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This Issue in Brief

Public Policy and Sentencing Reform: The Politics of Corrections.—Author Peter J. Benekos focuses on the politicalization of corrections and presents a public policy critique of correctional reform. As fear of crime and victimization have generated retributive rhetoric and get-tough crime control policies, the consequences of these policies—high incarceration rates and prison crowding—have now become their own public policy issues with critical implications for corrections. A review of one state's legislative reform efforts suggests that sentencing policies can be proposed with the get-tough rhetoric but are ostensibly more responsive to correctional needs, i.e., overcrowding and cost, than to the issues of crime, criminals, or crime control.

The Costliest Punishment—A Corrections Administrator Contemplates the Death Penalty.—According to author Paul W. Keve, the United States—going contrary to the general trend among nations—is maintaining its death penalty, with growing numbers of prisoners on its death rows, while at the same time showing a general reluctance actually to execute. Meanwhile, the public is mostly unaware that maintenance of the death penalty is far more costly than use of life imprisonment and has no proven deterrent effect. The author cautions that the interest in expediting executions by limiting appeals must be resisted because even with all the presumed safeguards, there are still repeated instances of wrongful convictions. He adds that the death penalty as respectful of the feelings of victim families is a defective concept because it actually puts families through prolonged anguish with the years of appeals and successive execution dates.

The Refocused Probation Home Visit: A Subtle But Revolutionary Change.—Home visits have historically been used in the control/law enforcement function of probation work, as well as in the treatment/service function. However, the current state of probation—dramatically affected by burgeoning caseloads, increased numbers of “difficult” clients, and emerging issues of officer safety—has made it necessary to rethink the concept of home visits. Now, many

agencies are limiting home visits to high risk cases and using such visits solely for control—an approach which may be consistent with a shift in probation practice towards a law enforcement orientation. In an article reprinted from the *Journal of Contemporary Criminal Justice*, author Charles Lindner looks at the

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The Federal Demonstration Program of Mandatory Drug Testing

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ON NOVEMBER 18, 1988, the President signed into law the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690. Section 7304 of the Anti-Drug Abuse Act of 1988 required the Director of the Administrative Office of the United States Courts to establish a demonstration program of mandatory drug testing of criminal defendants in eight Federal judicial districts. The program began January 1, 1989. To the extent feasible, drug testing was to be completed prior to the defendant's initial appearance before a judge or magistrate judge, and the results of the test were to be included in the pretrial services report presented to the judicial officer.

The legislation further provided that, for felony offenses occurring or completed in each of the judicial districts in the demonstration program on or after January 1, 1989, it was to be an additional, mandatory condition of probation or supervised release that defendants refrain from illegal use of any controlled substances and submit to periodic drug tests for use of controlled substances at least once every 60 days.

Implementation of Drug Testing Prior to a Defendant's Initial Appearance

Implementation of drug testing prior to the pretrial services hearing was a radical proposition at the time of implementation of the Act. While it took several months to implement the proposal, pretrial testing prior to initial appearance was a reality in all eight districts within 6 months of the effective date of the Act.

Pretrial services officers and assistants quickly gained expertise in the operation of the drug testing equipment. Chain-of-custody procedures were followed throughout the demonstration districts. The pretrial services officers in the participating districts completed the majority of their urinalyses in sufficient time to include the results in the pretrial services report. To assess compliance with this aspect of the law, the Probation and Pretrial Services Division, Administrative Office of the United States Courts, interviewed 34 magistrate judges in the districts that conducted on-site pretrial testing.

The judicial officers interviewed indicated that in the vast majority of cases the pretrial services officers

included the results of the drug tests in the reports, provided the defendant consented to the test. Several judicial officers indicated willingness to delay hearings to facilitate the inclusion of the urinalysis results in the pretrial services reports. Generally, there was a good working relationship between the courts and pretrial services offices which facilitated the testing of defendants prior to their initial appearance before judicial officers.

There were no formal challenges in the demonstration districts to the legality of the pretrial services urine testing program. This may have been because defendants were permitted, during the pilot program, to refuse to be tested. Most defendants who subsequently tested positive had admitted their drug use prior to the testing procedure.

There were 17 formal challenges in district courts to the reliability or validity of the urine testing results in the pretrial phase. Those challenges attempted to discredit the methodology employed, as opposed to a challenge of the individual results in a particular case. None of the challenges has been upheld. Pretrial services staff members are confident about the accuracy of the test results.

Most demonstration sites reported an increase in drug supervision caseloads as a result of the demonstration testing program. The use of available treatment resources also increased, apparently as a direct result of the drug testing program. Defendants who tested positive for illegal drug use were often given the opportunity to enter treatment programs. There were few revocations of bail in the course of the demonstration project: Violations of the conditions of release most often resulted in modification of release conditions.

Pretrial Services Testing Methodology

Of the various on-site testing methodologies which were available, the Probation and Pretrial Services Division selected the immunoassay technique. This method was selected because it was the premier on-site testing methodology available; it had been widely used in similar criminal justice applications by other jurisdictions.

The quality of the testing methods employed in the demonstration project had been examined in a study

prepared by the National Institute of Justice and the Bureau of Justice Assistance, "A Comparison of Drug Testing Technologies." The primary objective of that study was to compare the accuracy of four routinely used analytical procedures for detecting drugs of abuse in urine, using gas chromatography/mass spectrometry (GC/MS) as the control test. The four procedures examined were three immunoassay methods (including the enzyme immunoassay method employed by the project) and thin layer chromatography. The study analyzed both false positive and false negative accuracy problems.

False positive results occur when the screening at the local office indicates a positive result which is not later confirmed by the GC/MS technology. A false negative result occurs when the local screening process yields a negative result and the GC/MS technology identifies the presence of drugs in the urine. In the pretrial phase of the demonstration project, the incidence of false positive results was more serious than that of false negative results: False positive results could have adverse consequences for a defendant who in fact was not using illegal substances.

The three methods of immunoassay tests were found by the study to be of equal quality, and all three were found to be superior to the thin layer chromatography method.

The following table shows false positive and false negative results for the equipment employed in the demonstration project for five of the six drugs for which screening was done.

TABLE 1. FALSE POSITIVE AND FALSE NEGATIVE RESULTS FOR THE EQUIPMENT EMPLOYED IN THE DEMONSTRATION PROJECT

Illegal Substances	% of False Positive Results	% of False Negative Results
Opiates	2	17
Cocaine	2	23
Marijuana	2	29
PCP	2	21
Amphetamines	2	2

The Probation and Pretrial Services Division maintained its own quality control program through a contract with a recognized toxicology expert. The program consisted of visits to the 14 demonstration testing locations to monitor the implementation of policies and procedures and the processing of test samples containing known quantities of drugs. Overall, the results indicated that the eight probation and pretrial services offices participating in the pretrial phase of

the demonstration project were properly operating drug testing programs.

The initial screen performed was the same for pretrial services defendants at all sites. The initial screen tested for the presence of six drugs: amphetamines, benzodiazepines, cannabinoids, cocaine, opiates, and phencyclidine. In the pretrial phase, any positive results were retested on the on-site equipment prior to the defendant's initial appearance. Any contested positive results were sent for confirmation to the contract laboratory.

In the post-conviction phase, all initial screens and confirmations were performed by the contractor. The initial screens included amphetamines, benzodiazepines, cocaine, opiates, and phencyclidine. At the request of the officer, tests were conducted for a wide variety of additional drugs, including cannabinoids.

Statistical Results from the Pretrial Services Phase of the Demonstration Project

The first of 13 pretrial services testing sites in the eight districts became operational on March 6, 1989. All 13 sites were operational as of May 3, 1989. An additional site, Fort Myers in the Middle District of Florida, began testing on October 1, 1990. As of December 31, 1990, a total of 8,162 urine samples had been tested prior to the first appearance of the defendant in court, and a total of 2,491 (31 percent) had tested positive for the presence of at least one drug. The number of defendants tested in each district, and the number of defendants who tested positive, are shown in the following table:

TABLE 2. PRE-INITIAL APPEARANCE TESTS AND RESULTS

District	Defendants Tested	Defendants Positive	Percentage
Arkansas E	375	148	40
Florida M	1,464	403	28
Michigan E	928	283	31
Minnesota	687	188	27
Nevada	653	158	24
New York S	2,440	950	39
North Dakota	271	65	24
Texas W	1,344	296	22
Totals	8,162	2,491	31

Defendants Who Refused to Participate

One of the major concerns in establishing a system of drug testing prior to the initial court appearance of defendants in criminal cases was whether a system of mandatory testing might implicate defendants' consti-

tutional rights. To avoid this issue the Administrative Office of the United States Courts established a policy which permitted defendants to refuse to be tested. The following table reflects the number and percentage of defendants who declined to submit to drug testing in each district.

TABLE 3. DEFENDANTS DECLINING TO SUBMIT SPECIMEN PRIOR TO INITIAL APPEARANCE

District	Defendants Tested	Defendants Declined*	Total	Percentage
Arkansas E	375	20	395	05
Florida M	1,464	244	1,708	14
Michigan E	928	813	1,741	47
Minnesota	687	107	794	14
Nevada	653	87	740	12
New York S	2,440	129	2,569	05
North Dakota	271	19	290	07
Texas W	1,344	441	1,785	25
Totals	8,162	1,860	10,022	19

*This number does not include defendants who were not tested due to their unavailability or those unable to submit samples.

In all but two districts, the majority of defendants were cooperative with the process, and thus refusals were limited. The largest number of refusals occurred in the Eastern District of Michigan where 813 (47 percent) of the 1,741 defendants refused to submit a urine sample. In that district the Federal public defender expressed the belief that having the defendant refuse to be tested created less of a negative impression on the judicial officer than having the defendant test positive for use of illegal substances.

The other district with a higher-than-average rate of refusals was the Western District of Texas. In that district, 441 (25 percent) of 1,785 defendants refused to participate in the program. The Western District of Texas conducts pretrial services drug testing in two of its seven locations. The majority of refusals occurred in the El Paso office. The chief pretrial services officer advised that in his opinion the number of refusals in that office was due to the officers' belief that the testing was an imposition on the defendant. A more effective presentation of the testing program to the defendants might have decreased the rate of refusal.

There was a higher incidence of refusal in the second year of the demonstration project than in the first. During the first year the overall refusal rate was 13 percent. During the second year the refusal rate was 23 percent, for a combined rate of 19 percent. While the rate of increase varied, in seven of the eight dem-

onstration districts the refusal rate increased in the second year of the project. The eighth district, Arkansas Eastern, maintained a 5 percent refusal rate throughout the 2-year period.

Drugs Identified Among Pretrial Defendants

The most frequently identified drugs as determined by the test results, for defendants in the initial appearance aspect of the demonstration project, were cocaine and marijuana. One of the more interesting aspects of the drug use pattern was the very high incidence of multiple drug use; some defendants tested positive for two, three, and even four different drugs when they were arrested. Overall, cocaine was used more frequently than any other substance by those tested in the demonstration project. In six of the eight districts, however, marijuana was the most frequently used illegal substance. The reason cocaine appeared to be the drug of choice for the entire program is that its use in the Southern District of New York was so substantial that it outweighed the six districts where marijuana was the predominant drug.

There was also a change in the pattern of drug use from the first year to the second year of the project. In the first year, cocaine was the primary drug in seven of the eight demonstration districts. In the second year, marijuana was the most frequently identified drug in six of the eight demonstration districts.

Many defendants tested positive for more than one drug. Table 4 shows the frequency of positive results received for the six drugs for which the demonstration project tested.

Tests for Persons Released on Pretrial Services Supervision

Although drug testing as a condition of pretrial release was not specifically addressed in section 7304, the availability of on-site urinalysis equipment has made that condition an obvious one to be set in appropriate cases by magistrate judges. Table 5 presents the numbers and percentages of positive urinalysis results for defendants under pretrial services supervision. The numbers presented in the table are based on tests performed and not on the number of defendants under supervision. Thus the positive results reported could include several positive tests involving the same defendant.

Policies regarding reaction by pretrial services officers and by judicial officers to positive test findings varied from district to district. In general, positive test results prompted more frequent testing and increased actions by the supervising officer, including more frequent counseling and referral to a substance abuse treatment agency. Where these techniques were successful, officers did not, in general, call upon

TABLE 4. DRUGS IDENTIFIED AT THE INITIAL APPEARANCE STAGE

District	Positives	A	B	CA	CO	O	P
Arkansas E	148	22	21	82	69	6	3
Florida M	403	44	58	205	156	28	3
Michigan E	283	28	34	126	130	48	0
Minnesota	183	22	16	89	69	13	0
Nevada	158	17	26	82	58	9	3
New York S	950	61	59	280	714	157	17
North Dakota	65	11	7	45	4	5	0
Texas W	296	41	32	170	96	33	1
Totals	2,491	246	253	1,079	1,296	299	27

Legend

A - Amphetamines	CO - Cocaine
B - Benzodiazepines	O - Opiates
CA - Cannabinoids	P - Phencyclidine

TABLE 5. TESTS FOR PERSONS RELEASED ON PRETRIAL SERVICES SUPERVISION

District	Tests	Positives	Percentage
Arkansas E	2,750	518	19
Florida M	6,692	953	14
Michigan E	967	468	49
Minnesota	3,277	509	16
Nevada	2,225	324	15
New York S	3,866	1,013	26
North Dakota	410	59	14
Texas W	933	226	24
Totals	21,120	4,070	19

judicial officers to hold hearings. This is consistent with court policies which allow pretrial services officers to employ discretion in reporting bail violations to judicial officers.

Similarly, judges and magistrate judges have demonstrated varied responses to notification of positive test results, ranging from directions for increased screening or treatment to bail revocation. The reader will note a number of instances in which no court action was taken in response to a report of a positive test result. Judicial officers reported they were generally satisfied with the availability of treatment resources and increased officer actions to control drug abuse.

Effects of Drug Testing on Pretrial Release and Detention Rates

When the Probation and Pretrial Services Division first undertook the implementation of the demonstration project there was some concern that pretrial testing might have a negative effect on pretrial release and might increase detention rates. In an effort to determine whether or not there was any such effect the Division has compiled the following data on initial release and detention rates for the eight demonstration districts. The data compare the 12-month time periods ending December 31, 1987, and December 31, 1988, prior to the implementation of the project, with the 12-month periods ending December 31, 1989, and December 31, 1990.

While there was concern that detention would increase, it was also anticipated that drug testing might reduce detention because judicial officers with definitive information about whether or not a particular defendant had a substance abuse problem could then set specific conditions to address that risk.

As table 6 demonstrates, the demonstration project had virtually no apparent effect on initial appearance release or detention rates for the eight districts involved in the demonstration project. While the rates fluctuate, the changes do not correspond to the advent of testing in early 1989. The data in the table are cumulative for all eight districts. Each district was analyzed individually, and none showed any significant change in rates of release or detention at the initial appearance.

Demographic Data on Defendants Participating in Initial Appearance Testing

The following information has been compiled by employing the national pretrial services data base. By entering unique characters in the docket number we were able to access those defendants who have participated in the demonstration project. The national pretrial services data base contains such information as defendant demographics, release or detention status, and pretrial release violations.

The application of the national pretrial services data base to the demonstration project presents some problems. The most significant problem is the limited universe of cases for which data are compiled. Those limitations include the following: The system does not compile data on probation violations, on unlawful flight to avoid prosecution cases, on cases arising from warrants issued in Washington, DC but subsequently arrested in another Federal district, or on persons subject to writ who are brought before Federal judicial officers.

The net effect of the limitations was that the demographic data were based on 246 fewer cases than the

TABLE 6. RELEASE AND DETENTION AT THE INITIAL HEARING
IN THE EIGHT DEMONSTRATION DISTRICTS

Year	Active Cases	Released	Unable to Post Bail	Temporary Detention	Held for Detention Hearing	Pled Guilty	Bail Not Set
1987	5,796	59.2	7.2	5.9	25.5	.2	2.0
1988	7,209	48.8	8.1	3.2	29.6	9.3	1.0
1989	7,778	48.9	7.6	3.4	32.3	6.6	1.2
1990	9,377	43.7	5.6	3.3	29.1	.6	17.7

8,162 for which urinalysis tests were conducted. Given the number of cases which were reported, the shortfall had little effect. In addition, the following discussions are based on raw percentages and have not been subjected to any statistical tests of significance.

For purposes of the demonstration project we were very interested in the relationship between the offense charged, specifically drug versus non-drug offenses, and the test result. Those charged with drug offenses were more likely to test positive (39 percent) than those charged with a non-drug offenses (21 percent).

During the pretrial services interview individuals are questioned about substance abuse problems. The data demonstrate that some individuals who admitted to drug abuse problems did not test positive, and those who denied substance abuse problems in fact tested positive. Of the 2,417 defendants who admitted to a substance abuse problem 57 percent tested positive. Of the 5,329 defendants who denied substance abuse problems 16 percent tested positive. These data suggest that while drug testing is a useful tool, in that it identified drug users who would not otherwise have been identified, it is not a panacea, since it would have failed to identify 1,033 defendants with documented substance abuse problems; thus pretrial services officers need to continue to question defendants about drug abuse and employ all other available means to identify drug use in defendants they investigate.

One area which has received a significant amount of attention in the literature is the relationship between drug use and prior criminal activity. The data in the demonstration project showed that individuals with prior arrests and convictions were more likely to test positive (36 percent) than those with no prior criminal record (23 percent). Those with prior drug offenses tested positive 47 percent of the time. Defendants with pending matters, meaning they were either on probation, parole, or pretrial release for prior offenses, tested positive 37 percent of the time.

One of the more interesting, although somewhat predictable, demographic categories was education. As education levels went up drug use went down.

Those defendants who had less than a high school diploma or GED were positive 34 percent of the time. Those who completed high school or an equivalency were positive 31 percent of the time. Defendants who had college credits were positive 24 percent of the time, college graduates were positive 18 percent of the time, and those with post-graduate work were positive 12 percent of the time.

The remaining major demographic variables showed expected trends. Males tested positively (30 percent) more frequently than females (26 percent). Defendants who were unemployed tested positive (32 percent) more frequently than those who were employed (27 percent). The variable of age showed some interesting results with those defendants 25 to 34 showing the highest positive rate at 34 percent, followed by those 22 to 24 at 32 percent, those under 22 at 29 percent, and those over 35 at 24 percent.

The data indicate that while use of illegal substances is higher in certain demographic groups, it is a problem which appears in every demographic category.

Statistical Results From the Post-Conviction Phase of the Demonstration Project

Post-conviction testing was undertaken in 32 sites in the eight demonstration districts. Table 7 depicts the number of defendants entering the post-conviction phase of the program and the results of their tests. The population consisted of 718 persons who were convicted of felony offenses committed or concluded after January 1, 1989.

Of the 718 defendants in the post-conviction phase of the project, 2 died while on supervision and 9 were deported. Both deaths and the majority of the deportations occurred prior to post-conviction testing.

Drugs Identified in the Post-Conviction Phase

Of the 718 defendants in the population, 91 submitted positive samples. Probation officers took a total of 4,979 tests and received positive results on 248 (5 percent) of those samples. Almost half of those posi-

TABLE 7. POST-CONVICTION TEST RESULTS

District	Number of Eligible Offenders	Number of Tests	Number of Positives	% of Tests Positive
Arkansas E	40	124	11	09
Florida M	136	1,294	23	02
Michigan E	64	342	20	06
Minnesota	51	236	27	11
Nevada	56	373	15	04
New York S	166	772	112	15
North Dakota	47	685	13	02
Texas W	158	1,153	27	02
Totals	718	4,979	248	05

tives, 112 (45 percent), were collected in the Southern District of New York. None of the other districts approached the Southern District of New York's rate of positives. Next were the Western District of Texas and the District of Minnesota which both had 27 positives.

Of the 248 positive tests, 24 were positive for more than one drug. As with the pretrial services phase, the most samples, 130, were positive for cocaine, again due to the high volume of cocaine positives in the Southern District of New York. The second most frequently used substances were opiates, primarily morphine and codeine, which accounted for a total of 71 positives. Of the remainder, 38 were positive for benzodiazepines, 33 were positive for marijuana, 2 for barbiturates, and 1 each for amphetamines and PCP. (In the post-conviction phase, unless the supervising probation officer requested a marijuana test from the laboratory, it was not performed.)

One of the most interesting results of the post-conviction phase of the project was the small number of positives. Of the 4,979 tests conducted, only 248 (5 percent) were returned positive. There are two possible explanations for this outcome: The pretrial phase of the project may have been successful in deterring the majority of defendants from using drugs while they were under supervision; in the post-conviction phase of the project a number of individuals may have been tested for whom testing was not necessary.

To determine the efficacy of post-conviction testing of all felony offenders under supervision would have required an experimental and control group model. This approach was not authorized by the Anti-Drug Abuse Act of 1988 and was not employed. The report will attempt to address these issues below.

Response to Post-Conviction Supervision

One of the more interesting questions which needs to be addressed is how well defendants performed

under supervision and whether or not there was a relationship between use of drugs and response to supervision. However, the data available for such analysis are limited. At the end of the first year there were only 116 offenders in the post-conviction phase of the project; thus most of the 718 defendants in the post-conviction phase have been supervised for less than 1 year. Therefore, the failures are too infrequent for any meaningful analysis.

Of the 718 offenders in the project, 15 (2.1 percent) had their supervision revoked, and 31 (4.3 percent) had violations pending before judicial officers. Those violations included absconding, rearrest, and drug use. Forty-six offenders (6.4 percent) faced formal charges of violating their supervision.

Of the 46 with formal violations pending, 14 offenders submitted a total of 49 positives. Since the 49 positives account for 20 percent of the 248 positives, and the defendants with formal charges pending accounted for only 6.4 percent of the population of 718, the possibility exists that there is a relationship between the use of drugs and the response of supervision. However, insufficient data inhibit any reliable conclusions.

Comparison of Offenders for Whom Drug Abuse Treatment Was a Condition of Supervision and Those for Whom Treatment Was Not a Condition

In an effort to assess the worth of testing all offenders, the Probation and Pretrial Services Division created a quasi-experimental design based on whether the court ordered the offender to participate in drug abuse treatment as a condition of post-conviction supervision. The rationale was simple. Since the judicial officers felt that these offenders (in addition to being tested) should submit to drug abuse treatment, they would have been tested whether or not Congress passed the law mandating testing of felony offenders. Therefore, they constituted a comparison group.

Of the 718 offenders, drug abuse treatment was ordered in 248 cases (35 percent). This category of offenders with drug abuse treatment conditions did not include those offenders for whom the judge set only alcohol abuse treatment as a condition of supervision. The remaining 470 did not have drug abuse treatment as a condition of post-release supervision.

When the two groups are compared, several distinctions become evident. Offenders who did not have a drug abuse treatment condition accounted for 65 percent of the population but only 50 percent (2,490) of the tests taken. Thus they were tested less frequently than those defendants who had a drug abuse condition, following the testing guidelines previously established by the Administrative Office of the United States Courts.

The data indicate that persons with drug abuse conditions are more likely to test positive, since 23 percent of those defendants tested positive while only 7 percent of those without drug abuse conditions tested positive. The data suggest that the expansion of testing to those defendants without drug abuse conditions, which in effect is what the demonstration project accomplished, identified more drug use but, given the cost, not substantially more drug use.

Of the 470 defendants without drug abuse conditions, 34 (7 percent) submitted positive samples. Of the 2,490 tests that were conducted, only 67 (3 percent) were positive. Of the 248 individuals with drug abuse conditions, 57 (23 percent) submitted at least one positive sample.

One variable which might have significance is the presence or absence of a drug abuse history. Probation and pretrial services records for the 718 defendants in the post-conviction group were examined in an effort to determine which defendants had illegal drug abuse histories. Those with any drug abuse history were divided into three groups: defendants with drug abuse histories within the year of arrest; those with drug abuse histories within 2 to 5 years of arrest; and those with drug abuse histories more than 5 years prior to the arrest. Those with no known drug abuse history were placed in a fourth category. There were 13 offenders for which no definitive data were available.

Of the 718 defendants, 389 (54 percent) had no drug abuse history which was known to either probation or pretrial services. During the demonstration project, 2,155 tests were taken involving these offenders, of which 30 (1.4 percent) were returned positive. A total of 18 of these offenders submitted positives, usually only one, for an offender positive rate of 4.6 percent. Thus, if testing had been ordered in only those cases with a drug abuse history available to the judicial officer at time of sentencing, the number of tests could have been reduced by 43 percent and only 30 positive specimens would have gone undetected.

While some further analysis needs to be done, data are still being collected on those offenders who were sentenced under the provisions of the demonstration project. The initial data suggest that a target group of likely drug abusers could be identified. If such a group can be identified it would be more cost-effective, at least for post-conviction testing, to test only those individuals with drug abuse histories.

Analysis of Offenders Participating in Both Phases of the Demonstration Project

In the pretrial phase, of the 409 offenders from whom samples were requested, 53 (13 percent) refused to be tested. Of the 356 offenders who were tested, 112 (31 percent) were positive. In comparing those who

tested positive at the initial appearance with those who tested negative, it becomes apparent that the system could identify the majority of offenders who are likely to test positive on subsequent post-conviction supervision. The 112 offenders who tested positive initially accounted for 109 (44 percent) of all the positive tests submitted in the post-conviction phase, while the 244 offenders who tested negative at the initial appearance accounted for only 35 (14 percent) of all the positive tests submitted in the post-conviction phase.

While initial appearance testing alone should not be the sole determinant of whether or not an offender is to be tested during post-conviction supervision, it could serve an important role in that regard. With a national system of initial appearance testing in place, mandatory post-conviction testing for all felony offenders would not be necessary to achieve the desired goal of a substantial reduction in drug use by offenders during post-conviction supervision.

Conclusions

The demonstration project has provided information about the possible consequences of establishing a nationwide system of drug testing in the Federal district courts. A review of the results from the eight pilot districts leads to a number of conclusions, including the following:

- 1) Judges and magistrate judges overwhelmingly believe that pretrial drug testing is a valuable tool in implementing the provisions of the Bail Reform Act of 1984.
- 2) Pretrial services urine testing prior to the initial appearance requires on-site testing equipment.
- 3) Expansion of on-site drug testing into the entire Federal district court system would necessitate constructing restrooms and testing facilities to accommodate the procedures.
- 4) Drug testing requires additional staff to implement.
- 5) Pretrial testing prior to the initial appearance identified 31 percent of all tested defendants in the eight pilot districts as drug users.
- 6) There is no evidence that increased post-conviction testing would increase the identification of substance abuse by those under the supervision of the Federal probation system since current procedures identify the majority of drug users prior to this stage.
- 7) There have been no formal legal challenges to the constitutionality of pretrial drug testing in the Federal system during the demonstration project.