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Cost of Drug Testing

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WHAT IS THE ADMINISTRATION'S DRUG TESTING PROPOSAL

The Administration's proposed legislation would establish a new condition that States must meet to be eligible to receive BJA formula grants. Each State would be required to formulate and implement a comprehensive drug testing program for targeted classes of defendants arrested, confined, or on probation or parole. The Attorney General would consult with the Secretary of Health and Human Services and issue specific regulations covering State drug testing procedures. These regulations would ensure reliability and accuracy of drug testing procedures and include other appropriate guidelines, including provisions allowing States to apply from a waiver from the drug testing requirement under certain conditions. No State would be required to spend an amount greater than ten percent of its BJA formula grant. The Attorney General will specify the effective date of the drug testing requirement in the regulations.

WHY HAVE DRUG TESTING IN THE CRIMINAL JUSTICE SYSTEM?

There are a number of advantages to be realized from drug testing throughout the criminal justice process, from the time of arrest through post-conviction supervision.

Setting bail: Drug testing at the pre-arraignment stage enhances judicial decision-making in setting bail or conditions of release. There is a growing body of empirical evidence suggesting that drug use is not only linked to criminal behavior (beyond the drug use itself), but also to a failure to appear for subsequent court appearances. Pre-arraignment drug testing can help identify these high-risk individuals.

Monitoring drug use: When individuals identified as drug users are released on bail or on post-conviction supervision, it is important that they be monitored through periodic drug testing as a condition of their release. A positive urine test constitutes a violation of a release condition and should be met with swift (and progressively more severe) sanctions. Those drug-involved offenders who cannot or will not stay drug-free while on release (and who are therefore likely to again become criminally involved) should be confined. In this way, drug testing can serve authorities as both

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The National Drug Control Strategy endorses a comprehensive drug testing program for criminal offenders and recommends that it be a part of every stage of the criminal justice process, from the time of arrest through parole. Drug testing at the time of arrest and during pre-trial deliberations assists judges in setting bail and provides a link between criminal justice agencies and drug treatment services. The most recent Strategy stated:

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

The policy of drug testing is already embraced by many segments of the criminal justice system, including the Federal Government. It has been implemented in many States, and to some extent by local jurisdictions in virtually all States. However, not all States have adopted a comprehensive drug testing policy. Since the vast majority of drug offenders are apprehended and adjudicated under State and local, not Federal, jurisdiction, the Administration has proposed legislation requiring States to adopt drug testing programs as a condition of receiving block grant funds from the Bureau of Justice Assistance (BJA), Department of Justice. State testing programs would cover arrestees, prisoners, parolees, and those out on bail and on probation. Under the Administration's proposal, the cost for each State to implement drug testing programs would be limited to no more than ten percent of a State's BJA grant.

The Administration's pending legislation would also do two things in the Federal criminal justice context. First, it would require that Federal offenders refrain from any unlawful drug use as a mandatory condition of probation, parole, or post-conviction release. Second, it would require offenders to submit to periodic drug tests to ensure their compliance with the release conditions. Offenders failing to refrain from using drugs, as determined by a positive drug test, would be subject to having their release revoked and being returned to custody.

This bulletin examines the State drug testing provisions and answers many questions regarding this proposal.

BOB MARTINEZ,
Director

a risk-assessment tool (at the bail-setting stage) and as a supervision and risk-management tool (during the pretrial or post-conviction release stage). Experience in those jurisdictions that have implemented such programs shows that pretrial release rates remain constant, or even increase, as judges become more confident in the ability of criminal justice agencies to detect drug users in the first instance and to monitor their drug use while on release.

Detering drug use: At all stages of the criminal justice process, drug testing also serves an important role as a deterrent for both casual and hard-core users. Drug testing creates a realistic threat that individuals in the criminal justice system will be caught if they continue using drugs, and when revocation of release is linked to positive test results, drug testing becomes a powerful deterrent.

Facilitating drug treatment: For many users, drug testing programs facilitate effective drug treatment. As discussed at length in *Understanding Drug Treatment*, an ONDCP White Paper published in June 1990, the majority of drug users do not need drug treatment. However, they often do need the threat of social, legal or employer sanctions to motivate them to stop on their own. For these drug users, pretrial drug testing alone, without referral to treatment, can be sufficient to prompt them to stop using drugs.

Similarly, for drug users who need treatment, it is frequently trouble with the law that forces them into treatment. At present, the number of drug treatment slots is less than the number of drug users in need of treatment. However, drug test results can help make the criminal justice system more effective by allocating those slots to the individuals who need them most. Moreover, different forms of drug abuse require different treatment modalities, and drug testing programs can help match those individuals who need treatment with the most appropriate program. Continued drug-testing as a condition of release can help to keep a drug abuser in treatment for a longer time, and virtually all studies agree that the longer an addict receives treatment, the better are his or her chances for long-term success.

Measuring drug use: The information obtained from widespread drug testing can also help State and local jurisdictions assess drug-use trends and develop appropriate planning and prevention strategies. For example, in the District of Columbia, which has operated a widespread pretrial drug testing program since 1984, increased treatment and prevention resources were devoted to users of PCP and cocaine after pre-arraignment tests of adult arrestees showed surprisingly high rates of abuse of those drugs.

Improving the efficiency of the criminal justice system: Drug testing programs can save taxpayer dollars and

protect public safety. First, by improving bail decisions, offenders likely to commit other crimes while awaiting trial will instead be detained, thus reducing crime and its associated costs. Second, drug abusers who otherwise present no threat to public safety can be referred to treatment or monitored through drug testing. This assures that scarce prison and jail beds are available for those persons who constitute the greatest threat to our communities. Further, deterrence from drug use can be maintained through close supervision and regular drug testing to detect any resumption of drug use. In this way, drug users can be held accountable for their conduct and public safety can be protected.

WHO WOULD BE TESTED?

Under the Administration's proposal, individuals subject to State and local testing programs would fall into three categories: arrestees (particularly defendants charged with drug violations who are eligible for pretrial release); offenders incarcerated in prisons or jails; and convicted offenders on supervised release, such as probation or parole. The program would be used to manage the adult population of the criminal justice system and would cover all those arrested for or convicted of a felony crime.

Regulations setting forth who will be tested, how often tests will occur, and other parameters of the testing program would be promulgated by the Attorney General after consultation with the Secretary of Health and Human Services. These regulations would also set forth standards to ensure reliability and accuracy for all drug testing programs.

Every person entering the criminal justice system would not need to be tested. Who, when, and how often to test will be covered by the regulations and subject to the 10 percent cost cap, discussed below.

HOW MUCH WILL THE ADMINISTRATION'S PROPOSAL COST STATE AND LOCAL GOVERNMENTS?

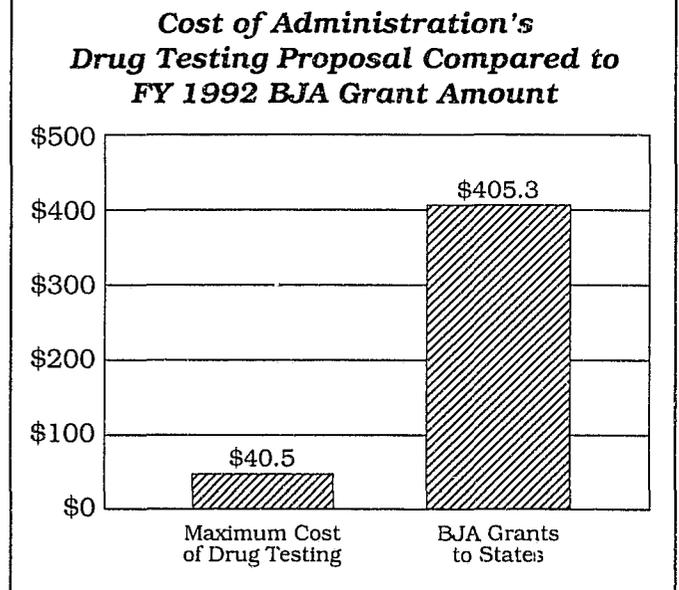
Given the size of the criminal justice population, one of the major concerns expressed by State and local policymakers is the cost of drug testing. The exact cost depends on the number of people to be tested, the frequency of testing, and the cost of each test. The Administration's proposal includes a cap limiting the amount each State would be required to spend to comply with the Attorney General's regulations to no greater than 10 percent of its BJA grant. If, for example, a State received a \$10 million grant from BJA, it would be required to spend no more than \$1 million per year on drug testing—including amounts from any source that States currently spend on testing. Furthermore, since drug testing already occurs in at least one stage of the criminal justice process in all States, the additional cost to a State of this proposal may be considerably less than ten percent of the BJA grant.

Figure 1

State	\$ in Thousands	
	FY 92 BJA Grant	Drug Testing Cost Cap
Alabama	\$6,729	\$673
Alaska	1,745	175
Arizona	5,949	595
Arkansas	4,352	435
California	41,350	4,135
Colorado	5,617	562
Connecticut	5,509	551
Delaware	1,947	195
District of Columbia	1,851	185
Florida	18,599	1,860
Georgia	9,946	995
Hawaii	2,556	256
Idaho	2,420	242
Illinois	17,193	1,719
Indiana	8,776	878
Iowa	4,955	496
Kansas	4,501	450
Kentucky	6,186	619
Louisiana	7,095	710
Maine	2,709	271
Maryland	7,528	753
Massachusetts	9,220	922
Michigan	13,883	1,388
Minnesota	7,055	706
Mississippi	4,651	465
Missouri	8,173	817
Montana	2,132	213
Nebraska	3,249	325
Nevada	2,555	256
New Hampshire	2,550	255
New Jersey	11,750	1,175
New Mexico	3,134	313
New York	25,926	2,593
North Carolina	10,133	1,103
North Dakota	1,929	193
Ohio	16,151	1,615
Oklahoma	5,488	549
Oregon	4,927	493
Pennsylvania	17,723	1,772
Rhode Island	2,398	240
South Carolina	5,887	589
South Dakota	2,005	201
Tennessee	7,869	787
Texas	24,595	2,460
Utah	3,382	338
Vermont	1,800	180
Virginia	9,477	948
Washington	7,621	762
West Virginia	3,590	359
Wisconsin	7,768	777
Wyoming	1,672	167
Puerto Rico	5,581	558
Virgin Islands	1,151	115
Guam	1,209	121
Other Insular Areas	<u>1,103</u>	<u>110</u>
TOTAL	\$405,250	\$40,525

Thus, the total mandated cost nationwide would be no more than \$40.5 million in FY 1992, which is 10 percent of the total BJA formula grant expected for that year. The drug testing costs and BJA grant amount for each State in FY 1992 is displayed in figure 1. Figure 2 compares the maximum cost of the Administration's drug testing proposal to the amount of Federal grant funds States will receive under the BJA grant program.

Figure 2



Any discussion of the costs of drug testing should include potential savings from making the criminal justice system more efficient, mentioned earlier. While these savings are difficult to estimate, the long-term benefits of a well-designed drug testing program can easily outweigh the short-term costs.

WILL EACH STATE BE REQUIRED TO SPEND 10 PERCENT OF ITS BJA GRANT ON DRUG TESTING?

No. The 10 percent cap is not a grant set-aside that requires each grant recipients to use a certain amount of a grant for a specific purpose. Instead, unlike a set-aside, the 10 percent cap limits how much States are required to spend to comply with the Federal regulations—including amounts currently spent from any source on drug testing. In fact, States with extensive drug testing in place may already spend more than the 10 percent cap and thus be in compliance with the proposed provisions. Other States may be able to implement these regulations by spending less than the 10 percent cap. Under either of these scenarios, States would not be required to do any additional testing.

The proposed legislation would also allow States to apply to the Attorney General for a waiver of the testing requirement if they can show that compliance would impose excessive financial or other burdens or would otherwise be impractical or contrary to State policy.

ISN'T DRUG TESTING ALREADY USED IN MOST STATES?

Yes. Drug testing is used in at least one stage of the criminal justice system in all States. ONDCP contacted officials in each State and territory to determine whether drug testing was used in their criminal justice

