

134276

**U.S. Department of Justice
National Institute of Justice**

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material in microfilm only has been granted by
Kentucky Corrections Cabinet

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

KENTUCKY CORRECTIONS CABINET



Secretary John T. Wigginton Special Report

October 1991

EMPLOYEE DRUG TESTING SURVEY

An important new issue facing public employers across the nation, including the Kentucky Corrections Cabinet, is drug testing for employees. This has become an issue because of the intrusion of drugs into nearly every aspect of American life. It is common knowledge that drug abuse is highly correlated with the criminal acts which are responsible for the incarceration of an ever-increasing number of people. Victims report that they believe their assailants were under the influence of drugs or alcohol in about 36.9% of violent crimes committed (BJS Data Report, 1984). It is incumbent upon Corrections professionals to assure the public that the very people who are entrusted to incarcerate, treat, and supervise convicted felons are themselves drug free.

THE NEED

The U.S. population consti-

tutes only six percent of the world population, yet it consumes approximately sixty percent of the world's illegal drugs (Washington State Drug Free Business, 1990).

U.S. Department of Labor, 1990). The quality of an organization's services depends upon clear thinking, productive employees. This is especially true for the Correc-

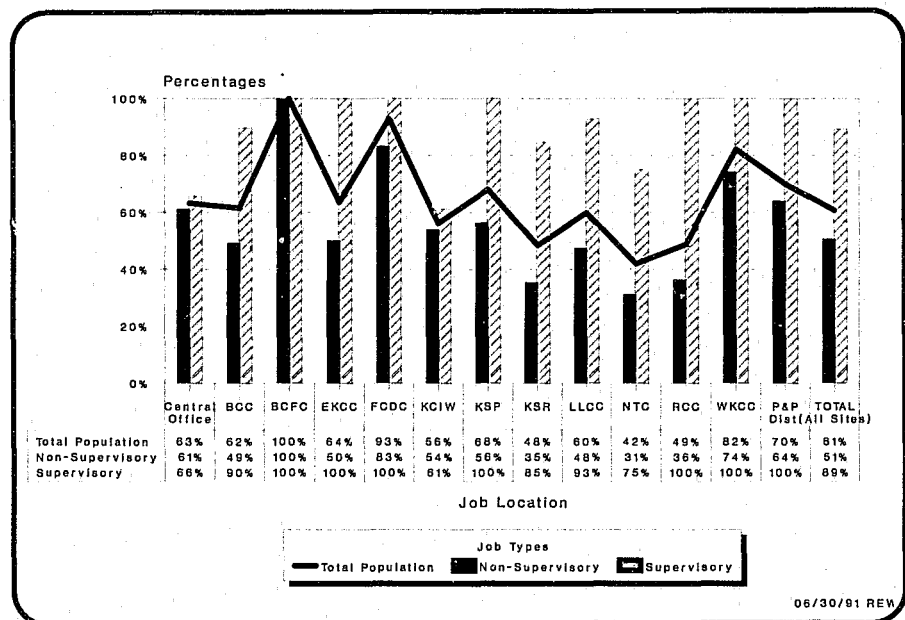


Figure 1: Percentage of Employee Responses

Each year drug abuse robs Kentucky of employee productivity. According to many experts, substance abusers have nearly triple the absenteeism of non-abusing employees, five times the workers' compensation claims, three times more accidents and three times more use of health care benefits (Workplaces Without Drugs,

tions Cabinet where the responsibility for the protection of the public exceeds that of most state agencies. Drug testing is a critical component in a total approach to confronting the substance abuse issue. Drug testing provides one means to decrease the impact of illegal drug use in the work environment. Drug testing, through its

deterrent effects, enhances the safety of employees, increases productivity and reduces lost time and health care costs. It symbolically indicates that employees are not

aiding in early identification and referral of abusing employees to treatment, drug testing helps to insure the health and safety of all employees. When properly ad-

searches is the standard by which courts measure the legality of drug testing in the workplace. The Federal Rehabilitation Act of 1973, while prohibiting employment discrimination against former drug abusers (by declaring drug addicts and alcoholics to be "handicapped"), specifically does not apply to employees whose drug use results in on-the-job impairment or affects the safety of the public or other employees. The Drug-Free Workplace Act of 1988 requires that all recipients of federal grants certify that they will maintain a drug-free workplace. KRS 18A.043 empowers the Commissioner of Personnel to implement regulations necessary to certify that the Commonwealth is in compliance with the Drug-Free Workplace Act of 1988. Neither that act nor KRS 18A.043 requires the initiation of a drug testing program. At the same time, they in no way preclude employers from conducting drug testing programs. While drug testing is legal, there have been legal challenges to specific drug testing programs. These challenges have involved issues of negligence, the right of privacy, freedom from unreasonable search, and seizure and due process. In each of these areas, courts have balanced the acknowledged intrusion, or search and consequent seizure of a bodily fluid, with the employer's need to know of employee drug use. Several factors need to be weighed in the balance before a drug testing program is instituted. These factors include:

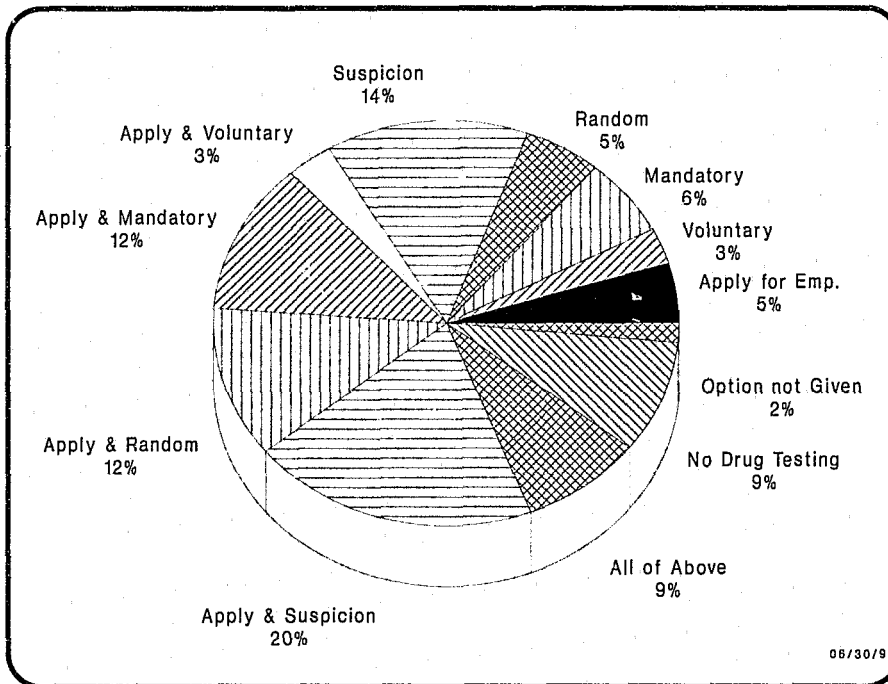


Figure 2: Timing and Circumstance of Drug Testing

drug dependent and are committed to "practicing what they preach."

In terms of appropriateness, drug testing may be conceptualized as similar to job-related physical examination. The evaluation of employees to determine fitness for duty is certainly not new. Physical examinations have long been performed to insure the selection of personnel free from medical conditions which would be likely to interfere with their ability to work safely and efficiently. By

ministered, a comprehensive drug testing program can also serve to prevent undesirable candidates from gaining employment and keep individuals who are on a probationary status from continued employment in Corrections' "safety sensitive" positions.

LEGAL ISSUES AND CONCERNS

The Fourth Amendment prohibition against unreasonable

- The hazardous or sensitive nature of the work performed
- The degree of regulation from federal and state authorities
- Public safety concerns
- The clear communication and consistent enforcement of drug testing policies
- The clear communication of the consequences of testing positive
- The use of valid and reliable testing procedures
- The use of a reputable laboratory
- The availability of a procedure for employees to contest the results of the analysis

Once these factors have been considered, a final issue needs to be addressed before making a decision to implement a drug testing program: employee input is important to consider in order for any program to be successful. In view of this final issue, the Kentucky Corrections Cabinet has sought input from all its employees through the use of a survey. The survey instrument consisted of twenty-six questions to determine:

- Employees' attitudes toward drug testing

- When the testing should take place
- The range of consequences for testing positive for both permanent and probationary employees

The survey also requested demographic information concerning job location (central office, correctional institutions, probation and parole offices), job type (supervisory, non-supervisory) and age groups.

participation was not mandatory, although it was strongly encouraged. Figure 1 illustrates the response rate for each location. The two smallest facilities, Bell County Forestry Camp (BCFC), and the Frankfort Career Development Center (FCDC) had the highest response rates. The lowest response rate occurred at the Northpoint Training Center (NTC), where only 42% of the employees responded to the survey. Locations with a response rate above the average of 61% include the Probation and Parole Districts

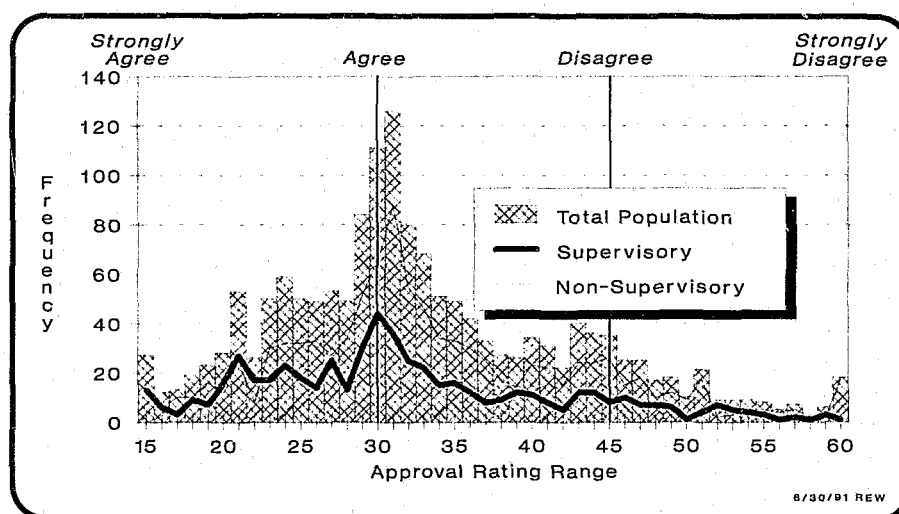


Figure 3: Drug Testing Approval Rating

RESULTS

The Respondents

The survey was sent to 2,913 employees of the Corrections Cabinet. Of these, 1,767 responded. This response rate of nearly 61% is gratifying given the fact that

(P&P Dist.), Western Kentucky Correctional Complex (WKCC), Kentucky State Penitentiary (KSP), Frankfort Career Development Center (FCDC), Eastern Kentucky Correctional Complex (EKCC), Blackburn Correctional Complex (BCC) and Central Office. Figure 1 also contains information pertaining to the different response rates for supervisory and

non-supervisory personnel by job location. The very last column in this figure shows the average response rate across all sites by job type; 89% of all supervisory personnel responded, whereas just 51% of non-supervisory personnel responded. Although this difference may not be surprising, it is significant that of the thirteen job locations, seven had a 100% response rate for supervisory personnel. Response rates for non-supervisory personnel ranged from 100% at the Bell County Forestry Camp (BCFC) to 31% at the North-

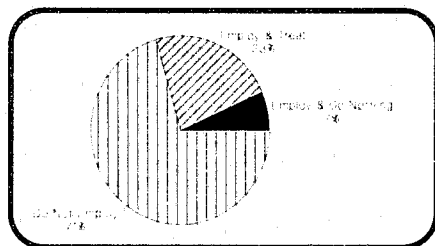


Figure 4: Job Applicant-Positive Drug Test results Personnel Action

point Training Center (NTC). Overall, the response rate to the survey was high enough to yield results which are generalizable to all employees of the Corrections Cabinet.

ATTITUDES TOWARD DRUG TESTING

One of the primary purposes of this survey was to measure employees' attitudes toward drug testing. Drug testing can be done at

TABLE 1

Personnel Type				
Supervisor (N=555)		Non-Supervisor (N=1007)		
Mean	SD	Mean	SD	F
31.83a	9.7	33.61b	9.6	12.09***

*** $p \leq .001$

NOTE: Means with the same subscripts do not differ at the .05 level or better by Scheffe's test for significant differences.

different points in the employment process, e.g. during the job application procedure, or as a component of the probationary period of

employment, or as a routine part of regular employment. In addition, testing may be mandatory or voluntary; it may be randomly administered, or administered to everyone, or administered only to those for whom some suspicion of drug abuse exists. Figure 2 clearly illustrates employees' opinions about the conditions and timing of drug tests. The categories which contain the word "apply" refer to applicants for employment. This pie chart shows that 3% of all respondents believe that job applicants should be able to volunteer to take a drug test, while 12% believe that applicants should be required to be drug tested. Another 12% believe that applicants should be randomly tested and 20% believe that applicants should be tested only if there is a suspicion that the applicant is a substance-abuser. An additional 5% believe

TABLE 2

AGE GROUPS									
Under 21 Yrs. (N=3)		21-29 Yrs. (N=302)		30-39 Yrs. (N=529)		40-49 Yrs. (N=470)		50 Yrs. & Older (N=274)	
Mean	SD	Mean	SD	Mean	SD	Mean	SD	Mean	SD
30.50a	13.4	34.05	9.3	34.32	10.2	32.70	10.0	29.57	7.6
12.41***									

**** $p \leq .0001$

NOTE: Means with the same subscripts do not differ at the .05 level or better by Scheffe's test for significant differences.

TABLE 3

JOB LOCATION																										
Central Office (N=103)		BCC (N=55)		BCFC (N=38)		EKCC (N=163)		FCDC (N=40)		KCIW (N=58)		KSP (N=225)		KSR (N=226)		LLCC (N=163)		NTC (N=110)		RCC (N=52)		WKFC (N=104)		P&P Districts (N=244)		F
Mean	SD	Mean	SD	Mean	SD	Mean	SD	Mean	SD	Mean	SD	Mean	SD	Mean	SD	Mean	SD	Mean	SD	Mean	SD	Mean	SD	Mean	SD	
34.6ab	9.6	31.5ab	10.9	33.2 ab	8.0	30.9ab	9.0	35.8ab	11.4	29.1ab	7.7	31.9ab	9.7	35.4a	10.2	32.4ab	9.2	30.1b	8.0	33.3ab	9.8	31.4ab	8.0	35.3ac	10.3	5.6****

**** $p \leq .0001$

NOTE: Means with the same subscripts do not differ at the .05 level or better by Scheffe's test for significant differences.

that drug testing should simply be a part of the application process. Thus, 52% of all respondents are in support of testing applicants for employment, although there is some difference of opinion concerning the conditions under which the test should be administered. Fourteen per cent of the respondents support drug testing for anyone who is suspected of substance abuse. Nine per cent are against drug testing in any form or under any circumstance and 3% believe that drug testing should be on a voluntary basis for all employees. The fact that only 9% of all respondents believe that there should be no drug testing indicates that the vast majority of employees support some form of a drug testing program.

Responses of the employees who favor drug testing for job applicants were examined more closely to determine their attitudes

about testing current employees. Thirty-eight per cent of the respondents who believe that job applicants or potential employees ought to be tested also believe that current employees should be tested, but only if suspicion of substance abuse exists. Fully 23% believe that current employees should be tested randomly and another 23% think it ought to be mandatory. Only 9% of those responding did not want to test current employees. Thus the vast majority of the employees who support drug testing of job applicants also support it for current employees, although conditions and circumstances under which they think the tests should be administered vary considerably.

All of the items in the survey which measure attitudes toward drug testing (question 5, 6, and 7 a-m) were constructed using a Likert type scale in which the responses

ranged from strongly agree to strongly disagree. Responses to these questions were subjected to a factor analysis which indicated that all fifteen questions were actually measuring one major factor. Thus all of these questions may be regarded as comprising a single scale which measures the attitude of employees towards drug testing.

Figure 3 shows the response frequencies for this scale. Each response was assigned a value: "Strongly Agree" = 1, "Agree" = 2, "Disagree" = 3, and "Strongly Disagree" = 4. Since there are fifteen items on this scale, the range of possible values is 15 (i.e. a respondent answered "Strongly Agree" to all fifteen questions) to 60 (i.e. a respondent answered "Strongly Disagree" to all fifteen questions). The right side of Fig. 4 shows the frequency of responses which strongly disagree with drug testing, whereas the left side shows

the frequency of responses which strongly agree with drug testing. Clearly the most frequent response categories were either agree or strongly agree with the testing program.

Figure 3 demonstrates that both supervisory and non-supervisory personnel support drug testing, although supervisory personnel approve more strongly of employee drug testing than do non-supervisory personnel. An analysis of variance (Table 1) of the

with the exception of those 21 years and younger. However, the very small sample size in the latter group (N=3) makes the stability of this particular result very doubtful.

Table 3 shows the drug testing approval rating by job location. Northpoint Training Center (NTC) has a significantly higher approval rating (M= 30.06) than the Probation and Parole Districts (P & P Dist.) and Kentucky State Reformatory (KSR) who had the two

RESULTING PERSONNEL ACTION

The majority (71%) of employees who responded to this survey believe that if a job applicant is positive on drug tests, he/she should not be employed (Figure 4). There are some respondents (23%) who believe that the person should be hired, but be required to receive treatment as a condition of their employment. Only 7% believe that the applicant should be hired anyway without any special condition for treatment.

Employees, as opposed to job applicants, can be divided into two groups: those on probation and those who are permanent. There appears to be a less tolerant attitude towards probationary employees who test positive than toward permanent employees. Figure 5 depicts the similarities and differences in attitudes toward probationary and permanent employees who test positively for the first time. The bar graph is constructed to show the differences between probationary and permanent employees as the personnel actions become more punitive. Thus the "No Action" category is the least punitive response and "Termination" is the most punitive. The most divergent attitudes, for employees who have a first time positive drug test results, can be seen in the three most severe actions that may be taken ("Mandatory

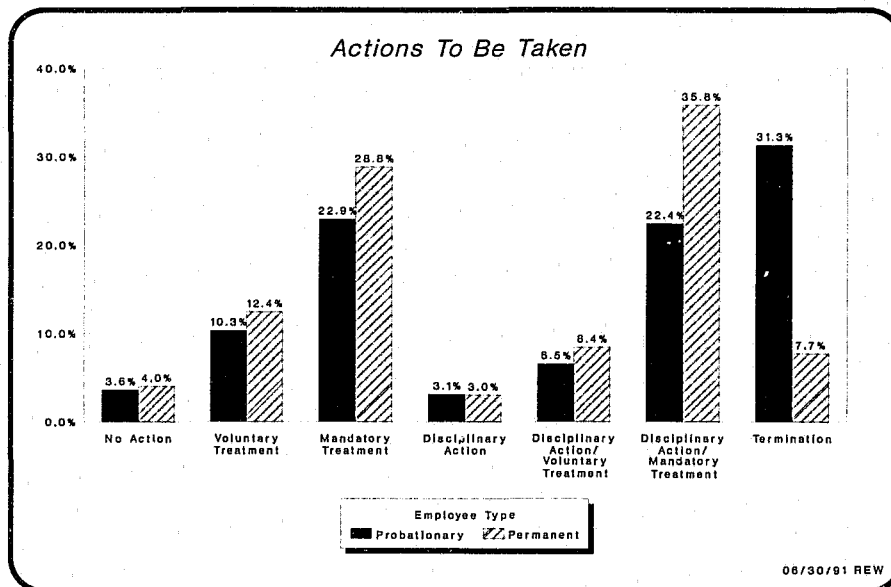


Figure 5: Actions To Be Taken For First Time Positive Test

difference between the approval ratings of supervisory and non-supervisory personnel indicated that the difference is statistically significant ($F=12.09$, $p \leq .001$).

Table 2 shows the drug testing approval rating of correctional employees by age group. Individuals who are 50 years and older are significantly more in favor of drug testing than any other age group,

lowest approval scores (M=35.41 and M= 35.25 respectively). Kentucky State Reformatory (KSR) and the Probation and Parole Districts (P&P Dist.) did not differ significantly from one another.

The testing process must include safeguards against errors and abuses.

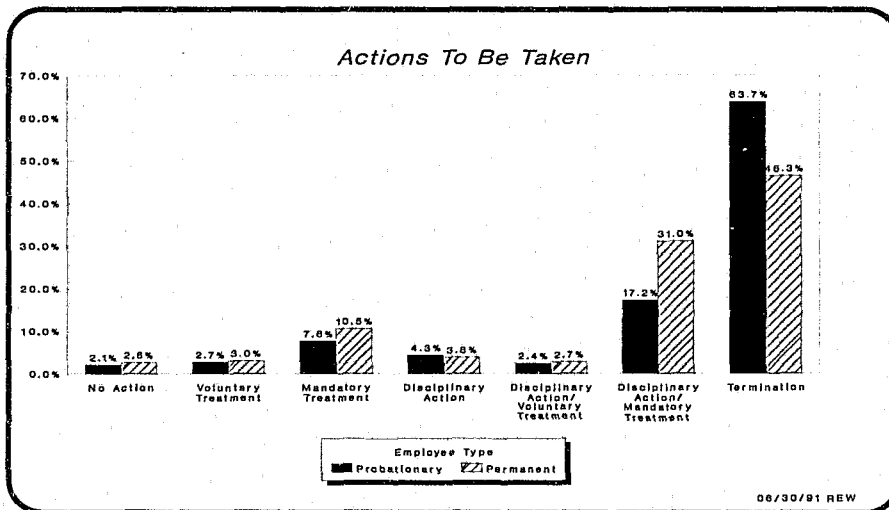


Figure 6: Actions To Be taken For Second Time Positive Test Results

Treatment”, “Disciplinary and Mandatory Treatment” and “Termination”). For permanent employees, respondents indicated that treatment and some discipline are appropriate for a first time positive drug test. Generally, there is a feeling that treatment, either voluntary or mandatory, is especially appropriate for permanent employees. This is not necessarily the case for probationary employees, however: while only 7.7% of the respondents believe that permanent employees should be terminated upon confirmation of the first positive drug test, fully 31.3% believe that probationary employees should be terminated.

Much less tolerance exists for a second positive drug test for either permanent or probationary employees, as illustrated in Figure 6. As can be seen, the most frequently endorsed response categories responses have shifted to the right of the graph, indicating more negative attitudes. However, respondents remain willing

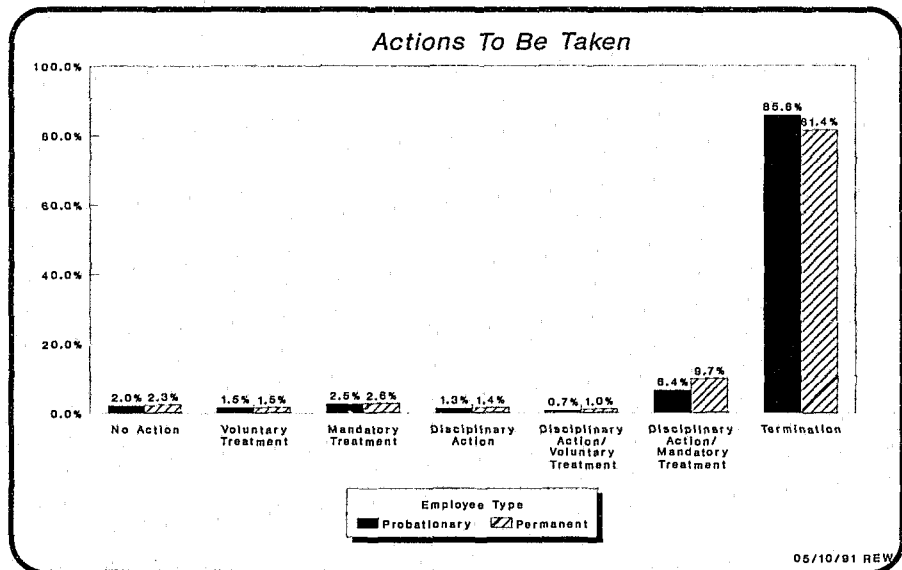


Figure 7: Actions To Be Taken For Third Positive Results

to give permanent employees more treatment options than probationary employees. Approximately 31% of the respondents believe that some disciplinary action and mandatory treatment should be required for permanent employees who test positive for the second time. Only 17.2% of the respondents believe that this same option should be afforded probationary employees. Without doubt

a second positive drug test is viewed negatively by the respondents: 63.7% believe a probationary employee should be terminated upon a second positive test and 46.3% believe a permanent employee should be terminated at this point. Thus, there is clearly less tolerance for second offenders whether they are probation or permanent employees. One difference in attitude toward permanent and probationary employees who have a second positive drug test

was found, viz., treatment is considered more frequently for permanent employees.

Figure 7 shows a dramatic change regarding what should happen to individuals who test positive for the third time. The distinction in outcome for permanent vs. probationary employees is virtually eliminated, and it is clear that respondents believe that employ-

ees, whether permanent or probationary, who test positive for a third time should be terminated. Fully, 85.6% of the respondents believe that a probationary employee should be terminated upon confirmation of a third positive drug test result and 81.4% believe this should also occur for permanent employees.

DISCUSSION

Drug testing is growing in both the public and private sectors. In 1987 alone, employers required 4.5 million Americans to submit to urine tests as part of their job requirement (Legal Issues in Drug Testing Probation and Parole Clients and Employees, NIC, 1989). In employee testing, the concern is procedural due process, (i.e. employee notification, chain of custody, test accuracy, and test confidentiality). The testing process must include safeguards against errors and abuses. Below are some measures that might well be considered when implementing a drug testing program.

1. Require all employees to be tested during their probationary period if they work in a "safety sensitive" position.
2. Avoid random mandatory testing of "safety sensitive" permanent employees.
3. Have a "reasonable suspicion" before testing a permanent employee. The only

instances when suspicion is not necessary are: a. when the test is in conjunction with a routine physical examination, and b. when the persons being tested are probationary employees.

4. Have a written policy that states the procedure to be used in testing, and what disciplinary actions will be taken in case of positive results.
5. Give every employee a copy of the Cabinet's policy on drug testing.
6. Confirm positive EMIT (Enzyme Multiplied Immunoassay Test) with another test (i.e. gas chromatography/mass spectrometry test).
7. Allow the employee to have further confirmation tests made at a lab of his own choosing (at his expense) if the Cabinet's initial tests are positive.
8. Maintain confidentiality of test results. Results should not be public information.
9. Use drug test results only for administrative purposes, not for initiating criminal charges.
10. Do not terminate a permanent employee immediately when positive results are

found; instead, refer employees to a drug treatment program (Legal Issues in Drug Testing Probation and Parole Clients and Employees, NIC, 1989).

Drug testing is not the only way the Kentucky Corrections Cabinet can help reduce illegal drug use by its employees. Some correctional agencies around the country are also providing drug abuse training for staff, either in-service or at the training academy. Of the correctional systems that have drug testing for its employees, 65% also provide staff training. Almost 35% of the systems that do not use drug testing provide a drug abuse training program (Employee Drug-testing Policies in Prison Systems, NIJ, Aug. 1988). As the incidence and prevalence of drug abuse in the U.S. have risen, many agencies have developed employment and in-service drug screening programs. As can be seen by the analysis of the results of the survey conducted by the Kentucky Corrections Cabinet, Cabinet employees clearly support a drug testing program. Such a program should help protect the health and safety of all employees through early identification and referral for the treatment of employees with drug abuse problems.

Copies of Secretary John T. Wigginton's Special Report on the Employee Drug Testing Survey are available from the Kentucky Corrections Cabinet, Office of the Secretary, 5th Floor, State Office Building, Frankfort, Kentucky 40601. Phone: 502-564-4726