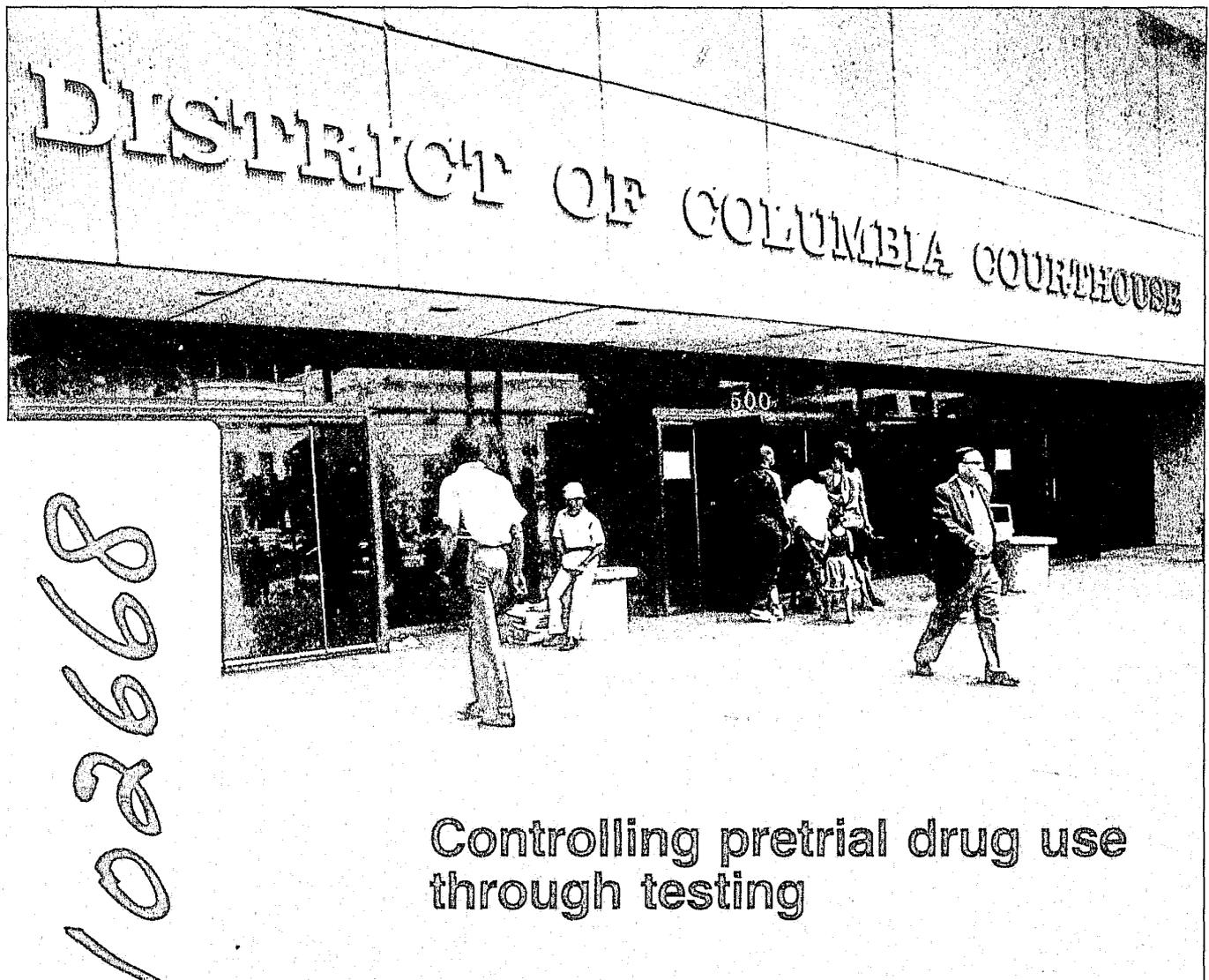


U.S. Department of Justice
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102668

Controlling pretrial drug use through testing

**U.S. Department of Justice
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The courthouse of the Superior Court of the District of Columbia. Photo by Peg Fulton, NCJRS.

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the level of drug abuse is associated with a corresponding increase or reduction in criminality (Gropner).

Practical application of this research raises two major issues. First, how can courts determine who is a high-risk drug abuser? Second, once determined, what can a court system do to control drug use and reduce risk?

In the District of Columbia, the first task—identifying drug users—was accomplished through a new program of drug testing set up within the District of Columbia Pretrial Services Agency. With a statutory mandate to collect relevant information on each arrestee for use by the court in determining appropriate release conditions, the Agency was a logical (and neutral) place in which to implement a program of drug testing.

The second task—to integrate the technology into the court processes to control drug use and reduce risk—was more challenging. With the earlier research as the foundation, the program's working hypothesis was that close monitoring of a defendant's drug use, coupled with quick sanctions for violations, could prove effective in deterring drug use and reducing criminal activity.



The author, John A. Carver, J.D., is the Director of the Washington, D.C., Pretrial Services Agency.

An independent evaluation conducted by Toborg Associates, Inc., indicates that the District of Columbia has achieved remarkable success in demonstrating the effectiveness and feasibility of such an approach. It is hoped that the District of Columbia's experience will prove a useful guide to other jurisdictions in adopting similar programs.

Drug testing in operation

Drug testing of arrestees has existed in one form or another in the District of Columbia since the early 1970's. For a variety of reasons, its usefulness and impact on criminal case processing were minimal. With initial assistance from the National Institute of Justice, the D.C. Pretrial Services Agency established in March 1984 an entirely new approach to drug testing.

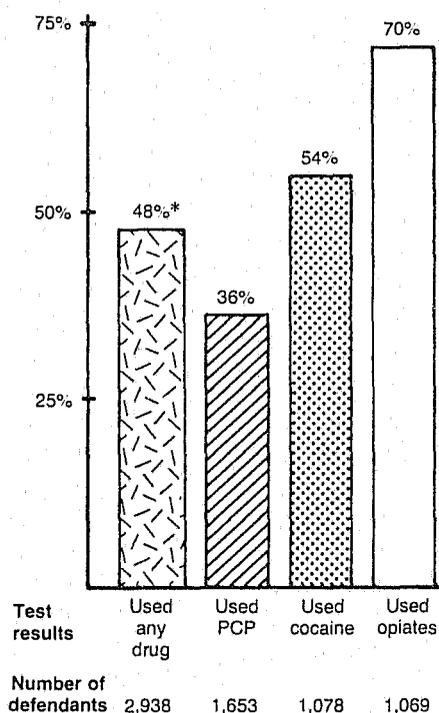
Relying on state-of-the-art technology to produce highly accurate drug tests in a very short time (generally 1 to 2 hours), the Agency has sought to put this information in the hands of judges at decision points where it can be of greatest use. These include the initial release decision (first appearance), throughout the pretrial period, and at sentencing. The Agency not only provides this important information to the court but offers judges a plan for dealing with the potential risks of releasing drug-abusing defendants. There are three situations in which the Agency conducts drug testing for the court: before the initial appearance, as a condition of release, and by special court order.

Initial or "lock-up" testing

The first and perhaps most important decision a judicial officer must make is the pretrial release decision. In the District of Columbia, this decision is made largely on the basis of information provided in a written report submitted by the Pretrial Services Agency in every case. The report summarizes the defendant's residence, family, and employment ties to the community, as well as prior criminal history and current status of pending charges, probation, parole, or warrants from other jurisdictions.

While the Agency has always asked arrestees about their drug use, only after the implementation of the drug detection program in 1984 could these important data be corroborated with a scientifically accurate test. Not surprisingly, the urinalysis testing program showed drug use to be far higher than the self-reported data indicated. (See Figure 1.)

Figure 1.
Percentage of drug users identified by urine tests who self-reported drug use (June 1984–January 1985)



*This shows that 48% of those who tested positive self-reported; or, alternatively, 52% of those who tested positive failed to report drug use.

Source: Toborg Associates, Inc.

In the District of Columbia, as well as the Federal system and most State court systems, the judicial officer must consider two factors at the initial release hearing: the risk of flight and risk to community safety. The court may set release conditions designed to deal with risks apparent in the defendant's background.

directed. Positive test results lead to sanctions, which escalate if drug use continues. Initially, those who continue to use drugs are placed on an intensified or more frequent testing schedule and are once again warned of the consequences of continued drug use. Further violations lead to a request for a hearing before the releasing judge.

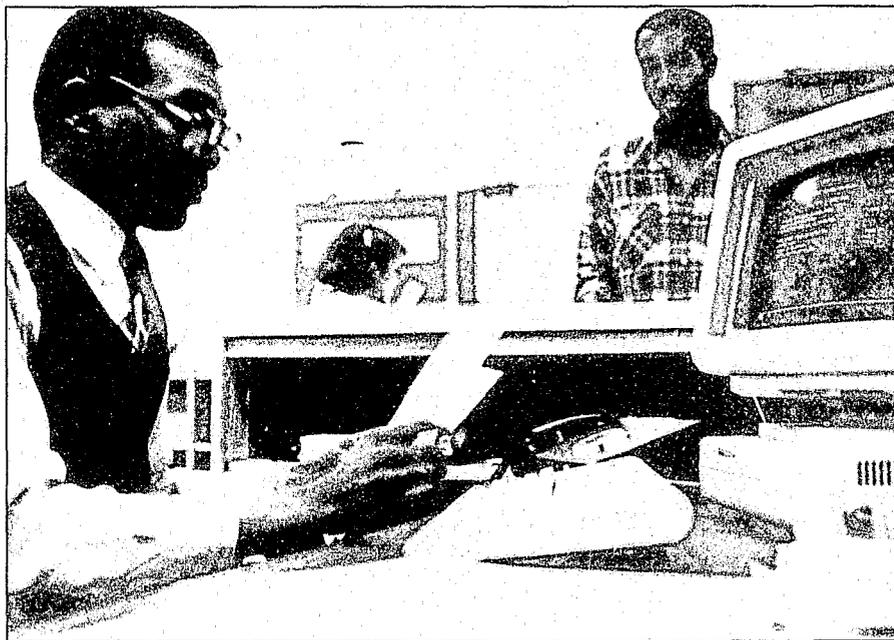
It is in the area of sanctions that the greatest changes in criminal case processing have occurred—changes that contributed substantially to the success of the program. The Pretrial Services Agency actively encourages the court to hold “show cause” hearings, i.e., hearings where the defendant is directed to show cause why he or she should not be held in contempt for violating the court’s release conditions. Furthermore, the Agency recommends that should the defendant be found guilty of violating conditions of release, short jail sentences, followed by re-release, be imposed.

This method ensures certainty of punishment. The more traditional approach of revoking release and setting a money bond, on the other hand, may not result in any detention of the defendant, and may in fact be a welcome alternative to the requirement of twice-weekly trips to the courthouse to submit a urine sample. If the program is to have the intended deterrent effect, defendants must know that violations will be detected and punishment will follow.

Once armed with reliable and timely information, the judges of the District of Columbia’s Superior Court were more than willing to use the program first as a release option for those drug users who might not otherwise be considered for release, and then as the mechanism to enforce court orders and hold defendants accountable for their conduct.

Hearings *were* held, and defendants *were* held in contempt of court and punished. Quickly, the word got around that the court was serious about enforcing its orders, and defendants began to act accordingly.

Predictably, not all drug users abide by the release conditions, even though they know the consequences. But what the program offers the court is an accurate method for determining who among the



Pretrial Services Agency staff member enters the results of drug testing on the computer.

vast numbers of drug-abusing defendants will comply with the program and who will not. After first determining (through the “lock-up” testing) the group posing the highest risk if released, the court is then able to utilize an “early warning” mechanism to identify those who cannot or will not refrain from drug use. With the backing of a scientifically reliable test, the court can and does take action against this “sub-set” of drug users.

The evaluation team has confirmed the validity of this “signaling” mechanism. Of all those placed in the Agency’s program of regular drug testing, the individuals that either never showed up or dropped out after one, or two, or three appointments, had very high rearrest rates (33 percent for no-shows and 30 percent for early drop-outs). Those who stayed with the program for at least four drug tests had substantially lower rearrest rates (14 percent)—so low, in fact, that they posed no higher risk of rearrest than the group of *non*-drug users.

In other words, for this group of re-releases, the intervention of the program and the willingness of the judges to put some teeth into it succeeded in eliminating the *additional* risk associated with drug use. It strengthened the concept of

conditional release, providing hard evidence that as an alternative to incarceration, the technique can operate without burdening the community with additional risks. At a time of serious jail crowding, the benefits of such a program have been substantial and have led to the further development of an intensive pretrial supervision program, of which drug testing is an important component.



The late Chief Judge H. Carl Moultrie I was instrumental in establishing the drug testing unit in the D.C. Superior Court.



Chief Judge Fred B. Ugast has spearheaded task force efforts to ensure adequate drug treatment services for defendants in Washington, D.C.

itself in court to respond to challenges to either the reliability of the testing procedure or to the chain of custody question.

The question of the reliability of the Emit technology has been carefully scrutinized in at least one lengthy proceeding where expert witnesses were brought in for several days of testimony. (For a general discussion of drug testing technologies, see "Testing to Detect Drug Use," *TAP Alert*, National Institute of Justice.) Since the program uses the stationary equipment (as opposed to the less reliable portable equipment) and follows all of the manufacturer's procedures for calibrating the instrumentation and reconfirming every positive test result, the program has withstood every legal challenge on reliability grounds.

Chain of custody is another issue frequently litigated in drug testing situations. As a result of careful procedures, numerous checks and double-checks, and the fact that the urine sample goes almost immediately from the defendant to the testing equipment next

door, the information has *never* been invalidated on the grounds of sloppy chain of custody procedures.

Program operating costs

The cost of setting up and operating a comprehensive drug testing program in a criminal justice context depends on a variety of factors. For how many drugs does the jurisdiction wish to test? Obviously, a screen for five drugs like that employed in the District of Columbia does cost more than screening for two or three drugs. How much time is available to analyze the urine samples? If a large number of samples must be processed quickly, more staff and more equipment will be needed. Will the drug testing facility remain open during extended hours to accommodate releasees with jobs or other commitments? What kind of management information system exists to maintain the test results consistent with the highest standards of data integrity? Will the drug detection program provide related services to the court, such as referrals to treatment facilities? All these issues must be addressed before arriving at a realistic assessment of the costs of operating such a program.

The costs of running a drug testing program can be broken into four categories of expenses: the testing equipment, the recordkeeping system, chemical reagents, and staff.

Testing equipment is available from several manufacturers in a variety of configurations. The instrumentation chosen by the Pretrial Services Agency was purchased at a price of approximately \$16,000 per unit.

The costs of maintaining an efficient and easily accessible information system should not be underestimated. In the District of Columbia, the Agency modified its existing mainframe computer system to handle its information needs. Smaller jurisdictions might find personal computer-based systems feasible.

About half of the program's operating budget is allocated to personnel. The unit is open 12 hours per day, 6 days per week. The other half of the annual

budget goes for chemical reagents and associated items needed to do the actual tests. For the five-drug screen employed by the program, the cost in chemical reagents and supplies is approximately \$7.00 per test, which includes the cost of reconfirming positive results.

In considering costs, a relevant question is: What does it cost *not* to have a drug testing capability? Providing judicial decisionmakers with accurate data is certainly a value. And, as the research has indicated, data on drug use are perhaps the most relevant pieces of information because they correlate so strongly with those factors uppermost in a judge's mind—risk of flight and likelihood of rearrest.

As the NIJ-sponsored research has demonstrated, drug users are substantially more likely to be rearrested than nonusers. Should judges make release decisions without this information? Should judges have to rely on what the defendant chooses to divulge, without scientific verification, knowing that *most* of the problem will go undetected? Finally, having documented the value of regular drug testing as an "early warning" system of trouble, do we really want to continue operating in the dark?

A final point on costs: most criminal justice systems are operating within tight local budgets. The fact that almost every jurisdiction is facing a jail crowding crisis does not make the situation any easier. While a program such as the District's is no panacea for either the drug problem or the jail crowding problem, it *does* strengthen the system of conditional release—a necessary prerequisite for any strategy to reduce jail crowding.

In the District of Columbia, the drug detection program of the Pretrial Services Agency was seen as so important that it is now operating with full local funding. There has been an unequivocal determination that the program, while not cheap, is less expensive than the alternative of *not* having one.

See page 24 for more information about publications cited in this article and other information products available from NCJRS on this topic.