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ASSESSMENT OF PRETRIAL URINE-TESTING IN THE  
DISTRICT OF COLUMBIA

MONOGRAPH NO. 1

BACKGROUND AND DESCRIPTION OF THE  
URINE-TESTING PROGRAM

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TOBORG ASSOCIATES, INC.

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by

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U.S. Department of Justice  
National Institute of Justice

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**TABLE OF CONTENTS**

	<u>Page</u>
A Note on the Monograph Series . . . . .	i
I. Background. . . . .	1
A. Introduction. . . . .	1
B. The Interrelationship of Drug Use and Criminality . . . . .	2
C. Drug Use and Criminality in the District of Columbia . . . . .	5
D. Overview of the Workings of the DC Criminal Justice System. . . . .	7
E. Mandate and Mission of the DC Pretrial Services Agency . . . . .	11
II. Description of PSA's Urine-Testing Program. . . . .	13
A. Program Operations. . . . .	13
1. Initial Urine-Testing in the Lockup . . . . .	13
2. Periodic Urine-Testing As a Condition of Pretrial Release . . . . .	14
3. Special Court-Ordered Urinalyses of Pretrial Releasees. . . . .	16
B. Program Implementation. . . . .	16
1. Designing the Program--Goals and Purposes To Be Served . . . . .	16
2. Start-Up Problems . . . . .	17
3. Staffing the Drug Detection Center. . . . .	18
4. Managing Drug-Testing Information . . . . .	19
5. Testing Technology and Equipment Selected. . . . .	20
6. Chain-of-Custody and Defendant Identification Procedures . . . . .	21
C. Concluding Remarks . . . . .	23
Footnotes. . . . .	25

## A NOTE ON THE MONOGRAPH SERIES

Beginning in March 1984, a comprehensive pretrial urine-testing program was implemented in the criminal justice system of the District of Columbia, with funds awarded by the National Institute of Justice (NIJ). The testing program is operated by the DC Pretrial Services Agency (PSA), an independent agency of the DC Government that is charged by law with the responsibility for (1) interviewing all arrestees to determine their eligibility for pretrial release; (2) making recommendations to the court as to appropriate terms and conditions for pretrial release in all criminal cases; and (3) monitoring compliance with pretrial release conditions for all defendants, except those released on surety bond.

Unless they are charged with federal offenses or relatively minor crimes, arrestees in Washington, DC are brought to the DC Superior Court lockup. PSA tests virtually all adult arrestees coming through the DC Superior Court lockup for the presence of selected drugs in their urine at the time of arrest; these drugs are opiates (primarily heroin), cocaine, phencyclidine (PCP), amphetamines and methadone. Test results are made available that same day to PSA's in-court representatives, who are present at the bail-setting hearing to make pretrial release recommendations to the court.

Before PSA's urine-testing program began, the only release option specifically tailored to the needs of drug users had been referral to treatment. With the advent of the drug testing program, however, a new release alternative became available for drug-using defendants, namely, placement in PSA's program of periodic urine-testing before trial. Continued drug use by a defendant, as shown by the urine-test results, is considered a violation of pretrial release conditions and is reported by PSA to the court, which may impose sanctions for the violation. Because of the increased likelihood that sanctions would be imposed for such a violation of release conditions, placement in this program was considered likely to encourage defendants to forego drug use during the pretrial period. This in turn was considered likely to reduce defendants' pretrial criminality, given the findings from prior research that drug use and crime are often related.

PSA's urine-testing program has been evaluated by Toborg Associates, Inc., under a separate, parallel NIJ grant, distinct from PSA's grant for program operations. The findings from that study are the subject of a series of six monographs. Each is briefly described below, so that interested readers can quickly identify the individual monographs of greatest utility to them.

Background and Description of the Urine-Testing Program (Monograph No. 1) presents background information on drug-crime relationships generally and, in particular, in the District

of Columbia; on the workings of the DC criminal justice system; and on the overall organization and mission of PSA. Additionally, it provides a detailed description of the operations of PSA's urine-testing program, including discussions of the various components of the program and of the way in which the program was implemented.

Analysis of Potential Legal Issues (Monograph No. 2) discusses a number of areas where legal challenges conceivably could arise, stemming either from Constitutional provisions or from established doctrines in American criminal procedure. The Constitutional issues pertain to the right to be free from (1) illegal searches and seizures; (2) self-incrimination; and (3) excessive bail; as well as the rights to be accorded due process of law and equal protection of the law. These various rights stem from the Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution. Possible challenges under criminal procedure law include the adequacy of chain-of-custody procedures for handling urine specimens; the accuracy of the urine-testing technology used; and the right of the defendant to confront and rebut government witnesses and to be accorded an administrative hearing in the face of reported violations of a court order.

The Views of Judicial Officers (Monograph No. 3) presents the findings from interviews conducted approximately one year after the start of PSA's urine-testing program with 25 DC Superior Court hearing commissioners and trial judges who had recently heard criminal cases. Topics covered include the ways in which judges use PSA's urine-testing information, their views about how the current drug testing program compares with the situation that existed before PSA's program began, and their opinions about the program's impact and about the nature of the drug-crime problems in the District of Columbia.

Analysis of Drug Use among Arrestees (Monograph No. 4) presents major findings from PSA's urine-testing of arrestees brought through the DC Superior Court lockup. The monograph discusses the rates and types of drug use found; the characteristics of users of various types of drugs, as compared with non-users of drugs; how urine-test results compared with defendants' self-reports of drug use; and the pretrial release rates of users of various types of drugs.

Periodic Urine-Testing As a Signaling Device for Pretrial Release Risk (Monograph No. 5) presents a statistical analysis of the relationship between the behavior of defendants ordered by the court into PSA's pretrial urine-testing program and subsequent observation of pretrial misconduct, that is, pretrial rearrest or failure-to-appear for court. In particular, the monograph considers whether the relative success of defendants while in the urine-testing program is associated with different rates of pretrial misconduct and whether the urine-testing program

can be viewed as a "signaling device" by which defendants identify themselves--after they have been released to await trial--as posing either high or low pretrial release risks.

The Efficacy of Using Urine-Test Results in Risk Classification of Arrestees (Monograph No. 6) considers the extent to which the initial urine-test results from the lockup testing can help to classify defendants as to differences in expected pretrial misconduct (pretrial rearrest and failure-to-appear for court). The monograph presents a statistical analysis of this issue and uses a technique which takes into account the "selection bias" caused by the facts that (1) some arrestees were not tested; (2) some arrestees were not released before trial, so no pretrial misconduct could be directly observed for them; and (3) some released defendants had conditions imposed on them that may have affected their underlying propensities to engage in pretrial misconduct. The results of the analysis show the additional explanatory power in predicting misconduct stemming from information on drug use, as determined by the initial lockup urine-test.

## BACKGROUND AND DESCRIPTION OF THE URINE-TESTING PROGRAM

### I. BACKGROUND

#### A. Introduction

Beginning in March 1984, a comprehensive pretrial drug testing program was implemented in the criminal justice system of the District of Columbia, with funds awarded by the National Institute of Justice (NIJ). The testing program is operated by the DC Pretrial Services Agency (PSA), an independent agency of the DC Government that is charged by law with the responsibility for (1) interviewing all arrestees to determine their eligibility for pretrial release; (2) making recommendations to the court as to appropriate terms and conditions for pretrial release in all criminal cases; and (3) monitoring compliance with pretrial release conditions for all defendants, except those released on surety bond.

Unless they are charged with federal offenses or with relatively minor crimes, arrestees in Washington, DC are brought to the DC Superior Court lockup. PSA tests virtually all adult arrestees coming through the Superior Court lockup for the presence of selected drugs in their urine at the time of arrest. Once provided by arrestees, urine samples are taken by PSA staff from the court colblock directly to PSA's laboratory, located in the same building, for analysis.

Using the EMIT (enzyme multiplied immuneassay technique) system of urinalysis, PSA analyzes each sample for the presence of five drugs: opiates (primarily heroin), cocaine, phenethylidine (PCP), amphetamines, and methadone. PSA's Drug Detection Center staff employs rigorous chain-of-custody procedures and quality control procedures from the time the urine sample is collected through the time the results are reported at the pretrial release hearing.

Test results are made available that same day to PSA's in-court representatives, who are present at the bail-setting hearing to make pretrial release recommendations to the court. Under DC law, defendants may be released on their personal recognizance; on nonfinancial conditional release (i.e., subject to certain restrictions on travel, association, behavior, etc.); on financial conditions (i.e., cash, surety or deposit bond); or into the custody of a third party. They may also be preventively detained if no condition or combination of conditions will adequately protect against the defendants' fleeing or endangering the community.<sup>1</sup>

Before PSA's drug testing program began, the only release option specifically tailored to the needs of drug users was referral to treatment. With the advent of the drug testing

program, however, a new release alternative became available for these defendants, namely, placement in the PSA program of periodic urine-testing before trial. Continued drug use by a defendant, as shown by the urine-test results, is considered a violation of pretrial release conditions and is reported by PSA to the court, which may impose sanctions for the violation. Because of the increased likelihood of detecting illegal drug use, coupled with the increased likelihood that sanctions would be imposed for such a violation of release conditions, placement in this program was considered likely to encourage defendants to forego drug use during the pretrial period. This in turn was considered likely to reduce defendants' pretrial criminality. The PSA program is the first comprehensive program in the nation to test the effectiveness of periodic urine-testing as a tool for identifying, monitoring and controlling pretrial drug use and crime-on-bail.

PSA's drug testing program has been evaluated by Toberg Associates, Inc., under a separate, parallel NIJ grant, distinct from PSA's grant for program operations. The findings from that study are reported in a series of six monographs, of which this is the first. The rest of this section of the monograph presents background information on drug-crime relationships generally and, in particular, in the District of Columbia; on the workings of the DC criminal justice system; and on the overall organization and operations of PSA. The following section then describes PSA's urine-testing program in detail.

#### B. The Interrelationship of Drug Use and Criminality

A number of studies, many of them conducted within the last decade, have assessed drug-crime relationships.<sup>2</sup> Although largely focused on users of heroin, rather than other drugs, these studies have consistently found that higher levels of illicit drug use are accompanied by higher levels of criminality. Moreover, this criminality is not limited to the offenses of drug possession and sale but, instead, spans a wide variety of criminal activities.

Although there has been much debate and disagreement over whether drug use and criminality are causally related, there is general consensus--and overwhelming evidence--that the two behaviors are highly correlated (which could be due simply to their sharing a common etiology). Such a strong correlation is alone sufficient to justify the widespread interest in developing ways to try to reduce drug use among criminal justice populations as a potential means of attaining a corresponding reduction in their criminality.

No attempt will be made here to review the extensive literature on drug-crime relationships. However, the following key points from recent studies provide an overview of the major conclusions from this body of literature:



- Drug users, particularly heroin addicts, engage in substantial amounts of income-generating crimes. After reviewing the existing literature regarding drug-crime relationships, Gandossy, et al., concluded that, "This is true when analyzing the charges against drug-using arrestees, convictions of addicts in prison, arrest records of treatment populations, or the observations of street addicts."<sup>3</sup>
- Heroin users are just as likely as other offenders to commit such violent crimes as homicide, sexual assault and arson--and they are even more likely than other offenders to commit robbery and weapons offenses. A study by Wish, et al., in the District of Columbia found that the percentage of arrest charges for violent crimes was lower for drug users than non-users but that the arrest rates were similar for many violent offenses. This result occurred because drug users committed so many more crimes than non-users.<sup>4</sup>
- Drug use has often been identified as a good predictor of subsequent criminality. For example, Chaiken and Chaiken found that a history of drug use was one of the characteristics shared by "violent predators" incarcerated in three states.<sup>5</sup> Similarly, in a study seeking to identify high-rate offenders for "selective incapacitation" purposes, Greenwood isolated seven important factors, and two of these concern drug use (i.e., illegal drug use as a juvenile and illegal drug use during the prior two years).<sup>6</sup> Moreover, two recent studies of defendants facing federal charges found that drug use increased the likelihood of pretrial misconduct.<sup>7</sup>
- Reducing the level of drug usage can reduce the level of criminality for heroin addicts. For example, a study by Ball, et al., of heroin addicts in Baltimore concluded, based on information reported by the addicts interviewed by the research team, that those addicts' rates of criminality were four to six times higher when they were using heroin than when they were abstaining from it.<sup>8</sup>
- Persons apprehended by the criminal justice system may be helped if they are required to participate in a treatment or urine-testing program that is accompanied by supervision.<sup>9</sup> For example, a study by McGlothlin, et al., of parolees who participated in the California Civil Addict Program found that supervision with urine-testing led to lower rates of drug use and criminality than did either supervision without urine-testing or no supervision.<sup>10</sup> Additionally, analysis by Collins and

Allison of data from the Treatment Outcome Prospective Study (TOPS) found that persons who entered treatment because of a criminal justice referral stayed in treatment longer than other individuals. Moreover, among persons who entered outpatient drug-free programs, those who were monitored by a Treatment Alternatives to Street Crime (TASC) program stayed in treatment longer. This led to the conclusion that "legal pressure is most effective when accompanied by monitoring or surveillance of clients' behavior."<sup>11</sup>

Although the various studies of drug-crime relationships that have been conducted to date have greatly enhanced our understanding, they also have several major limitations. First, most of them have focused on heroin, rather than other drugs, such as cocaine or PCP. (As discussed in Monograph No. 4, Analysis of Drug Use among Arrestees, cocaine and PCP are each more widely used than heroin among current arrestees in the District of Columbia.) Second, many of these studies have relied upon self-reported information provided in interviews with drug users and former drug users, rather than on objective data, such as urine-test results. (As Monograph No. 4 indicates, arrestees in the District of Columbia greatly under-reported their drug use in interviews, as compared with urine-test data.) Third, the samples of individuals selected for study were often quite limited; for example, often only men were studied. Finally, the analyses of criminality rarely focused on pretrial criminality; rather, they typically addressed recidivism over a longer time period. Because of the increasing public concern about crime-on-bail,<sup>12</sup> the specific topic of pretrial criminality as related to drug use merits consideration.

The study undertaken by Teborg Associates in connection with PSA's pretrial urine-testing program was designed in part to overcome these limitations of past analyses. For this reason, it has the following features:

- It considers four drugs (cocaine, PCP, amphetamines and methadone) in addition to heroin.
- It uses urinalysis results as well as arrestees' self-reports to assess drug use.
- It covers virtually all adult criminal defendants arrested in the District of Columbia over the time period studied, except those charged with federal crimes or with relatively minor offenses.
- It focuses specifically on pretrial criminality and whether such criminality can be reduced through a program of periodic urine-testing of defendants who are released to await trial.

### C. Drug Use and Criminality in the District of Columbia

In addition to the studies discussed previously, several analyses focused specifically on the District of Columbia provide insight about drug-crime relationships there. In general, findings from these studies parallel those reported previously, in particular, that drug users are disproportionately involved in criminality and that drug use is a good predictor of rearrest. Key findings from these studies include the following:

- Drug use is a good predictor of rearrest. For example, a longitudinal study by Williams of 4,703 persons arrested during a four-month period in 1972-73 and tracked through August 1975 concluded that drug use--as measured by police identification of an arrestee as a drug user--was a good indicator of both the frequency and the seriousness of subsequent rearrests.<sup>13</sup> Similarly, a longitudinal study by Wish, et al., of 7,087 persons, randomly selected from the August 1974--April 1975 time period, and tracked through December 1978 found that drug users--as identified by urinalysis tests at the time of arrest--were more likely than non-users to be rearrested: 65 percent of the drug users were rearrested during the follow-up period, as compared with 50 percent of the non-users.<sup>14</sup>
- Drug use is also a good predictor of multiple rearrests. For example, the study by Wish, et al., cited above, found that 30 percent of the drug-positive arrestees--as compared with 18 percent of the drug-negative arrestees--had three or more subsequent arrests during the follow-up period.<sup>15</sup> Moreover, drug users had more multiple rearrests than non-users even after after controlling for both age and prior arrest record.<sup>16</sup>
- Drug users commit income-producing crimes, such as larceny and burglary, at much higher rates than non-users. For example, when Wish, et al., analyzed the arrest rates per 100 arrestees over the six-year period from 1973 through 1978, they found that drug users had an arrest rate for larceny of 112.6, as compared with a rate of 42.1 for non-users--almost a threefold difference. Similarly, drug users' arrest rates for burglary were almost double those for non-users (66.1 versus 36.4), and their rates for robbery were also substantially higher (57.1 for drug users versus 34.4 for non-users).<sup>17</sup>
- Drug users commit violent crimes at about the same rate as non-users. For example, the study cited above by Wish, et al., of the 1973-78 period found arrest rates for assault of 35.6 (per 100 arrestees) for drug users and 38.2 for non-users. Similarly, the arrest rates

for sexual assault were 5.6 for drug users and 6.1 for non-users; and for homicide, 4.5 for drug users and 4.6 for non-users.<sup>18</sup>

Besides these analyses of the relationship between drug use and rearrest in general, several studies of the District of Columbia have assessed the relationship between drug use and pretrial criminality. Key findings from these studies include the following:

- Drug users are more likely than non-users to be rearrested before trial. For example, a study by Toborg and Kirby of persons arrested over the 1979-81 period found a 42 percent pretrial rearrest rate for drug users--identified by arrestees' self-reports--as compared to 18 percent for non-users.<sup>19</sup> This confirmed the findings of an earlier study by Roth and Wice, using 1974 data, that drug users were more likely to be rearrested before trial than non-users, after controlling for a variety of other factors that might affect pretrial rearrest (e.g., defendants' criminal histories, charge at arrest, age, employment status, etc.).<sup>20</sup>
- Drug users are more likely than non-users to have multiple pretrial rearrests. For example, the study by Toborg and Kirby, cited earlier, found that 16 percent of the drug users released to await trial during the 1979-81 period were rearrested more than once before trial; the comparable rate for non-users was 5 percent.<sup>21</sup>
- Drug use is a good predictor of pretrial rearrest. A study by Toborg, Yezer, et al., of persons arrested during the 1979-81 period found that self-reported drug use was a good predictor of pretrial rearrest for any charge as well as of pretrial rearrest for a "dangerous or violent" charge, as defined by DC law; this study used multivariate analysis to control for a variety of other factors that might influence pretrial rearrest, such as arrest charge, prior criminal record, other involvement with the criminal justice system when arrested, age, and so on.<sup>22</sup> These findings confirm those of an earlier multivariate analysis, based on 1974 arrests, by Roth and Wice that showed that drug use was a good predictor of pretrial rearrest.<sup>23</sup>

As indicated above, the studies of drug-crime relationships in the District of Columbia reached many of the same conclusions as had similar analyses in other jurisdictions. However, these studies also share many of the same limitations of the other analyses, in particular: (1) the major drug studied was heroin, with little--if any--attention given to other illicit drugs; and (2) measures of drug use were often based on defendants' self-

reports or police officers' observations, rather than urinalysis results. Moreover, several of these studies are somewhat dated; analyses based on data from the mid-1970s obviously cannot reflect the trends of the past decade.

In summary, while prior studies have indicated a strong relationship between drug use and criminality, including pretrial criminality, they have also suggested a need for better measurement of drug use, for development of new approaches to reducing both drug use and crime, and for acquisition of more recent information about drug-crime trends and relationships. This project was designed in part to respond to these needs.

#### D. Overview of the Workings of the DC Criminal Justice System

The District of Columbia is unique among American political jurisdictions in that its government performs all the equivalent functions of municipal, county and state governments elsewhere. Additionally, because the Federal Government is based in the District of Columbia, it has much more involvement in local activities there than in other major US cities. These special features of the District of Columbia are especially apparent with regard to its criminal justice system. Therefore, background on the workings of the DC criminal justice system is both useful and necessary for understanding the context in which the DC Pretrial Services Agency and its pretrial urine-testing program operate. The following discussion provides a brief overview of the DC criminal justice system and PSA's role with regard to other DC criminal justice agencies.

Since the passage of the DC Home Rule Charter in 1975, criminal laws (statutes under the DC Code) are enacted by the District of Columbia Council (city council), which is composed of representatives elected directly by the citizens of the District of Columbia. Laws enacted by the DC Council are subject to veto by the mayor of the District of Columbia--the chief executive officer of the jurisdiction, now also a publicly elected official--but the mayor's veto is subject to override by a majority vote of the Council. Criminal statutes and other laws enacted by the DC Council are also subject to veto by the U.S. Congress, within 90 days of their passage.

The District of Columbia has a two-tiered local court system, created by Congress in 1970.<sup>24</sup> The DC Court of Appeals is the equivalent of a state supreme court; appeals from the DC Court of Appeals go directly to the US Supreme Court. The DC Superior Court is a unified trial court of general jurisdiction. The Superior Court is organized for administrative purposes into five divisions--Criminal, Civil, Family, Probate and Tax. Each division is administered by a presiding judge, all five of whom report to the Chief Judge of the Superior Court.

The DC Superior Court bench consists of 57 "active" judges plus several retired judges who are called upon as needed. Each Superior Court judge is nominated by the President of the United States and confirmed by the US Senate, as are federal judges. Their terms are for 15 years, with the possibility of reappointment thereafter. The Chief Judge of the Superior Court is nominated by the President of the United States from among the associate judges of the Court in active service. The Chief Judge is appointed to a four-year term, subject to reappointment(s) by the President. All Superior Court judges rotate periodically through various judicial assignments in the different divisions of the Court. The Criminal Division is the largest of the five; at any given time, approximately half of the Superior Court bench sits in assignments in the Criminal Division.

Caseloads in Superior Court have been on a steady increase for over a decade. In addition, time to case disposition is relatively long. In 1983, it took an average of 90 days for a misdemeanor trial to reach completion and 250 days for a felony trial to reach completion.<sup>25</sup> Hence, pretrial release decisions are particularly important, because of the length of time involved.

Since 1970, the District of Columbia has operated under a statute passed by Congress which mandates that the dual purpose of a pretrial release decision is to assure the defendant's reappearance for trial and to protect community safety against the threat of pretrial criminality. Defendants are to be released on the least restrictive conditions needed to achieve those ends. For defendants charged with "dangerous" or "violent" crimes (including robbery, burglary, assault with a dangerous weapon and sale of narcotics), the statute authorizes preventive detention, upon motion by the prosecutor and after a due process hearing in court; however, this provision of the statute is used relatively rarely.<sup>26</sup>

All crimes that occur in the District of Columbia which have been committed on other than federal property are investigated by the Metropolitan Police Department (MPD), an agency of the executive branch of the DC Government. After arrest, a defendant is usually taken to a police station for booking. If the charge is a misdemeanor, the defendant may be eligible for citation release, which may be granted by the police after a staffmember of the DC Pretrial Services Agency (PSA) interviews the defendant over the telephone, verifies the information provided and makes a release recommendation.<sup>27</sup> Defendants who are not released from the police station are transferred to the DC Superior Court lockup. Because release decisions are made at Superior Court during the day only, a defendant arrested at night will be held in custody until the following morning and taken to the Superior Court lockup at that time.

While in the lockup, the defendant will be interviewed by PSA about residence, employment, family ties and references who could verify the information. Also, since March 1984, PSA has asked defendants to provide urine specimens and has then tested those specimens in its laboratory, located down the hall from the lockup, for the presence of selected drugs.

PSA makes extensive efforts to verify the information provided by defendants. Sources contacted may include references given by the defendant; relatives who appear at the Agency's court office on the defendant's behalf; probation and parole officers, where applicable; and staff at third party custody organizations. PSA also checks criminal history information on the defendant with various sources, including several computerized data bases.

The information obtained is entered into PSA's automated data system and used to prepare a release recommendation report. Such reports include the information gathered about the defendant, separate release recommendations dealing with court appearance and community safety, and in some cases remarks about additional relevant information that does not fit within the reports' standardized format. With regard to drug use, PSA's reports contain only the phrase "drug abuse indicated"; test results for specific drugs are not shown, nor is any distinction made between drug abuse identified by urinalysis and drug abuse reported by the defendant. PSA's reports for all defendants are presented in court to the hearing commissioners making release decisions and are also made available to the prosecuting and defense attorneys.<sup>28</sup>

All criminal prosecutions in the District of Columbia are brought by the federal prosecutor, not the city attorney. The District of Columbia is the only jurisdiction in the United States where the office of the United States Attorney--an arm of the US Department of Justice--prosecutes both local law violations, in the local trial court, and federal law violations, in the US District Court. In 1983, the Office of the US Attorney for the District of Columbia filed approximately 17,000 misdemeanor and 11,000 felony cases in the Criminal Division of the DC Superior Court.<sup>29</sup>

Legal representation of criminal defendants in the District of Columbia is provided through three possible avenues. Defendants who are financially capable of so doing must obtain and pay for their own private legal counsel from among certified members of the District of Columbia Bar. Defendants who are indigent are eligible for court-appointed counsel at no cost to them. Eligibility for obtaining court-appointed counsel is determined by specially appointed officials of the Superior Court. Court-appointed counsel may be drawn from the ranks of the Public Defender Service (PDS), a DC Government agency, or from members of the private bar who have registered with the court to provide such services.

The DC Public Defender Service (PDS) was created by Congress in 1970 as part of the general court reform activity of the time. Like PSA, PDS is an independent agency of the DC Government which reports to the judicial branch and acts as an agent of the court. In 1983, PDS attorneys represented 13 percent of all indigent defendants who had counsel appointed for them by the court to represent them in adult criminal, juvenile justice, or mental health commitment proceedings.<sup>30</sup> In the remainder of the indigency cases, private counsel was appointed under the authority of the Criminal Justice Act of 1974 (CJA), a federal statute, and compensated from government funds. Most defendants in DC are indigent and qualify for court-appointed counsel; in 1983, defendants who were represented by PDS attorneys or CJA attorneys amounted to almost 90 percent of all defendants.<sup>31</sup>

A pretrial release hearing in the District of Columbia is essentially an adversary proceeding between the defendant and defense attorney on one hand and the prosecutor on the other. After listening to both sides and reviewing PSA's report, the hearing commissioner makes a release decision. A release hearing usually takes only a few minutes in Superior Court.

Most arrestees (about 85 percent) in the District of Columbia are released pending trial, rather than detained in the DC Jail. Of these defendants, the majority (more than 80 percent) are released on some form of non-financial pretrial release.<sup>32</sup> PSA monitors compliance with any conditions of release imposed on defendants; this monitoring continues until a case reaches final disposition.<sup>33</sup>

Defendants who are found guilty and who are placed on probation are under the supervision of the Social Services Division of the DC Superior Court. As of the close of calendar year 1983, the Adult Probation Branch had approximately 10,000 cases under active supervision by a staff of 94 adult probation officers.<sup>34</sup>

Other correctional services in the District of Columbia are provided by the DC Department of Corrections (DCDC), an agency of the executive branch of the DC Government. DCDC operates the DC Jail ("Central Detention Facility"), located within the District of Columbia, as well as 10 minimum, medium and maximum security correctional facilities (prisons), all located approximately 20 miles from DC on a 3,600 acre tract in Lorton, VA. DCDC also operates approximately 10 halfway houses ("community corrections facilities") located in decentralized fashion throughout the District of Columbia and a Parole Supervision Division; these units supervise prisoners who have served time in confinement and are in the process of being reintegrated into the community.

DCDC is responsible for providing services and supervision to an average daily confined population of over 6,000 persons--approximately 2,000 of whom are in pretrial detainee status at the DC Jail--as well as to 2,600 active parolees plus over 500



halfway house residents.<sup>35</sup> The DC Jail and most of the 10 Lorton confinement facilities are operating under separate, judicially imposed population caps; each of these facilities faces a constant overcrowding crisis, with the Jail's situation being the most acute due to daily turnovers and a high volume of new admissions from the courts.

#### E. Mandate and Mission of the DC Pretrial Services Agency

The DC Pretrial Services Agency (PSA) is an independent agency of the DC Government and operates under a Board of Trustees consisting primarily of judges drawn from the branches of the local appellate and trial courts. It operates under enabling provisions of the DC Code.<sup>36</sup> PSA's threefold statutory mandate is to (1) interview all arrestees and otherwise gather and verify background information about them to assist the court in making pretrial release determinations; (2) make recommendations to the bail-setting magistrate about appropriate conditions of release; and (3) monitor compliance by defendants with court-ordered conditions of non-financial release. The Agency's governing statute provides that information gathered by PSA from the defendant as part of the initial lockup interview shall be inadmissible on the issue of guilt at trial or in any subsequent proceeding.

PSA--and its predecessor agency, the DC Bail Agency--has performed these functions for more than two decades and is widely viewed as a permanent and important component of the criminal justice system in the District of Columbia. The Agency has been publicly recognized on many occasions for its innovative approaches to addressing pretrial release issues. For example, in 1982, PSA was designated an "Exemplary Project" by the National Institute of Justice.<sup>37</sup>

In order to accomplish its mission, PSA is administratively organized into four main units, as follows:

- Pre-Release Services,
- Post-Release Services,
- Failure-To-Appear Unit, and
- Drug Detection Center.

Because the operations of the Drug Detection Center will be described in detail in the following section of this monograph, only the other three units are discussed below.

Pre-Release Services. In both the local trial court (the DC Superior Court) and the federal trial court (the US District Court for the District of Columbia), PSA prepares and submits a written report to the bail-setting magistrate on each arrestee.

The report is based on a personal interview with the defendant in the lockup in which personal history information (family, residence, employment status, physical and mental health, etc.) is gathered and then checked with references provided by the defendant for purposes of verification. Virtually all DC arrestees are interviewed by PSA. Also checked are the defendant's prior criminal record; present status with regard to probation, parole or other pending cases; and drug test results. Based on this information PSA prepares a two-part assessment of risk of (1) failure-to-appear; and (2) danger to the community. The report concludes with a recommendation on whether to release the defendant--and if so, under what conditions--and whether a defendant meets the statutory criteria for holding a preventive detention hearing. When PSA recommends release conditions for a defendant, those conditions are always tied to specific risk indicators and are designed to reduce the identified risks to acceptable levels.<sup>38</sup> Also, as a matter of Agency policy, PSA never recommends money bond as a release condition.

Post-Release Services. For defendants released by the court on some form of non-financial release, PSA conducts a post-release interview, at which time the conditions imposed by the court, if any, are reviewed; the defendant's next court date is reaffirmed; and the defendant's current address and telephone number are rechecked. Every subsequent scheduled contact that the defendant has with PSA, or fails to have, is entered into the Agency's computerized information system for later retrieval. Telephone call-ins and in-person check-ins by the defendant, as required by the court, are monitored and recorded. The unit monitors compliance with all other court-imposed restrictive conditions of release, including periodic drug testing and referral to drug treatment, and reports violations to the court. In aggravated instances of non-compliance, the unit recommends that the court convene "show-cause" hearings to consider modifying or revoking pretrial release. PSA staffmembers attend such in-court hearings and testify as required. The unit also prepares compliance reports for the court, upon request, as an aid in making an informed sentencing decision.

Failure-To-Appear Unit. While most pretrial releasees reappear for court as scheduled, a minority do not, causing calendaring delays and inconvenience to the court, attorneys and witnesses. The Failure-To-Appear Unit seeks to reduce the Metropolitan Police Department's warrant-serving workload by decreasing the number of bench warrants that have to be issued by the court for failure-to-appear. The Unit monitors the calendar control courtrooms of Superior Court to determine which pretrial releasees have failed to appear as scheduled and then attempts, first by telephone and later by mail, to contact defendants who have not appeared; ascertain the reasons for their failure-to-appear; and try to get the defendant to come in voluntarily either before or after issuance of a bench warrant. The Unit prepares a report to the court explaining the reasons for failure-to-appear and recommending changes in release conditions, if any. Many failure-to-appear are found to be inadvertent or

due to oversights by the system as opposed to wilfull omissions by the defendant. In such cases, the Unit is frequently able to produce the defendant and obviate or quash the bench warrant.

## II. DESCRIPTION OF PSA'S URINE-TESTING PROGRAM

PSA's Drug Detection Center began its comprehensive urine-testing effort in March 1984. As noted earlier, the urine-testing program carried out by the Drug Detection Center has two parts--drug testing of defendants shortly after arrest and monitoring of drug use during the pretrial release period. In addition, PSA performs special court-ordered urinalyses upon request by the court. All these operations are described below.<sup>39</sup>

### A. Program Operations

All defendants arrested in the District of Columbia, except those charged with federal offenses or with very minor infractions (such as traffic or municipal offenses), are tested for drug use shortly after their arrest. This test is conducted as part of the screening which PSA routinely performs to develop pretrial release recommendations. A urine specimen is collected in the court lockup from each defendant at approximately 7:00 AM; the tests are conducted in the court building by PSA staff; and test results are provided to the court at the pretrial release hearing later in the day.

The second part of the urine-testing program applies to drug-using defendants who are not currently in treatment and who are released before trial on condition that they report to PSA for participation in the urine-testing program. These defendants must report to PSA periodically (initially, at least once a week) for urinalysis. Continued use of drugs is a violation of pretrial release conditions and is reported to the court, which may impose sanctions for the violation.

A program of intensive urine-testing is also available for those defendants who have failed in the initial urine-testing program and do not wish to be referred for treatment. Intensive urine-testing requires the defendant to report twice weekly for urinalysis. The following subsections describe the procedures employed by PSA at each of these stages.

#### 1. Initial Urine-Testing in the Lockup

The initial determination of drug use is made, in most cases, while arrestees are held in the courthouse cellblock awaiting pretrial release determinations. Initially, defendants charged with misdemeanors and released on citations from police stationhouses were not tested for drug use. However, after the

first year of operation, the Superior Court's hearing commissioners began to request with increasing frequency that citation releasees also be tested for drug use when they first report to the courthouse for a scheduled court appearance.

In the cellblock, defendants are interviewed by PSA staff and questioned about residence, employment, health, criminal history, drug and alcohol use, and other pending court cases. This information is used by PSA in formulating pretrial release recommendations for use by the court. Since the establishment of the drug detection program, this information is now supplemented by urinalysis data showing whether samples of the defendants' urine, taken while in the cellblock, contain traces of selected illegal drugs. The EMIT (Enzyme Multiplied Immunoassay Technique) system of urinalysis is the one used by PSA.

The daily routine in the PSA drug detection laboratory begins at 6:30 AM, when a technician arrives to turn on the testing machines and to remove chemicals from the refrigerator. Set-up is usually complete by 7:00 AM. Interviewing folders and labels for the urine cups are prepared from the daily lock-up list, and when the Deputy US Marshals begin bringing the previous night's arrestees into the lockup, urine-testing begins.

Urine collection is conducted by PSA staff working in the cellblock, who, as part of the pretrial interviewing process, request that defendants provide urine specimens, with the results of the urinalysis to be used in setting conditions of release. Each defendant is given a plastic cup and a lid and asked to void at the cellblock urinal with a member of the PSA staff present and observing. Although compliance is voluntary at this stage on the part of defendants, relatively few defendants have refused to provide urine specimens.<sup>40</sup>

When the first batch of urine samples is collected, technicians hand-carry the specimens from the central cellblock to the laboratory, which is located on-site at the courthouse, for testing. Strict chain-of-custody procedures are maintained at all times.

Any sample which tests positive for a drug is retested, again using EMIT, to verify the finding. Test results on the first batch of lockup samples are ready for presentation to the court by 10:30 AM, when the day's first pretrial release hearings are held.

## 2. Periodic Urine-Testing As a Condition of Pretrial Release

Defendants who test positive for one or more drugs at the initial (lockup) screening may be ordered by the court into a weekly urine-testing program. It is the role of the PSA drug unit's intake workers to process and track those defendants who are scheduled for urine-testing each day. Tracking of appoint-

ments is now accomplished primarily through the use of computer-generated lists; however, prior to the availability of these lists, manual records were relied upon. The sheer volume of urine-testing made eventual automation of this recordkeeping function necessary. In addition, intake workers are responsible for providing each defendant with a written appointment sheet indicating the date of the next scheduled urine test, as well as explaining to defendants the sanctions they could face for non-compliance with program requirements.

When defendants appear for their appointments, intake workers obtain urine samples, using the same procedures as those employed in lockup testing. Test results are entered into PSA's computerized information system. If defendants fail to appear for scheduled urine-testing appointments during the pretrial release period, this information is also entered into PSA's information system. Defendants are considered to be in violation of the program's rules after (a) two consecutive positive drug tests; or (b) one positive test and one failure-to-appear in two consecutive weeks; or (c) three positive tests, or failures-to-appear, within a three-month period.

Defendants who fail the "regular" urine-testing program are given a choice of entering a drug abuse treatment program or entering a program of "intensive" urine-testing, run by PSA. Defendants who enter the intensive urine-testing program must report twice a week for urinalysis; if they fail to report or if they are found drug-positive a total of twice, they are considered to have failed intensive surveillance. At this point, PSA reports to the court that the defendant has violated the conditions of pretrial release. Thus, PSA's urine-testing program has a two-staged sanctioning process: first, PSA imposes internal administrative sanctions, by requiring the defendant to enter treatment or to report for more frequent urine-testing; then, if the defendant fails to comply with the enhanced program requirements, an official violation notice is sent to the court, along with a recommendation from PSA that a hearing be held to determine whether the defendant should be held in contempt of court.

Judges have reacted in varied ways to PSA's notices that defendants have violated their release conditions. Many judges report that they have held contempt hearings, with many defendants having been sentenced for contempt. Some judges will sentence the defendant to 30 or 60 days in jail for contempt of court but will suspend all but two or three days of the sentence. According to judges who use this approach, it provides an additional "hold" over defendants when they are subsequently released, because they know the balance of the suspended contempt sentence may be imposed if they continue to violate their release conditions in the original case by using drugs. Another approach is to sentence a defendant to one day of incarceration for contempt of court--a sentence that can be served in the court's lockup and so avoid the need to book the defendant into and out of the jail.<sup>41</sup>

### 3. Special Court-Ordered Urinalyses of Pretrial Releasees

On occasion, the court may request a "one-test," in which a urinalysis is conducted, without prior notice to the defendant, when he or she returns to court as scheduled for pretrial motions, plea entry, sentencing, etc. In these cases, samples are collected in the courtroom cellblock and processed according to the procedures for initial screening. The test result is taken directly to the requesting judge, usually within an hour of the request. If the test is positive for drugs, the judge may order the defendant into PSA's periodic urine-testing program.

Because of the reliability of PSA's testing program and the quick reporting to judges of test results and violations, the court has made an increasing number of requests for one-time tests when it suspects ongoing drug use by a particular defendant under its jurisdiction, as well as ordering a large number of defendants into the pretrial urine-testing program.

#### B. Program Implementation

In designing the pretrial urine-testing program, a number of decisions had to be made by PSA regarding logistical, operational and policy-related matters. Similar issues might likewise be faced by other jurisdictions attempting to install a similar drug testing unit. First, a number of policy questions had to be addressed, including determining the scope of the program, dealing with equity concerns and assuring the confidentiality of the urine-test results. After policy decisions were made, a variety of operational issues had to be resolved in the development of feasible program procedures that would pass legal muster and ensure the integrity and credibility of the program. Finally, a number of decisions involved logistics, for example, securing a suitable facility, staffing it and acquiring equipment for it. The following subsections describe how these various program implementation concerns were handled by PSA.

#### 1. Designing the Program--Goals and Purposes To Be Served

Washington, DC, unlike many other urban jurisdictions with a substantial crime problem, has historically experienced a high rate of pretrial release. Moreover, nonfinancial pretrial release--release on personal recognizance or release with nonfinancial conditions--has been ordered for the majority of defendants in recent years.<sup>42</sup> High rates of nonfinancial pretrial release are due in large part to the activities of PSA in gathering and verifying background information on defendants for the bailsetting judges to use; in fashioning release conditions reasonably related to the purposes of bail under DC law (to insure return for trial and avoidance of criminal activity while released); and in effectively monitoring conditions of release in individual cases and reporting violations to the court.

PSA's purpose in designing its pretrial drug testing program was twofold: (1) to provide a more reliable method (via lockup urine-testing) for the bail-setting judges to determine whether a given defendant had recently used drugs; and (2) to offer to the court a reasonable and reliable new condition of pretrial release--periodic urine-testing, monitored by PSA--for drug users in an effort to reduce the risk of failure-to-appear and the risk of pretrial rearrest for those defendants.

## 2. Start-up Problems

PSA had a number of special advantages that helped in overcoming the difficulties of actually putting a drug-testing program in place. As the testing program initially was funded by NIJ as a pilot effort, costs for the first two years of operation were assumed by the Federal Government. In addition, space in the DC Courthouse--space which had previously been used by the local drug treatment agency for a more limited program of urine-testing for heroin addicts only--became available for use by PSA for the new drug-testing program.

Moreover, the existence of an active pretrial services agency, within which the urine-testing unit would be housed, provided a ready framework for implementation. PSA embarked on the urine-testing program with personnel already in place and trained to conduct initial defendant interviews, to make recommendations to the court concerning conditions of pretrial release, and to monitor defendants' adherence to conditions of release. PSA also had a pre-existing computer capability and management information system, which was a major factor in the agency's ability to mount a comprehensive urine-testing program in a large urban jurisdiction in a relatively short time.

Even so, a number of logistical challenges arose. In large part, these were related to the unexpectedly large number of drug-positive defendants identified by the urine-tests and to the large number of drug-using defendants who were ordered by the court into the pretrial urine-testing program. This resulted in a much larger number of defendants reporting to the drug unit for periodic urine-testing than had been expected. The large number of urine-tests conducted required additional staff, equipment, supplies, and office space. These problems arose shortly after the program began. By mid-May of 1984--only three months into the program--the drug-testing unit was handling more than 100 defendants per day who were reporting for pretrial urine-testing. Floor space and facilities could not accommodate this level of traffic efficiently, especially at peak periods. Moreover, in such a crowded atmosphere, it was difficult to discuss confidential matters, such as positive test results, with defendants.

The problem of security was closely related to lack of space. When the drug unit became crowded, defendants could be found wandering through offices. The potential for violence,

especially from PCP users, combined with the potential for theft to create a serious security concern. After PSA raised these concerns with the Chief Judge of the Superior Court, a number of steps were taken by the Court both to alter and to expand space and facilities for the program. In addition, an alarm was installed in the Drug Detection Center's offices which would, if activated, alert the Court's security office to a potential problem.

### 3. Staffing the Drug Detection Center

Staff hired by PSA for the new drug detection unit initially consisted of a full-time director, seven laboratory technicians/intake workers, and a pretrial release officer. These persons received two types of training. First, like all PSA employees, they received a five-day orientation to PSA; this was designed to familiarize them with the Agency's overall mission, structure, staff and procedures and with the drug unit's role within the overall operations of the Agency. In addition, they received a special two-day training session about the drug unit; this focused on operation of the equipment and use of the reagents (i.e., the chemicals used to detect traces of drugs). Three laboratory technicians and the unit director also attended a special training course on urinalysis techniques, run by the manufacturers of the urinalysis equipment.

Although most drug unit employees were hired at the same time and received the same training, they were ultimately split into two teams, one responsible for the technical work of analyzing the urine samples and the other dealing with defendant intake. Had this eventual division of labor been foreseen, hiring and training might have been conducted somewhat differently--with more specialized training provided to each team. However, the comprehensive training of both teams did permit rotation of staff members within the unit. This was useful in alleviating the "burn-out" syndrome that afflicted employees in both teams as well as in dealing with any unusually heavy absences from a given team.

Because of the workload considerations described above, the drug detection unit eventually added five more intake workers and an assistant director as well as part-time employees who processed defendants during the afternoon, the peak workload period. A full-time court liaison officer was also added to the drug unit's staff, who processed violation notices, testified in court at "show-cause" hearings as to the nature of program violations by defendants, and worked with defendants in attempts to bring them into compliance.

Although the drug detection unit's director was experienced in implementing and operating a drug testing facility in a criminal justice environment, the laboratory technicians hired were not. Qualifications sought for those positions included a basic familiarity with laboratory techniques, knowledge about



drugs and drug abuse, experience or coursework in the fields of criminal justice or social work, and "street smarts."

Some persons take the view that laboratory technicians should be toxicologists who are specifically educated and trained in laboratory techniques and testing. However, because of the training program and certification process available from the company which manufactures the testing equipment, PSA agreed with the manufacturer that it was unnecessary to recruit and maintain a staff of professional laboratory technicians. In addition, because the new drug unit's director had extensive prior experience in drug testing, using the same type of testing techniques and equipment as PSA had installed, the need to maintain the services of a toxicologist on staff was further reduced. Moreover, calibration and retesting procedures in PSA's laboratory have been designed to minimize human error in the testing process. As a further check on the accuracy of its urine-testing procedures, PSA participates in a proficiency testing program and to date has always received a 100 percent accuracy rating.

#### 4. Managing Drug-Testing Information

PSA's management of drug testing information was facilitated by the fact that the Agency had an automated management information system (MIS) in place prior to the initiation of the drug testing program in March 1984. This MIS is widely regarded by other agencies and actors in the DC criminal justice system as one of the most accurate, comprehensive and up-to-date databases in the jurisdiction with regard to key data elements on defendants with active court cases. As a result of interviews conducted by PSA staff on all DC criminal defendants and the later telephone verification with outside sources of the particulars supplied by defendants in those interviews, within hours of arrest, PSA's MIS contains comprehensive information for each defendant on present offense charged; concurrent probation, parole or pretrial release status in other criminal cases; prior criminal history; community ties; employment status; and other personal history information.

With the advent of the PSA drug-testing program, the MIS was expanded to include the results of the initial lockup test, subsequent test results during the pretrial release period, a record of scheduled testing dates, and whether the defendant appeared or failed to appear for each such appointment.

As indicated earlier, PSA's enabling legislation (DC Code, Chapter 13) stipulates that information gathered from defendants by PSA for the purposes of assisting in setting conditions of release may not be used against the defendant in any subsequent proceeding. This broad restriction has been interpreted by PSA to cover urine-test results during the pretrial period. Consequently, the urine-test results cannot be used in the determination of guilt or innocence on the underlying charge, nor

can positive test results be used against a defendant who is arrested while on parole or probation that is conditioned on remaining drug-free.

Consistent with its statutory authorization, PSA places strict limits on access to test results, compliance information and drug program participation status. Using the principle of providing such information only on a need-to-know basis and with the defendant's consent, PSA provides such information only to the court, defense attorneys and prosecuting attorneys for their use in making pretrial release representations and decisions. PSA does not provide urine-test results to families of defendants, victims, witnesses, the police, or the media.

These limits that PSA has placed on who can be tested and who has access to testing results are considered key aspects of the program's success in achieving acceptability within the pretrial community as well as in withstanding legal challenges to the program. PSA has worked well with individual Superior Court judges, the prosecutor's office and police department, as well as probation and parole personnel, to gain their acceptance of PSA's interpretation of its statute with regard to confidentiality of information and the use of test results in the processing of those persons involved in the criminal justice system. As indicated earlier, this has been a critical facet of PSA's success in achieving acceptability in the local legal community.

##### 5. Testing Technology and Equipment Selected

At PSA, urine specimens are analyzed using urinalysis instrumentation called EMIT (enzyme multiplied immunoassay technique), an automated system combining the techniques of spectrophotometry and homogeneous enzyme assay. Although EMIT tests are not as sensitive as GC/MS (gas chromatography/mass spectrometry) tests, they are much less expensive. Moreover, EMIT technology is superior to many other drug detection techniques, including thin-layer chromatography (TLC), for identification of certain drugs.<sup>43</sup> EMIT tests are considered to be 97-99% reliable, depending on the specific drug test, according to the US Center for Disease Control (CDC). Judicial notice of this fact was taken recently in a lengthy written opinion by a judge of the DC Superior Court in the case of a procedural challenge to the general accuracy of PSA's test results.<sup>44</sup>

The EMIT technology combines two scientific procedures, homogeneous enzyme assay and spectrophotometry. Homogeneous enzyme assay involves the introduction of reagents--substances which produce certain chemical reactions--into a system in order to observe the effects. Spectrophotometry measures light absorption, and takes advantage of the principle that certain chemicals absorb certain amounts of light; by measuring absorption, one can determine the presence and quantity of certain chemical compounds.

Using the EMIT technology, then, specific reagents are introduced to a urine sample, causing a reaction and producing a compound. The amount of the compound produced is measured by the amount of light the solution will absorb, and indicates the rate of reaction. The rate of reaction reflects the presence or absence of the drug for which the test is being conducted.

The EMIT system is a semi-automated system having three components. A carousel measures the proper amounts of the urine samples and of the reagents and pumps them to the second component, the spectrophotometer, which actually detects the presence of drugs. The third component is a computer, which measures the readings and prints out a hard copy of test results. A single machine can process up to 65 tests per hour. Moreover, a single machine can be used to test for a variety of different drugs; however, these tests must be done for a single drug at a time, because different reagents must be used to test for the presence of each drug.

PSA is under extreme time constraints in the processing of arrestees' urine samples (e.g., samples that are collected starting at 7:00 AM must be analyzed in time for the results to be included in reports made to the court at bail-setting hearings held later that same day, starting at 10:30 AM). For this reason, PSA operates five EMIT units, one for each of the five drugs tested.

PSA's costs for reagents and related drug-testing supplies (e.g., calibrators, distilled water, wash solution, collection cups and caps, test cups, rubber gloves, etc.) average about \$7.00 per five-drug urinalysis. Additionally, each EMIT unit costs about \$16,000.<sup>45</sup>

#### 6. Chain-of-Custody and Defendant Identification Procedures

One of the central features of PSA's urine-testing program is its strict procedural safeguards, which ensure the integrity of the testing results. Two major components are critical--chain-of-custody procedures and defendant identification procedures. The adequacy of both components was challenged in a recent Superior Court case which raised a variety of procedural objections to the PSA program. The Court in US v. Roy carefully reviewed the PSA procedures and found them to be not only rigorous but also legally sufficient.<sup>46</sup>

The location of the drug detection unit--on-site at the DC Courthouse--and the rapid turnaround time between receipt of a sample and its testing are key ingredients in PSA's ability to insure a strict chain-of-custody over urine samples. Chain-of-custody considerations are also related to defendant identification concerns, since adherence to strict chain-of-custody procedures limits the possibility of "switched" samples. Such

procedures also help prevent the introduction into a urine sample of any substance (e.g., household cleanser) designed to "neutralize" drug traces.

The first step in PSA's careful chain-of-custody procedures in an individual case is that a member of the drug detection unit must be present to witness the voiding of urine. When the urine cup is returned by the defendant to the staff member, the defendant is handed a label displaying the defendant's name, personal identification number, lockup number and date. The defendant must verify this information and then place the label on the side of the cup and seal the container.

In order to maintain accountability at all times, the staff member who has observed the voiding of urine must certify that the defendant produced a sample and that the sample was accepted by the staff person, indicating all was in order. Once a batch of specimens has been collected at the cell lock, these are taken directly and without delay to the PSA laboratory, where procedures for logging in samples and certifying the test results (by the laboratory technician), are in place.

Under PSA's chain-of-custody rules, the sample is handled by as few persons as possible--in many cases, only the intake worker and the laboratory technician--and in as little time as possible, often only a few hours. This reduces the possibility of samples' being attributed to the wrong defendant. The longer the time between the taking and testing of a sample, and the larger the number of persons handling that sample, the greater the margin for error.

A number of strict procedures are also in place in PSA's drug detection unit regarding identification of a defendant. In the initial screening process, all defendants entering the lockup are given a wristband containing their name and personal identification number; this wristband is difficult to remove without the proper instruments. Thus, the wristband acts as a confirmation tool to identify the defendant and ensure that samples are attributed to the correct person. If a defendant is not wearing a wristband at the time PSA requests a sample, no sample will be accepted.

In the pretrial urine-testing program, where a defendant reports to PSA on a weekly or biweekly basis to give urine samples, he or she must again demonstrate positive proof of identity. If a defendant reports for urinalysis without picture identification or an appointment slip, no sample is taken. Instead, the defendant is asked to return later the same day with appropriate documentation. Likewise, if a defendant reports for urinalysis on the wrong date, no sample is taken. Rather, the defendant is told to report on the scheduled day.

Because of concerns regarding accurate defendant identification, PSA has considered several devices designed to facilitate this. These range from technology which immediately identifies persons on the basis of fingerprints to instrumentation which identifies persons on the basis of retinal configuration. However, to date, such devices have not been adopted in PSA's adult urine-testing program.<sup>47</sup>

### C. Concluding Remarks

In conclusion, PSA's urine-testing program is well-accepted by the criminal justice system in the District of Columbia (see, for example, Monograph No. 3, The Views of Judicial Officers, for comments by hearing commissioners and trial judges of the DC Superior Court about the program). There are several major reasons for this, as discussed previously; these reasons include the following:

- High-level criminal justice officials were very supportive of PSA's program. They were familiar with the ways in which urine-test results could be used, because widespread urinalysis screening of arrestees had been done in the District of Columbia, off and on, since 1971. However, no previous program was as systematic, comprehensive or responsive to the needs of the court as PSA's.
- PSA's program was carefully planned and implemented. Considerable attention was given to developing rigorous chain-of-custody procedures, determining the proper uses of urine-test results and acting to preclude other uses of them, training and educating PSA staff as well as other criminal justice practitioners about the program, and so on.
- Urine-test results at the time of arrest are used solely to determine conditions of pretrial release; they cannot be used to determine guilt or innocence on the instant charge or as evidence of probation or parole violation in another case. Similarly, urine-test results for defendants who are tested periodically as a condition of pretrial release can be used only to monitor compliance with release conditions; they cannot be used for other purposes. These limitations have obviated a variety of legal problems. The carefully constrained uses of the urine-test results from PSA's program has been a critical factor affecting the widespread acceptance of the program.

- The urinalysis technology used--the EMIT (enzyme multiplied immunoassay technique) system--has been objectively rated as having a high level of accuracy; moreover, the equipment does not require toxicologists to operate it. As a result, PSA staff were able to learn to use the equipment after only a short training period, and they consistently have provided the court with reliable test results.
- There are a series of sanctions, of increasing severity, that can be imposed on defendants who fail to comply with the urine-testing condition of pretrial release. The sanctions for failure in urine-testing in Washington, DC range from warnings through administrative sanctions, such as requiring more frequent urine-testing, to contempt of court. The most severe sanctions would be imposed only after a defendant had repeatedly failed to appear for testing or repeatedly tested positive for drug use.

## FOOTNOTES

1. DC Code §§ 23-1321 et seq.
2. Major findings from these studies are reviewed in several articles, including Robert P. Gandossy, et al., Drugs and Crime: A Survey and Analysis of the Literature (Washington, DC: US Government Printing Office, May 1980); Bernard A. Gropper, Probing the Links Between Drugs and Crime (Washington, DC: National Institute of Justice Research in Brief, February 1985); William H. McGlothlin, "Drugs and Crime," in Robert L. Dupont, et al., eds., Handbook on Drug Abuse (Rockville, MD: National Institute on Drug Abuse, 1979); Maxine L. Stitzer and Mary E. McCaul, "Criminal Justice Interventions with Drug and Alcohol Abusers: The Role of Compulsory Treatment," in Edward K. Morris and Curtis J. Braukmann, eds., Behavioral Approaches to Crime and Delinquency (New York City, NY: Plenum Press, in press); Jared R. Tinklenberg, "Drugs and Crime," in National Commission on Marihuana and Drug Abuse, Drug Use in America: Problem in Perspective, Appendix, Vol. I (Washington, DC: US Government Printing Office, 1973); James C. Weissman, "Understanding the Drugs and Crime Connection: A Systematic Examination of Drugs and Crime Relationships," Journal of Psychedelic Drugs, Volume 10 (1979), pp. 171-192; and Eric D. Wish and Bruce D. Johnson, "The Impact of Substance Abuse upon Criminal Careers," in Alfred Blumstein, et al., eds., Criminal Careers and "Career Criminals," Volume II (Washington, DC: National Academy Press, 1986).
3. Gandossy, et al., op. cit., p. 52.
4. Eric D. Wish, et al., An Analysis of Drugs and Crime Among Arrestees in the District of Columbia (Washington, DC: National Institute of Justice, December 1981), p. A-5.
5. Jan M. Chaiken and Marcia R. Chaiken with Joyce E. Peterson, Varieties of Criminal Behavior: Summary and Policy Implications (Santa Monica, CA: The Rand Corporation, August 1982), p. 16.
6. Peter W. Greenwood with Allan Abrahmse, Selective Incapacitation (Santa Monica, CA: The Rand Corporation, 1982).
7. William Rhodes, et al., Pretrial Release and Misconduct in the Federal District Courts (Washington, DC: Bureau of Justice Statistics, 1984); see also the Bureau of Justice Statistics Special Report, entitled Federal Offenses and Offenders: Pretrial Release and Misconduct, January 1985, which summarizes this study. An earlier study of federal defendants was conducted by Liese Sherwood-Fabre, An Experiment in Bail Reform: Evaluating Pretrial Release Services Agencies in Federal District Courts, unpublished

Ph.D. dissertation, Indiana University, 1984; this is also the Final Report of a National Institute of Justice Graduate Research Fellowship.

8. John C. Ball, et al., "The Criminality of Heroin Addicts When Addicted and When Off Opiates," in James A. Inciardi, ed., The Drugs--Crime Connection (Beverly Hills, CA: Sage Publications, 1981); and John C. Ball, et al., "The Day-to-day Criminality of Heroin Addicts in Baltimore: A Study in the Continuity of Offense Rates," Drug and Alcohol Dependence, Volume 12 (1983), pp. 119-142.
9. John Kaplan is among those who have argued that "coerced treatment" may be the best policy to pursue with regard to heroin addicts who are involved with the criminal justice system: "As compared with imprisonment, treatment is both economical and effective--not so much because our treatments are so enormously successful and cheap but rather because, as applied to heroin addicts, the usual processes of the criminal law seem to be singularly costly and ineffective. . . . If the addict commits six times as many property crimes when he is using heroin daily as when he is not, any means of preventing daily (or more accurately, compulsive) heroin use would reduce his criminality by five-sixths. Any treatment that costs less than five-sixths of the amount we pay for imprisonment might be, in terms of crime prevented, a better buy." John Kaplan, The Hardest Drug (Chicago, IL: University of Chicago Press, 1983), p. 225.
10. William H. McGlothlin, et al., An Evaluation of the California Civil Addict Program (Rockville, MD: National Institute on Drug Abuse, 1977), p. 2.
11. James J. Collins and Margret Allison, "Legal Coercion and Retention in Drug Abuse Treatment," Hospital and Community Psychiatry, Volume 14 (1983), pp. 1145-1149, as quoted in Wish and Johnson, op. cit. For more information on TASC programs, see Mary A. Toborg, et al., Treatment Alternatives to Street Crime (TASC) Projects, National Evaluation Program Phase I Summary Report (Washington, DC: National Institute of Law Enforcement and Criminal Justice, U.S. Department of Justice, February 1976). For related information about diversion of heroin addicts in the District of Columbia from the criminal justice system to treatment programs, see John P. Bellassai and Phyllis N. Segal, "Addict Diversion: An Alternative Approach for the Criminal Justice System," 60 Georgetown Law Journal 667 (1970); and John P. Bellassai and Michael J. English, The Case for the Pretrial Diversion of Heroin Addicts in the District of Columbia (Washington, DC: American Bar Association Special Committee on Crime Prevention and Control, 1972).



12. See the discussion in Mary A. Toborg and John P. Bellassai, Public Danger As a Factor in Pretrial Release: Summary, prepared for the National Institute of Justice, August 1986.
13. Kristen M. Williams, The Scope and Prediction of Recidivism (Washington, DC: Institute for Law and Social Research, July 1979), pp. 16-21. This study was based on data maintained by the Prosecutor's Management Information System (PROMIS) in the District of Columbia.
14. Eric D. Wish, et al., op. cit., p. 17. This study was based on data from the Prosecutor's Management Information System (PROMIS) and from the records of the city-wide drug abuse treatment agency, which conducted urine-testing of arrestees during the time period studied as well as provided treatment to drug users who were referred by the court or who otherwise sought treatment. Because urinalysis results were available only for 56 percent of the total sample, this analysis was limited to 3,982 persons; of those, 17 percent were identified by urinalysis as drug users.
15. Ibid., pp. 17-18.
16. Brian Forst and Eric Wish, "Drug Use and Crime: Providing a Missing Link," in Kenneth R. Feinberg, ed., Violent Crime in America (Washington, DC: National Policy Exchange, 1983), p. 91.
17. Wish, et al., op. cit., p. A-5. This analysis defines a drug user as any arrestee who had a positive urinalysis test result at any arrest during the six-year period studied.
18. Ibid.
19. Mary A. Toborg and Michael P. Kirby, Drug Use and Pretrial Crime in the District of Columbia (Washington, DC: National Institute of Justice Research in Brief, October 1984), p. 3. This study also found that failure-to-appear rates were higher for drug users than non-users (31 percent versus 21 percent).
20. Jeffrey A. Roth and Paul B. Wice, Pretrial Release and Misconduct in the District of Columbia (Washington, DC: Institute for Law and Social Research, April 1980), p. 58. This study, based on data maintained by the Prosecutor's Management Information System (PROMIS) for the District of Columbia, also found that drug users were more likely than non-users to fail-to-appear for court (see p. 57).
21. Toborg and Kirby, op. cit., p. 3. See also the full-length Final Report with the same title, submitted to the National Institute of Justice in March 1984, especially Table 23 of the Appendix.

22. Mary A. Toborg, Anthony M.J. Yezer, et al., Pretrial Release Assessment of Danger and Flight: Method Makes a Difference, report submitted to the DC Pretrial Services Agency, June 1984, pp. 83-84.
23. Roth and Wice, op. cit., p. 58.
24. Public Law 91-358, District of Columbia Court Reform and Criminal Procedure Act of 1970.
25. The District of Columbia Government, Indices: A Statistical Index to District of Columbia Services, June 1984, p. 103.
26. DC Code, Chapter 13, "Pretrial Services and Pretrial Detention," Sec. 23-1322.
27. Defendants ineligible for citation release are juveniles; any person ever convicted of an escape from jail; any person who has willfully failed to appear on bond or who has a pending charge of failure to appear; any person with an outstanding attachment, warrant, or detainer; and any person presently under the influence of narcotics or alcohol to the extent that an intelligent interview cannot be conducted. In addition to citation release, defendants may be released from the police station by posting the bond amount shown on the bail schedule for the offense charged. However, only about one percent of all defendants secure release in this way. Giannina P. Rikoski and Debra Whitcomb, An Exemplary Project: The DC Pretrial Services Agency, Washington, D.C. (Washington, DC: National Institute of Justice, U.S. Department of Justice, May 1982), pp. 22, 24.
28. The position of hearing commissioner was created in 1982 to ease the administrative burden on the trial judges of the Superior Court--much in the way U.S. magistrates function in federal district courts. Among other duties, they conduct bail-setting hearings, which in past years were presided over by the judges of the Court. Although they may accept guilty pleas, they do not sit in trials; jurisdiction over a criminal case typically passes to one of the judges then assigned to the Criminal Division of the Court after bail has been set and preliminary motions heard by one of the hearing commissioners.
29. The District of Columbia Government, op. cit., p. 101.
30. Ibid., p. 102.
31. Ibid.
32. Toborg, Yezer, et al., op. cit., Appendix G.
33. PSA does not monitor defendants released on surety bond; it has no statutory authority to do so.

34. The District of Columbia Government, op. cit., p. 105.
35. Budget Report of the Committee on the Judiciary of the Council of the District of Columbia, March 7, 1986.
36. DC Code, Chapter 13, "Pretrial Services and Pretrial Detention."
37. Rikoski and Whitcomb, op. cit.
38. See Toborg, Yezer, et al., op. cit., pp. 5-7, for more information on PSA's recommendation system.
39. This discussion applies to procedures in effect during the period of the research study; some procedures were changed subsequently.
40. A hearing commissioner or judge will occasionally order a defendant who refused in the lockup to provide PSA with a urine sample to report to PSA for a urine test as a condition of release.
41. Mary A. Toborg and John P. Bellassai, The Views of Judicial Officers, Monograph No. 3 in the series, Assessment of Pretrial Urine-Testing in the District of Columbia (Washington, DC: Toborg Associates, Inc., April 1987), pp. 5-6.
42. District of Columbia Pretrial Services Agency, 1985 Annual Report, published by the Government of the District of Columbia.
43. Eric D. Wish, et al., "Are Urine Tests Good Indicators of the Validity of Self-Reports of Drug Use? It Depends on the Test." Presented at the Annual Meeting of the American Society of Criminology, Denver, CO, November 1983.
44. US v. Phillip Roy, Crim. No. M-12098-84, Superior Court of the District of Columbia, Preliminary Order at pp. 6-7, 10-13 (issued Sept. 24, 1985, Burgess, J.); Memorandum and Final Order at pp. 3-5, 12-13 (issued October 6, 1986, Burgess, J.).
45. John A. Carver, "Drugs and Crime: Controlling Use and Reducing Risk Through Testing," NIJ Reports, SNI 199 (Washington, DC: National Institute of Justice, September/October 1986).
46. US v. Phillip Roy, supra note 44, at pp. 13-17, Preliminary Order, and pp. 5-7, Memorandum and Final Order.

47. The urine-testing program for juvenile respondents--also run by PSA--uses digitized photographs of the juveniles as an aid to accurate identification. These photographs are taken by PSA and stored electronically in a microcomputer.