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Employee drug-testing policies in prison systems

by *Randall Guynes and Osa Coffey*

Drug use in the workplace increasingly demands attention by employers, particularly in potentially dangerous work environments such as law enforcement and corrections that require full mental and physical alertness. These positions not only involve public trust but are inherently stressful, thus at high risk for substance abuse.

Earlier National Institute of Justice reports reviewed the response of police departments to employee drug use.¹ This report deals with actions taken by prison systems to deal with drug use by correctional staff, job applicants, or both. Inquiries to all 50 State correctional systems and the Federal Bureau of Prisons brought replies from 48 States and the Bureau. Among the findings were these:

- The Bureau of Prisons and less than half the States now test employees or job applicants for drugs.
- Most of the systems that test began their programs within the last 4 years.
- Most respondents do not consider drug abuse among staff members a major problem.

Randall Guynes and Osa Coffey are with the Institute for Economic and Policy Studies, which conducted research for this paper under a subcontract with the Institute for Law and Justice. The latter Institute conducted the National Assessment Program for the National Institute of Justice under contract number OJP-85-C-006.

- Most agencies began drug testing because of problems with contraband, work performance, or both, and in response to public concerns about drug abuse in general.
- Of the systems with testing programs, most test only employees suspected of drug use. Only two systems reported random testing of staff, and that was limited; eight systems test job applicants.
- Special staff training on drug abuse remains limited and is more likely to be available in agencies that test employees or applicants.
- Few agencies have written policies and procedures for drug testing programs.
- Few grievances or lawsuits have resulted from drug testing to date.
- False positives were a common result on first tests; therefore many systems require a second test whenever the first proves positive.
- Most agencies with testing programs contract with laboratories or hospitals to conduct the tests at an average cost of \$20 to \$30 each.
- In the 15 States with unions, 7 unions have taken no stand, 1 union supported drug testing, and the remaining 7 opposed it.

Who to test

As shown in Exhibit 1, only 19 State correctional agencies and the Bureau of Prisons (41 percent of respondents) currently conduct drug testing of either staff or applicants. (By comparison, earlier studies showed testing by 73 percent of a sample of police departments.)

Four additional States indicate they plan to start a testing program. Twelve test only employees suspected of drug use; six test all applicants and those employees suspected of use; two States test only employees.

Only two States conduct random testing of staff, and one of those limits staff testing to preservice training. Georgia is the only State with random weekly testing of staff, and that program is limited to the Reidsville maximum security institution.

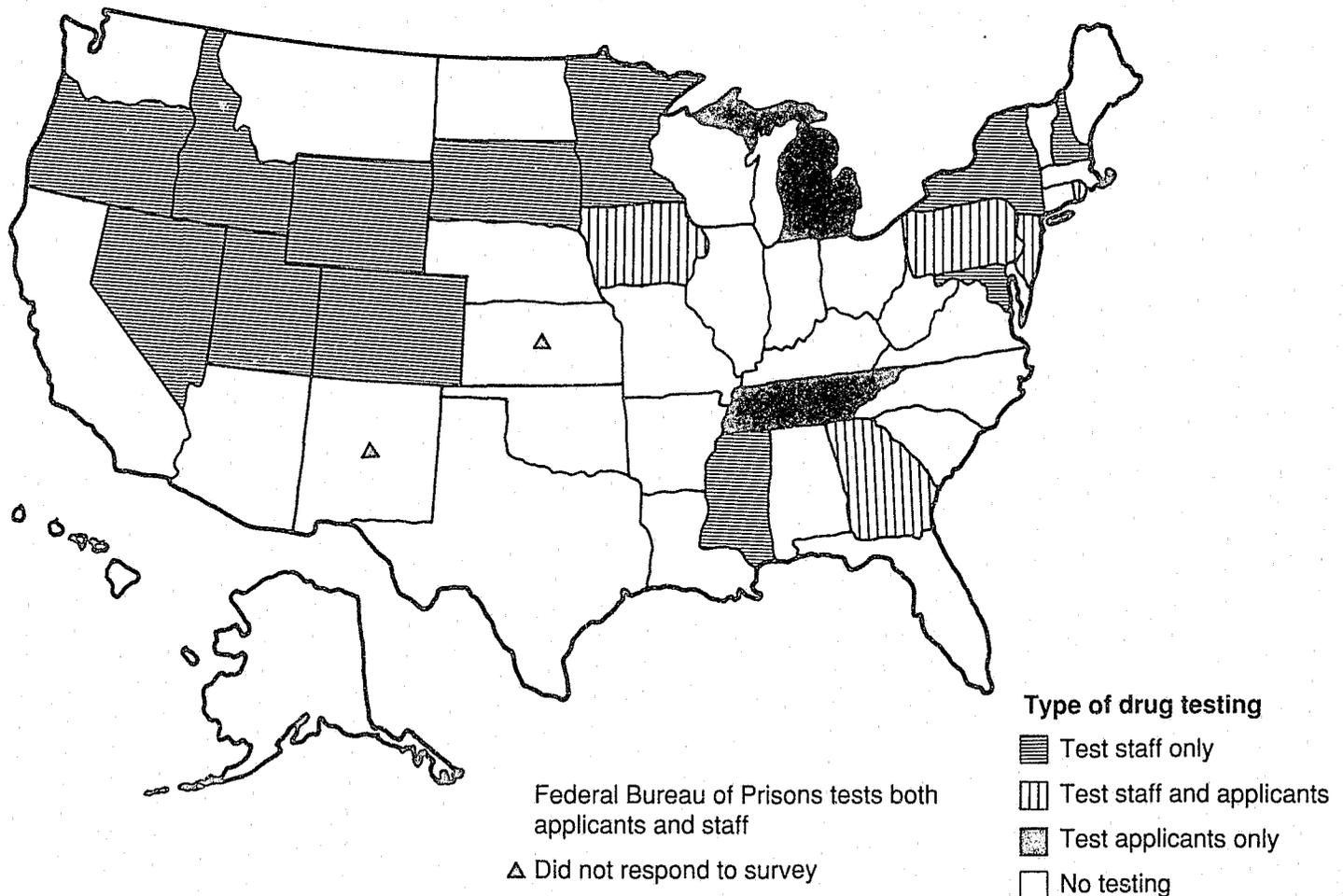
Reasons for testing

Asked why drug testing was initiated, 44 percent of respondents cited problems with contraband, 29 percent cited problems in work performance, and 27 percent mentioned public concerns about drug use.

Respondents from systems that do test employees for drugs indicated they perceive a relationship between drug tests and contraband more frequently than those from systems that do not test. No empirical evidence, however, either corroborates or refutes the perception that correctional employees who use

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Exhibit 1
Employee drug testing in State prison systems



drugs are more likely to be involved in drug contraband.

In virtually all States, an employee caught with drug contraband is turned over to the local or State police and charged with possession. Testing for drugs may or may not be part of the police arrest procedure.

Agencies that limit their testing of employees to those suspected of drug abuse did not indicate whether their limitation was established because it

would raise fewer legal questions, whether it was due strictly to a sense of necessity, or whether cost was a consideration.

Legal questions about testing arise most frequently with regard to the fourth amendment, which prohibits *unreasonable* searches and seizures. When testing is limited to those suspected of drug abuse, departments have to make determinations as to what constitutes reasonable grounds. Suspicion is usually based on an employee's appearance, manner, or actions that raise questions about the

employee's ability to perform assigned duties.

Testing procedures

Another sensitive area is testing procedure. Care must be taken that urine samples reach the laboratory unadulterated while the individual's rights to privacy and due process are respected. Without proper procedures and reliable tests, grievances and legal actions are likely.

Of 20 correctional systems that test, only 13 indicated they have written policies and procedures. (Virtually all the 33 police departments in earlier surveys had written procedures.) Two jurisdictions reported that State law provided the necessary policy.

Policies ranged in length from a few lines in the general personnel policies to separate, detailed policy and procedural orders.

Many of the policies provide a detailed description of the "chain of custody"; i.e., records of everyone who physically handles the container from the moment the sample is provided to the time it enters the laboratory process.

Most of the policies also cover other requirements: a second test when the first has proven positive; issues of confidentiality; actions to be taken if the person refuses the test or if the test is positive. The majority of agencies (16) require that the sample be provided under the direct observation of a same-sex supervisor.

Testing technology

Agencies use several different types of drug tests (Exhibit 2), the most popular being EMIT (enzyme multiplied immu-

noassay technique) for the first test and gas chromatography for the second. Agencies received test results in from 1 to 6 days; on average, within 3 days.

The EMIT test is inexpensive and is utilized as a basic screen for opiates, barbiturates, cocaine, and marijuana. The National Institute on Drug Abuse has reported that the immunoassay method has the advantage of short analysis time and "moderate to good sensitivity and specificity."² Seven correctional agencies reported using their own equipment and conducting their first tests in the facility at a very low cost.

Gas chromatography is a more sensitive technique that can detect small amounts of drugs; however, it is a slower process requiring more expertise.³ Correctional agencies that use this technique usually do so as a second test to confirm previous findings or to screen out false positives.

Cost of testing

Cost is of concern to correctional agencies, and reported drug-test costs range from \$2 to \$100. The \$100 figure, however, included personnel, transportation, and related expenditures as well as the laboratory work.

Most agencies provided only the cost of the test procedure. Agencies that used outside laboratories cited prices in the \$20-\$30 range. The lowest figure, \$2, was from an agency that uses an in-house "desktop" tester for first tests only.

The low cost of desktop testing, however, must be balanced against the fact that it is generally less accurate than results from full-scale carousel equipment. Considering this and the high incidence of desktop false positives (44 percent of a limited sample of 98 cases discussed later), agencies utilizing desktop testing need to consider more sophisticated equipment—either in-house or outside—for confirmatory second tests.

How agencies face dispositions, training

Testing is not the only approach correctional agencies have taken regarding drug abuse. Some agencies are providing drug abuse training for staff, either in-service or at the training academy. As Exhibit 3 indicates, most agencies that test also provide staff training. Only 35 percent of agencies without drug testing provide drug abuse training (including one agency whose training program was in development at the time of this study).

Agencies were also asked about their disposition of subjects testing positive. Those that test applicants require testing as a condition of employment and reject anyone who refuses to take the test or who tests positive. Six of the eight agencies that test applicants provided estimates of test results. Rejection rates due to positive tests ranged from 0.7 to 11 percent.

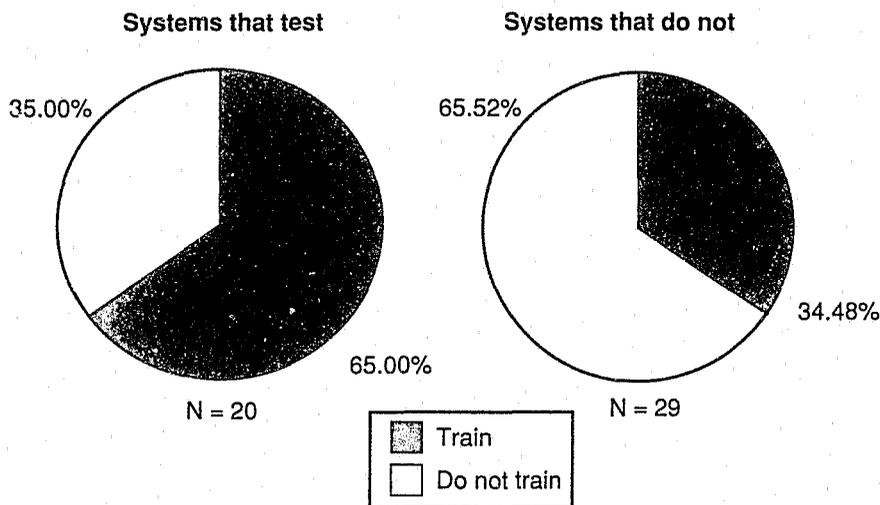
While most systems were candid about the failure rate among applicants, the number and disposition of staff members testing positive for drugs were impossible to obtain. The systems did not have figures on the number of employees tested nor on employees refusing tests or testing positive.

Exhibit 2
Testing technology used

	1st test	2d test*
EMIT	12	1
Gas chromatography	2	6
Thin-layer chromatography	1	0
Radioimmunoassay	1	0
Respondent unsure	4	10

* The three States that use gas and thin-layer chromatography do not have second tests routinely performed. In these cases a repeat test may be made if necessary.

Exhibit 3
Systems providing training on drug abuse



Whether opposition will develop may depend on future applications of drug testing. Currently only two systems use *random* testing. All others are limited to applicants or employees *suspected* of drug use.

Initially, no lawsuits were reported by respondents. However, two have since been reported from Georgia. Only 6 of the 20 systems using drug testing reported that grievances had been filed.

The relative lack of opposition may simply reflect the limited application of drug testing. Thirteen of the testing programs were less than 2 years old, and most cases other than applicant testing originate based on observation of work performance.

Conclusion

Most respondents did not consider employee drug abuse a major problem. One respondent called particular attention to the fact that virtually all of the facilities in the State were in rural areas where drugs were less prevalent. Others said they were more concerned about contraband and inmate drug use.

Though most respondents saw no significant employee drug problem,

Respondents from 10 agencies provided data on the disposition of cases in which results were positive, but warned the figures were only approximations. Cumulatively, they provided disposition information for 98 cases. Of these, 43 were cleared through a second test, 38 were fired, 3 resigned, and 2 were referred to a treatment program. In 12 cases, the disposition was unknown.

Opposition and legal issues

Opposition to drug testing seems to fall in no clear pattern. Seven respondents reported that their unions opposed drug testing while only one reported union support for testing. Seven other respondents reported their unions had no stand. (There were no unions in five of the States.)

Although only a few cases were identified as having been referred in the limited data obtained, correctional agencies claim to use a variety of drug treatment referral sources, shown in Exhibit 4.

A small number of agencies that conduct drug testing of employees indicated they base referrals on work performance rather than on test results alone. In these instances failure to attend the employee assistance program (EAP) or continued poor work performance are used as cause for termination.

Exhibit 4
Drug treatment referral resources

Referred to	Testing States	Nontesting States
Employee assistance programs (EAP)	8	19
Community programs	1	16
Mental health division	0	2
No referrals	0	2
Unknown	1	0

Warden Lanson Newsome of Georgia State Prison was among a few who believe they face very serious problems. He initiated random testing in 1984, and according to the warden, 40 percent of the tests then were positive. By 1985, the positives had dropped to 10 percent.

Responses from 4 States indicated plans to initiate testing the following year, and another 13 States were discussing such plans.

Perhaps the biggest surprise of the survey was that only seven States and the Federal Bureau of Prisons test applicants. (In an earlier study of police departments, 73 percent tested applicants.) New programs being considered may well begin at the applicant stage; at present, agencies seem more likely to identify drug problems *after* hiring than to screen applicants.

The survey reflects a surprising dearth of written policies and procedures. The small number of formal grievances shows the low visibility of testing problems to date. However, operating a testing program without carefully prescribed policies and procedures can leave an agency exposed to constitutional challenge.

The future of employee drug testing in corrections is difficult to forecast. The problem is highly significant in a few systems and not considered much of a problem in others. However, the fact that 4 States are planning to implement drug testing for correctional employees and 13 others are considering it indicates an awareness of the drug problems being generally recognized across the country.

Correctional officials may do well to concentrate their antidrug efforts on policy development and on the effectiveness of applicant screening until results of police departments' drug policies become better known.

Random drug testing at Georgia State Prison

Random testing for drugs began at Georgia State Prison in 1984 in response to staff and administration concerns over contraband.

All 742 employees, including the warden, are included in the program. Every Monday morning the names of all employees are placed in a box. Twenty names are pulled; urine samples are collected that morning and transported to the prison's lab, where the first test is performed.

If the result is positive, the sample is sent to Atlanta for two additional tests. Anyone who tests positive on all three tests is terminated.

Employees who acknowledge a drug problem and seek assistance through the EAP before being tested positive are kept in service, and nothing is entered in their personnel file. They must, however, remain drug free and not test positive at any time. During their involvement with the EAP, they

are tested as frequently as the EAP coordinator finds necessary, either through the Department of Corrections, the EAP, or the employee's private physician.

Warden Lanson Newsome indicated the program has met its goals. At first, approximately 40 percent of all tests were positive; the figure today is about 10 percent.

The warden said there has been a tremendous reduction in drug contraband within the prison, reporting that they are not collecting nearly the amount of drugs and drug contraband during shakedowns now as they did before the testing program and drug dealings between staff and inmates are notably lower.

To date there have been no grievances filed by current employees. There are, however, two lawsuits in the court system, filed by terminated employees.

Is random drug testing of correctional officers "reasonable"?

A legal analysis for the Georgia Department of Corrections by Michael E. Hobbs, Senior Assistant Attorney General, State of Georgia

Questions have been raised about the legitimacy of drug testing of correctional officers. The most frequent legal basis for attacking drug testing programs is the fourth amendment to the United States Constitution, which prohibits *unreasonable* searches and seizures. Courts have now established that urinalysis drug

testing does constitute a "search" of the person and "seizure" of bodily fluids. See, e.g., *Allen v. City of Marietta*, 601 F.Supp. 482 (N.D. Ga. 1985). The central question, therefore, is whether such searches and seizures are constitutionally reasonable. The determination involves balancing the government's need to search against the intrusion upon the individual necessitated by the search. *McDonnell v. Hunter*, 809 F.2d 1302 (8th Cir. 1987).

In many cases this balancing has resulted in a requirement that urinalysis testing may not be imposed unless the government can show a particularized and reasonable suspicion that the tested em-

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ployee is under the influence of drugs. See, e.g., *Allen v. City of Marietta*, supra; *McDonnell v. Hunter*, 612 F.Supp. 1122 (S.D. Iowa 1985), modified, 809 F.2d 1302 (8th Cir. 1987); *Amalgamated Transit Union v. Suscy*, 538 F.2d 1264 (8th Cir. 1976). However, in a recent decision of the United States Court of Appeals for the Eighth Circuit, random testing was found reasonable for correctional officers working in maximum and medium security prisons. *McDonnell v. Hunter*, 809 F.2d 1302 (8th Cir. 1987). The court focused on the needs of prison administrators to ensure that correctional officers are able to function at the height of their mental and physical capabilities because of the very nature of their work environment, the prison, "a unique place fraught with serious security dangers." *Bell v. Wolfish*, 441 U.S. 520, 559 (1979). The court found that the only way to control the use of drugs by correctional officers and the possible intro-

duction of drugs into the institution was to permit a system of uniform and random testing. The court found that urinalysis was not nearly as intrusive as strip searches. Furthermore, it determined that correctional officers must have diminished expectation of privacy because of their duties. Therefore, drug testing constitutes an intrusion "which society will accept as reasonable." *Id.* at 1308.

Notes

1. Barbara A. Manili et al., *Police Drug Testing*, Washington, D.C., National Institute of Justice, October 1987; J. Thomas McEwen, Barbara Manili, and Edward Connors, "Employee Drug Testing Policies in Police Departments," *Research in Brief*, Washington, D.C., National Institute of Justice, October 1986.

2. National Institute on Drug Abuse, *Urine Testing for Drugs and Abuse*, n.d.: 31.

3. *Urine Testing*, n. 2 above: 33.

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