arkansas (Eastern) <sup>†</sup>	Jamie Holt 501-324-5745	Before initial appearance.	Amphetamines, cocaine, opiates, PCP, and marijuana.	Analyzer-based inhouse facility.
Minnesota <sup>‡</sup>	Tim Norgren 612-290-3890	Before initial appearance.	Amphetamine, benzodiazepine, cocaine, marijuana, and opiates.	Analyzer-based inhouse facility.
Nebraska	Tim Connor 402-437-5795	Before initial appearance.	Amphetamines, cocaine, marijuana, opiates, and PCP.	Hand-held inhouse testing for initial test, supervision tests sent to private laboratory.
New Hampshire	Peter Russo 603-225-1515	Before initial appearance.	Amphetamine, cocaine, marijuana, and opiates.	Hand-held inhouse testing.
New Jersey	Tom Henry 973-645-2230	After initial appearance.	Amphetamines, cocaine, marijuana, opiates, and PCP.	Hand-held inhouse testing plus sweat patch.
North Carolina (Middle)	Elaine Rector 910-631-5371	After initial appearance.	Amphetamines, cocaine, marijuana, and opiates.	Hand-held inhouse testing.
<b>Local</b>				
District of Columbia	Jerome Robinson 202-727-6190	Before initial appearance.	Amphetamines, cocaine, methadone, opiates, and PCP.	Analyzer-based inhouse facility.
Maricopa County	Perry Mitchell 602-506-1304	N/A	Wide range of drugs.	Contract with TASC program, analyzer-based facility.
Milwaukee County	Marilyn Walczak 414-223-1307	N/A	Cocaine, marijuana, and opiates.	Analyzer-based inhouse facility.
Pima County	Shelby Myer 520-740-3310	N/A	Amphetamines, cocaine, and opiates.	Analyzer-based facility operated by probation.
Prince George's County	Linda Kinnikin 301-952-7050	N/A	Cocaine, opiates, and PCP.	Analyzer-based inhouse facility.

\* Represents a sample of federal programs currently conducting pretrial testing.

<sup>†</sup> One of the original federal pilot drug testing sites; it is now participating in Operation Drug Test.

<sup>‡</sup> One of the original federal pilot drug testing sites.

Confirmation Policies	Supervision Testing Practices	Program Responses to Continued Positives
Retest all positives. Positives sent to private laboratory if defendant does not admit use.	Defendants tested once a week on a regularly scheduled basis; tested randomly once every other week.	Refer to treatment. Court action requested after second positive.
Positives sent to private laboratory if defendant does not admit use. When defendant admits use, sample is saved for 1 month.	Defendants tested twice a week at outset. Frequency gradually reduced to twice a month, then once a month if results are negative.	Testing frequency increased and treatment offered. Court action may be requested if continued positive.
Positives sent to private laboratory if defendant does not admit use. Exception: All amphetamine positives sent to private laboratory.	Three testing phases: defendants tested 4 to 6 times a month in Phase 1 and 1 to 2 times in Phase 3. Defendants call hotline every day to see if they must report for test.	Response depends on defendant's history and cooperation with treatment. Responses range from reprimand to requesting court action.
Positives sent to private laboratory if defendant does not admit use.	Defendants tested randomly, at officers' discretion, but at least once a month.	First positive, address with defendant. If continued positive, testing frequency increased, refer to treatment.
Positives sent to private laboratory for confirmation.	Testing frequency determined on case-by-case basis; can be regularly scheduled appointments or random.	Refer to treatment at first positive. Court action requested only if defendant does not cooperate with treatment.
Positives sent to private laboratory for confirmation.	Defendants randomly tested once a week for at least 4 weeks. If results are negative, frequency reduced to twice a month.	Second positive, refer to treatment. If continued positive, court hearing requested, but no recommendation made at hearing.
Retest all positives. Positive specimens frozen. If result challenged, specimen sent to local laboratory for confirmation.	Defendants tested once a week on a scheduled basis.	Increase frequency of testing or refer to treatment. Court action requested if defendant misses treatment or testing appointments.
Confirm by GC/MS if defendant does not admit use and results may lead to revocation.	Defendants tested twice a week on a scheduled basis. Frequency reduced if results are negative.	Notify court, request revocation if continued positive.
Retest all positives. Positive specimens sent to private laboratory if defendant does not admit use.	Assigned to one of three supervision levels depending on overall risk. Testing frequency determined by level placement.	Second consecutive positive result after the initial supervision test reported to court along with treatment plan.
Retest all positives. Defendant can request and arrange for independent confirmation.	Defendants tested at least twice a week on a scheduled basis; occasionally called in or field visit made for a random test.	First positive refer to treatment and notify court of action taken. Schedule court hearing if continued positive.
First positive during supervision period sent to private laboratory for confirmation if defendant does not admit use.	Defendants tested once a week on a scheduled basis if in treatment; twice a week if not in treatment.	Continue to work with defendant if in treatment. Court action requested if defendant refuses treatment or misses testing appointments.

not released. If the test is positive, the defendant's release order is modified to require participation in ongoing drug testing.

With the exception of the District of Columbia Pretrial Services Agency, none of the local demonstration programs currently test defendants for the purpose of identifying drug users. Instead, these programs recommend testing during the pretrial supervision period when there are indicators of drug use, such as the defendant admitting use, a current drug charge, criminal history of drug-related offenses, or information from other sources (for example, a family member or probation officer) that the defendant is a drug user.

### Testing Approaches

Table 2 shows that all but two of the federal pretrial programs use the newer hand-held devices to test defendants for drug use. The local programs continue to use the analyzer-based instruments.

In most programs, defendants are tested inhouse by pretrial program staff. However, in the District of Nebraska, only the specimens collected for the preinitial appearance test are tested inhouse. A private agency under contract collects all specimens for supervision testing and sends them to a private laboratory for testing. In Pima County, the specimens are collected by pretrial staff but tested by the county's probation department, which has its own inhouse analyzer-based testing facility. New Jersey's federal program uses the sweat patch if a defendant tests negative on the urine tests taken during supervision but is still suspected of drug use.

In several programs, all specimens that test positive are sent out to a private laboratory capable of conducting confirmation testing using GC/MS. Other programs forgo additional testing of specimens that originally test positive if the defendant admits use.

In the majority of programs, testing is conducted on a regular schedule. Typically, defendants are required to report once or twice a week on a set day or days. Other programs conduct tests on an unscheduled basis; the defendant will be instructed in the morning to report for a test by the end of the day. In some programs, the frequency of testing for a defendant is determined by a caseworker, who calls the defendant in for tests as deemed necessary.

### Program Responses to Continued Positives

All of the federal pretrial testing programs discussed in this report notify the court after the first and any subsequent positive results during the supervision period. No program recommends a change in release status based on the first positive result.

All programs—local and federal—offer the defendant a referral to treatment if the defendant continues to test positive. Several also increase the frequency of testing. In several programs, a caseworker uses discretion to determine when to invoke an administrative sanction such as increased frequency of testing.

In several programs, court action ranging from a court reprimand to revocation is requested if the defendant continues to test positive and does not cooperate with treatment. In others, court action is requested regardless of the defendant's participation in treatment. All programs recommend court action if the defendant continually fails to report for testing appointments.

### For More Information

For more information on pretrial drug testing technical assistance, contact:

#### **Pretrial Services Resource Center**

1325 G Street NW., Suite 770  
Washington, DC 20005  
202-638-3080

#### **Bureau of Justice Assistance**

810 Seventh Street NW.  
Washington, DC 20531  
202-514-5947

World Wide Web: <http://www.ojp.usdoj.gov/BJA>

#### **Bureau of Justice Assistance Clearinghouse**

P.O. Box 6000  
Rockville, MD 20849-6000  
1-800-688-4252

World Wide Web: <http://www.ncjrs.org>

Clearinghouse staff are available Monday through Friday, 8:30 a.m. to 7 p.m. eastern time.

#### **U.S. Department of Justice Response Center**

1-800-421-6770 or 202-307-1480

Response Center staff are available Monday through Friday, 9 a.m. to 5 p.m. eastern time.

## Notes

1. "White House Directive on Drug Testing Arrestees," Memorandum to the Attorney General, December 18, 1995.
2. William H. McGlothlin et al., *An Evaluation of the California Civil Addict Program* (Washington, DC: National Institute on Drug Abuse, 1977).
3. Mary A. Toborg et al., *Treatment Alternatives to Street Crime: An Evaluative Framework and State of the Art Review* (Washington, DC: Lazer Institute, 1975).
4. Bureau of Justice Assistance, *Treatment Alternatives to Street Crime*, Program Brief (Washington, DC: U.S. Department of Justice, Office of Justice Programs, 1988).
5. *White Paper on Drug Abuse: A Report to the President from the Domestic Council Drug Abuse Task Force* (1975), pp. 80–81.
6. Frank Lozito, "Operating a Urine Screening Program in a Probation Department," in *Drug Abuse Testing: Successful Models for Treatment and Control in Correctional Programs* (Lanham, MD: American Correctional Association, 1981), pp. 8–10.
7. The number of persons arrested in the United States for drug possession rose 107 percent between 1980 and 1988, from 368,451 to 762,718. Bureau of Justice Statistics, *Drugs and Crime Facts* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, 1989).
8. William Rhodes, Raymond Hyatt, and Paul Scheiman, *Predicting Pretrial Misconduct with Drug Tests of Arrestees: Evidence from Six Sites* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, 1996).
9. See note 8.
10. Syva is now part of Behring Diagnostics, Inc.
11. This technology was also used for criminal justice testing, but not with onsite facilities because the test had to be run by certified technicians in licensed laboratories.
12. Christy Visher, *A Comparison of Urinalysis Technologies for Drug Testing in Criminal Justice*, Research Report (Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, November 1991).
13. See, for example, Alan H.B. Wu et al., "Evaluation of the Triage System for Emergency Drugs-of-Abuse Testing in Urine," *Journal of Analytical Toxicology* 17 (July/August 1993); and Amada J. Jenkins et al., "Validity of the EZ-SCREEN® Cannabinoid Test," *Journal of Analytical Toxicology* 17 (September 1993).
14. Pretrial services programs in the District of Columbia and in Milwaukee, Wisconsin, operate onsite analyzer-based drug testing facilities that conduct testing for others in the system.
15. Robert Willette, *An Evaluation of Non-Instrumented Drug Tests for the Office of the U.S. Courts*, Summary Report (Denver, CO: Duo Research Inc., April 1997).
16. National Institute of Justice, *Hair Analysis as a Drug Detector*, Research in Brief (Washington, DC: U.S. Department of Justice, Office of Justice Programs, October 1995).
17. National Institute of Justice, *Hair Analysis and Urinalysis Results for Juvenile Drug Offenders*, Research Preview (Washington, DC: U.S. Department of Justice, Office of Justice Programs, April 1997).
18. In establishing an inhouse analyzer-based testing facility, officials can negotiate costs with the vendor of the selected analyzer. Many vendors will finance an analyzer, or provide one at a much lower cost or for free, if the program makes a commitment to purchase a certain volume of testing supplies.
19. Extensive plumbing and electrical renovations may be required to office space designated for use as the drug testing facility. Programs should check with vendors of various analyzers before a selection is made to determine the electrical and plumbing requirements of the instrument.
20. There are ways to achieve greater cost efficiency with analyzer-based inhouse testing. For example, if more than one agency in a jurisdiction is currently conducting drug testing, savings could be realized if all testing were combined under one facility; or, if a pretrial services program wants to start drug testing and the probation office already has an inhouse analyzer-based testing facility, savings might be realized if the inhouse facility takes responsibility for all testing. In addition, many analyzers have the capability of filing test results directly from the analyzer into an agency's automated information system, thereby saving data entry costs.
21. The five drugs are amphetamine, cocaine, marijuana, opiates, and PCP.
22. *Lahey v. Kelly*, N.Y. 2d 135 (N.Y. Ct. of App., 1987); *re Johnston* (Wash. Sup. Ct. No. 53580–9, 1987); *Spence v. Farrier* (CA8, No. 85–902, 1986);

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*Harmon v. Auger*, 768 F. 2d 270, 276 (8th Cir. 1985); *Jensen v. Lick*, 589 F. Supp. 35 (D.N.D. 1984); *Vasquez v. Coughlin*, 499 N.Y.S. 2d 461 (Sup. Ct. App. Div. 1986); and *Peranzo v. Coughlin*, 605 F. Supp. 1504 (S.D.N.Y., 1985). One court has ruled that an unconfirmed positive result was admissible as evidence in a contempt of court proceeding (*U.S. v. Roy*, Crim. No. 12098-84, D.C. Sup. Ct., 1986). Another found unconfirmed results to be “presumptively reliable and thus generally admissible into evidence in every case” (*Jones v. U.S.*, No. 86-31, D.C. Ct. App., 1988). Other courts have ruled that test results that were retested on the same technology but not confirmed by an alternative method can be used to support sanctions in prison disciplinary proceedings.

23. “Mandatory Guidelines for Federal Workplace Drug Testing Programs,” *Federal Register*, April 11, 1988.

24. See Bureau of Justice Assistance, *Estimating the Costs of Drug Testing for a Pretrial Services Program* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, June 1989). Copies of this document

are available from the Pretrial Services Resource Center at 202-638-3080 or fax 202-347-0493.

25. In addition to the programs highlighted here, numerous pretrial programs at both the federal and local levels have the ability to test or arrange for the testing of any defendant so ordered by the courts.

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