REPORT OF THE
VIRGINIA STATE CRIME COMMISSION

Drug Testing of Arrestees

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

House Document No. 9

COMMONWEALTH OF VIRGINIA
RICHMOND
1989

COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

General Assembly Building
910 Capitol Street

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IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

October 18, 1988

TO: The Honorable Gerald L. Baliles, Governor of Virginia
Members of the General Assembly:

House Joint Resolution 60, agreed to by the 1988 General Assembly, directed the Virginia State Crime Commission "to study a voluntary drug testing program for arrestees awaiting trial or sentencing." In fulfilling this directive, a study was conducted by the Virginia State Crime Commission. I have the honor of submitting herewith the study report and recommendations on the Drug Testing of Arrestees.

Respectfully submitted,

Elmon T. Gray
Chairman

ETG:kr

Members of the Virginia State Crime Commission

From the Senate of Virginia:

Elmon T. Gray, Chairman
Howard P. Anderson
Elmo G. Cross, Jr.

From the House of Delegates:

Robert B. Ball, Sr., Vice Chairman
V. Thomas Forehand, Jr.
Raymond R. Guest, Jr.
Speaker A. L. Philpott
Warren G. Stambaugh
Clifton A. Woodrum

Appointments by the Governor

Robert C. Bobb
Robert F. Horan, Jr.
George F. Ricketts, Sr.

Attorney General's Office

H. Lane Kneedler

Subcommittee Studying

Drug Testing of Arrestees

Members:

Delegate Clifton A. Woodrum, Chairman
Senator Howard P. Anderson
Senator Elmon T. Gray
Delegate Raymond R. Guest, Jr.
Mr. Robert F. Horan, Jr.
Mr. H. Lane Kneedler
Speaker A. L. Philpott
Delegate Warren G. Stambaugh

Staff:

Robert E. Colvin, Executive Director
Tammy E. Sasser, Executive Administrative Assistant
Kris Ragan, Secretary

The subcommittee sincerely appreciates
the support and assistance provided by the
Attorney General's Office:

Stephen D. Rosenthal, Deputy Attorney General
John S. West, Administrative Staff Specialist

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I. Authority For Study

House Joint Resolution 60, agreed to by the 1988 General Assembly, directs the Virginia State Crime Commission "to study a voluntary drug testing program for arrestees awaiting trial or sentencing." House Joint Resolution 60 was proposed by Attorney General Mary Sue Terry, and patroned by Delegate Ralph L. Axselle of Henrico County.(Appendix A).

Section 9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission (VSCC) "to study, report and make recommendations on all areas of public safety and protection." Section 9-127 provides that "The Commission shall have the duty and power to make such studies and gather information and data in order to accomplish its purposes as set forth in §9-125..., and to formulate its recommendations to the Governor and the General Assembly." Section 9-134 authorizes the Commission "to conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The VSCC, in fulfilling its legislative mandate, undertook the Drug Testing of Arrestees Study as directed by House Joint Resolution 60.

II. Members Appointed to Serve

During the April 19, 1988 meeting of the Crime Commission, Senator Gray appointed Delegate Clifton A. Woodrum of Roanoke to serve as the Chairman of the subcommittee on Drug Testing of Arrestees Study. Members of the Crime Commission who served on the subcommittee are as follows:

Delegate Clifton A. Woodrum, Chairman
Senator Howard P. Anderson
Senator Elmon T. Gray
Delegate Raymond R. Guest, Jr.
Mr. Robert F. Horan, Jr.
Mr. H. Lane Kneedler
Speaker A. L. Philpott
Delegate Warren G. Stambaugh

III. Executive Summary

The full Crime Commission met on October 18, 1988 and received the report of the subcommittee. After careful consideration, the findings and recommendations of the subcommittee were adopted by the Commission. After conducting an extensive review of reports from the National Institute of Justice and from the District of Columbia and New York drug testing programs, the subcommittee strongly supports the position that a close link exists between drug abuse and criminal behavior. The subcommittee found that the data from the two initial drug testing programs indicated a high percentage of drug use among all arrestees, especially those who committed major felonies. The results of the projects also strongly indicated that drug testing of arrestees is an effective way of identifying those who pose high risks of pretrial rearrest, and that pretrial drug testing can significantly reduce those risks for many arrestees.

The subcommittee worked closely with the Director of the District of Columbia drug testing program to learn how that program is conducted. Testimony was heard on the constitutional issues surrounding the testing program, the importance of the test result information to the judicial officers and the current drug testing technology.

The subcommittee also worked closely with the Department of Criminal Justice Services and the Department of Corrections to decide the proper agency in the state to administer a pilot drug testing program.

The subcommittee made the following recommendations at its September 27, 1988 meeting:

A. Enabling Legislation

Introduce legislation to amend Section 19.2-123 of the Code of Virginia to enable any jurisdiction served by a pretrial services agency to conduct a voluntary drug testing program in agreement with the chief judge of the General District Court. The amendment should require that the test results only be used to assist the judicial officer in setting the conditions of release. The amendment would also allow the judicial officer to require an arrestee who tested positive on the initial test, and was subsequently released, to refrain from illegal drug use and submit to periodic tests until final disposition of his trial. (Appendix B)

B. Coordination of Pilot Program by the Department of Corrections

Contingent upon the passage of the proposed enabling legislation, request the Department of Corrections, in coordination with its new pretrial services program, to establish a pilot drug testing program for all accused felons in a jail's lock-up section.

C. Quarterly Reports From the Department of Corrections

Request that the Department of Corrections report on a quarterly basis to the Virginia State Crime Commission on the results of the drug testing program.

IV. Background

Due to the growing concern over the apparent link between drug abuse and crime, the National Institute of Justice, United States Department of Justice, provided funding in 1984 for pilot projects in New York city and the District of Columbia to focus on the relationship of drug abuse and pretrial criminality.

These two pilot studies have shown that more than half of the defendants tested have used drugs shortly before their arrests; a substantial percentage of defendants charged with major crimes were using drugs; and pretrial rearrest rates were fifty percent higher for drug users than for nonusers. The pretrial testing results in New York have only been used for research, while the results from the District of Columbia program have been used to set the conditions of release of the accused.

Since 1984, the National Institute of Justice, through the Bureau of Justice Assistance, has chosen three additional sites across the country to implement a pretrial drug testing program modeled after the one established in the District of Columbia: the State of Delaware; Portland, Oregon; and Pima County, Arizona.

In 1987, following the guidelines of the New York program, Drug Use Forecasting programs were established in twelve of the largest localities across the United States: New York; Washington, D.C.; Orleans Parish (New Orleans); San Diego County, California; Marion County (Indianapolis), Indiana; Maricopa County (Phoenix), Arizona; Los Angeles; Houston; Chicago; Detroit; Fort Lauderdale, Florida; and Portland, Oregon.

The results of the projects strongly indicate that drug testing of arrestees is an effective way of identifying those who pose high risks of pretrial rearrests and that pretrial drug testing can substantially reduce those risks for many arrestees.

V. Scope of the Study

House Joint Resolution 60 instructed the Drug Testing of Arrestees Study subcommittee to review the following topics to determine the feasibility and desirability of establishing a voluntary drug testing of arrestees program in Virginia:

- The methods of the pilot drug testing programs in the District of Columbia and New York City;
- The proper agency in Virginia to administer such a program;
- The cost of developing and implementing such a program;
- The drugs to be tested for; and
- The potential effectiveness of such a program.

VI. Work of the Subcommittee

The subcommittee held three meetings (June 9, September 1, and September 27) and one public hearing (July 27). The subcommittee used these meetings to review the structure of the proposed drug testing program, the cost estimates for the establishment of such a program and consideration of the proposed enabling legislation. At each of its meetings, the subcommittee heard testimony on the different aspects of the drug testing program from a variety of interested groups. Attorney General Mary Sue Terry, whose office initially proposed that this study be conducted, testified at the subcommittee's first meeting that the data compiled from the two original pilot drug testing programs did indicate a strong correlation between drug use and criminality. She urged the subcommittee to consider establishing a pilot program to provide data relevant to Virginia.

The subcommittee would like to express special appreciation to the following individuals who provided valuable technical assistance during the course of the study: Dr. Paul B. Ferrara of the Bureau of Forensic Science; Dee A. Malcan and C. Ray Mastracco of the Department of Corrections; Daniel E. Catley and Tony C. Casale of the Deparment of Criminal Justice Services; Oscar R. Brinson of the Division of Legislative Services; Barry Cox of Richmond Offender Aid and Restoration Inc and William R. Bowler of the Richmond City Sheriff's Office..

VII. Discussion of Issues

A. Applicable Law

1. Discussion

Section 19.2-120 of the Code of Virginia provides that an accused will be admitted to bail by a judicial officer unless that officer has reason to believe that the accused "will not appear for trial or hearing," or that his liberty "will constitute an unreasonable danger to himself or the public."

In determining the conditions of release of the accused on unsecured bond or promise to appear, Section 19.2-123 requires the judicial officer to consider, in addition to other background information on the accused, "any other information available to him which he believes relevant to the determination of whether or not the defendant or juvenile is likely to absent himself from court proceedings."

It further stipulates that "should the judicial officer determine that such a release will not reasonably assure the appearance of the accused," he may "impose any other conditions deemed reasonably necessary to assure appearance as required, and to assure his good behavior pending trial." (A copy of Sections 19.2-119 - 19.2-123 of the Code of Virginia are included in Appendix C).

While the pretrial testing programs have not been successfully challenged on constitutional grounds, a court case is currently pending against the program in the District of Columbia, Berry v. the District of Columbia. The U. S. District Court of the District of Columbia initially dismissed the claims as meritless, but on appeal to the U. S. Court of Appeals for the D. C. Circuit the case was remanded to the District Court for a "full exploration" of the claims of unconstitutionality made by the defendant. The Attorney General's office reviewed the documentation available on the case and established that the two major issues were whether the search or seizure is "reasonable" under the Fourth Amendment, and whether there is a need for "individualized suspicion." Further inquiries about the status of the case revealed that due to unique circumstances it will, more than likely, not settle the constitutional questions raised about the drug testing program.

2. Conclusion

The subcommittee concluded that Section 19.2-123 of the Code of Virginia should be amended to specifically state that a judicial officer may require a defendant to refrain from illegal drug use and be tested as a condition of release.

Specifically, the legislation should be broadly written to enable localities which are served by a pretrial services agency to conduct a drug testing program in agreement with the chief judge of the General District Court.

To protect the program from constitutional challenges, the subcommittee concluded that, unlike the D. C. program, the test results should not be provided to the judicial officer until after the bail decision is made. The judicial officer would only consider the test result at the time he sets the conditions of release. If the accused or juvenile tests positive for illegal drugs, and is admitted to bail, the judicial officer may then order that he be tested on a periodic basis until final disposition of his trial. The statute would also allow the judicial officer to impose more stringent conditions of release, contempt of court, or revocation of release for any accused whose subsequent tests are positive. (See Appendix B)

B. Procedures For The Drug Testing Program

1. Discussion

The review of the structure of the drug testing program focused on the information provided to the subcommittee by the District of Columbia Pretrial Services Agency. In gaining a general understanding of the guidelines that the D. C. Agency uses to conduct its program, the subcommittee paid particular attention to three issues: (1) who is tested; (2) the time at which the judicial officer receives the test result, and whether the test result is used in making the release decision or only in setting the conditions of release; and (3) the reliability of the drug testing equipment and the specific need to retest positive results. (See Appendix D for a report on the District of Columbia's drug testing program).

The D. C. Pretrial Agency collects voluntary urine samples from all defendants in the central lock-up each morning. The defendant's test result is then included in the agency's pretrial report which is given to the judicial officer at the bail hearing. The test result, however, is only used to determine the conditions of release. Most often, a defendant who tests positive is then required to enroll in a regular, once or twice a week drug testing program. A D. C. Superior Court Judge testified that he relies heavily on the drug test results when setting the conditions of release. He also stated that all of the judges in the D. C. system are supportive of the program and think that drug use is a very important factor in determing whether a defendant will appear for trial and whether a defendant will be a danger to himself or the community while on bail.

Representatives from both the D.C. Pretrial Agency, and the Bureau of the Forensic Labs, testified on the reliability of the drug testing equipment. They told the subcommittee that in order to provide the judicial officer with the test results at the time he sets bail or sets the conditions of release, the testing would need to be done on-site. The D. C. Pretrial Agency uses the Emit test and claims that it is almost 100% reliable, and other testimony indicated that the Emit test is a good, quick test with close to 97% reliability. The D. C. representative also indicated that each positive test is reconfirmed by another test.

2. Conclusion

The subcommittee concluded that a pilot drug testing program should be established following the general guidelines of the District of Columbia program. The Virginia pilot program, however, would only test those felons in lock-up each morning. The subcommittee concluded that since this would be a pilot program, it should focus on those arrestees

that have committed the most serious crimes and pose the most serious threat to the community when released on bail. If the drug testing of felons proves to be a successful way of identifying those arrestees who pose a high risk of pretrial criminality, then consideration could be given to expanding the program at a later date.

The subcommittee also decided that the judicial officer should not receive the test results until after the bail decision is made in order to ensure that this information is only considered in setting the conditions of release.

With regard to the reliability of the testing equipment, the subcommittee concluded that the technology and the safeguards built into the program would ensure that the test results were reliable.

C. Proper Agency to Administer the Drug Testing Program

1. Discussion

All participants in the study agreed that the drug testing program should be directly administered by a pretrial services agency. The testing program involves contact with the arrestees during the pre-release and post-release stages, and, therefore, could be combined with the pretrial agency's initial interviews and community surveillance. In conducting its research, the subcommittee learned that the Department of Corrections has received approval to establish five pretrial services programs around the state for misdemeanants. (See Appendix E) These proposed pretrial services programs would have a drug testing component.

In order not to duplicate efforts, the subcommittee worked with representatives of the Department of Corrections to determine if it could expand one of its pretrial programs to encompass the drug testing of felons pilot program. The Department of Corrections agreed that, with funding, it could administer such a program.

2. Conclusion

The subcommittee concluded that the Department of Corrections should expand its efforts with one of its pretrial programs to conduct pre-release and post-release drug testing for felons to accommodate the subcommittee's pilot program. The Department of Corrections agreed that it had the necessary procedures established to do this, and would supervise and operate such a drug testing program.

The subcommittee also concluded that the Department of Corrections should report to the Commission on a quarterly basis on the progress of the pilot program. The Department of Corrections' report should include, but not be limited to, the following areas:

(a) The number of arrestees who tested positive for drugs at the time of arrest and the type of crime they were arrested for;

(b) The effectiveness of the program in reducing pretrial rearrests and failure-to-appear rates; and

(c) The response by the judicial officers in the locality to the program and its results.

D. Estimated Cost of A Pilot Program

1. Discussion

In order to establish a cost approximation for implementing a drug testing program, the subcommittee worked with the Director of the Richmond Pretrial Services Agency to determine the cost of adding a drug testing program like the one in the District of Columbia to the Richmond pretrial program.

The pilot drug testing program would test all accused felons in lock-up each morning and conduct follow-up tests on all who tested positive on the initial test and are subsequently released. The following breakdown represents a general cost approximation for a drug testing program in Richmond:

1. Initial Test
   1,000 initial tests at $7 = $7,000

2. Follow-up Tests
   220 accused felons released under supervision by Pretrial Services
   380 (or 49%) of remaining 780 felons eventually released on bail

   600 (or 60%) released of the original 1,000 tested
   75% of 600 (or 450) have positive drug test

   450 tested once weekly for 10 weeks
   450 x 10 x $7 = $31,500

3. Personnel Cost
   Two FTE at $20,000 plus, 25% fringe = $50,000

4. Additional Office Space = $3,000

5. **Total Cost Estimate = $91,500**

Cost per accused monitored = $203.30

2. Conclusion

Initial inquiries were made concerning possible sources of federal funding to cover the costs of such a pilot program. At the time of the study, the Department of Criminal Justice Services reported that no federal funding was available. The subcommittee concluded that the Department of Criminal Justice Services should continue to seek federal sources of funding. If federal funding is still unavailable, the subcommittee would recommend that the Department of Planning and Budget, the House Appropriations Committee and the Senate Finance Committee be encouraged to consider funding the pilot program.

E. Types of Drugs to Test for in the Drug Testing Program

1. Discussion

The decision of what drugs to test for largely depends on the location in which the pilot program is established. The District of Columbia and New York studies found that the most abused drugs are cocaine, opiates (heroin), barbiturates and phencyclidine (PCP). Therefore, a pilot drug testing program in Richmond might conduct a four drug screen test to analyze urine samples for cocaine, opiates (heroin), barbiturates and PCP.

2. Conclusion

The subcommittee concluded that the option should be given to the pretrial agency to test for any such illegal drugs that it may deem appropriate.

F. Potential Effectiveness of the Drug Testing Program

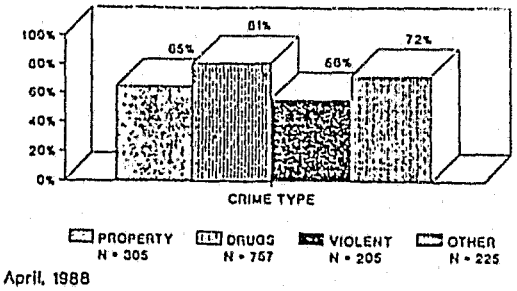
1. Discussion

The goal of the drug testing program is to reduce the use of drugs by those arrestees released, thereby reducing pretrial criminality and increasing trial appearances. Figures from the 1986 New York study indicated a high percentage of drug use among arrestees who committed major felonies. For example:

Arrest Charge	Percent Positive
Possession of drugs	76%
Sale of drugs	71%
Possession of stolen property	61%
Forgery	60%
Burglary	59%
Murder/manslaughter	56%
Larceny	56%
Robbery	54%
Weapons	53%

The latest statistics compiled by the D. C. Pretrial program continue to support strongly the theory that drug use is linked very closely to criminal behavior, and that this drug use is prevalent among all types of crimes:

Adult Drug Detection Unit
Percent Positive by
Crime Type•



April, 1988

•Excludes 70 No Papered Cases

2. Conclusion

The subcommittee concluded that the statistics from the two original pilot drug testing programs do indicate that a positive correlation exists between drug abuse and criminal behavior. The subcommittee further concluded that the drug testing program serves as an effective way to identify those who pose high risk of pretrial rearrest and that pretrial drug testing can significantly reduce those risks for many arrestees.

More specifically, the drug testing program does the following:

- Provides judges with information about an arrestee's drug use at the time the conditions of release are set;
- Reduces the number of arrestees who are rearrested or fail to appear, thus reducing the amount of jail time they serve for these offenses; and
- Allows judges to release high risk arrestees, ones that they otherwise would not release, with the confidence that the arrestee's drug use and other activities will be closely monitored.

VIII. Recommendations

The subcommittee made the following recommendations at its September 27, 1988 meeting:

A. Enabling Legislation

Introduce legislation to amend Section 19.2-123 of the Code of Virginia to enable any jurisdiction served by a pretrial services agency to conduct a voluntary drug testing program in agreement with the chief judge of the General District Court. The amendment should require that the test results only be used to assist the judicial officer in setting the conditions of release. The amendment would also allow the judicial officer to require an arrestee who tested positive on the initial test, and was subsequently released, to refrain from illegal drug use and submit to periodic tests until final disposition of his trial. (Appendix A)

B. Coordination of Pilot Program by the Department of Corrections

Contingent upon the passage of the proposed enabling legislation, request the Department of Corrections, in coordination with its new pretrial services program, to establish a pilot drug testing program for all accused felons in lock-up.

C. Quarterly Reports From the Department of Corrections

Request that the Department of Corrections report on a quarterly basis to the Virginia State Crime Commission on the results of the drug testing program.

APPENDIX A

House Joint Resolution 60

HOUSE JOINT RESOLUTION NO. 60

House Amendments in [ ] - February 16, 1988

Requesting [~~that a joint subcommittee be established~~ the Crime Commission] to study drug testing for arrestees and defendants awaiting trial.

Patron—Axselle

Referred to the Committee on Rules

WHEREAS, the National Institute of Justice, U.S. Department of Justice, has provided funding for two pilot projects in New York and the District of Columbia to determine the extent of drug use among arrestees; whether current drug use at the time of arrest is a good indication of pretrial misconduct; the effectiveness of drug testing before trial in reducing pretrial misconduct (e.g., pretrial rearrests and failure to appear for court); and the relationship between drug abuse and criminal conduct; and

WHEREAS, the preliminary findings from the two-year-old drug testing projects show that: more than half of the defendants tested had used drugs shortly before their arrests; the use of cocaine has increased dramatically in the past two years and PCP and opiates are major drug problems; a substantial percentage of defendants charged with major crimes were using drugs (e.g., approximately half of the arrestees charged with robbery and two-fifths charged with burglary were drug users); and pretrial rearrest rates were fifty percent higher for drug users than for nonusers; and

WHEREAS, the results of the projects strongly indicate that drug testing of arrestees is an effective way of identifying those who pose high risks of pretrial rearrests and that pretrial drug testing can substantially reduce those risks for many arrestees; and

WHEREAS, the drug test results have been extremely useful to the courts in fashioning appropriate conditions of release on bail, reducing the use of drugs and thereby reducing the risks of pretrial misconduct by arrestees; and

WHEREAS, the success of the two drug testing projects indicates that such a program could be useful in the Commonwealth in reducing drug abuse and pretrial misconduct; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That [~~a joint subcommittee study a~~ the Crime Commission is requested to study a voluntary] drug testing program for arrestees awaiting trial or sentencing, the study to include, but not be limited to, a review of the methods and results of the drug testing programs in New York and the District of Columbia, the potential effectiveness of such a program in Virginia, the proper agency in Virginia to administer such a program, the costs for developing and implementing such a program, the drugs to be tested for and the most effective and efficient drug testing method.

[~~The joint subcommittee shall be composed in the following manner: three members from the House Courts of Justice Committee and two members of the House Health, Welfare and Institutions Committee, appointed by the Speaker; two members from the Senate Courts of Justice Committee and one member of the Senate Committee on Rehabilitation and Social Services, appointed by the Senate Committee on Privileges and Elections; a Commonwealth's attorney and a representative of the Division of Consolidated Laboratory Services, Department of General Services, both to be appointed by the Governor.~~

~~The joint subcommittee shall report its findings and recommendations to the 1989 Session of the General Assembly.~~

~~The indirect cost of this study is estimated to be $7,465; the direct cost shall not exceed $3,600~~ The Commission shall complete its work in time to report to the Governor and the General Assembly prior to the 1989 Session as provided in procedures of the Division of Legislative Automated Systems].

APPENDIX B

Proposed Legislation to Amend Section 19.2-123
of the Code of Virginia

D 7/20/88 Brinson C 9/21/88 df

SENATE BILL NO. ..... HOUSE BILL NO. .....

A BILL to amend and reenact § 19.2-123 of the Code of Virginia, relating to release of an accused on bond or promise to appear; conditions of release; drug testimony.

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-123 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-123. Release of accused on unsecured bond or promise to appear; conditions of release.-- ~~(a)~~ A. If any judicial officer has brought before him any person held in custody and charged with an offense, other than an offense punishable by death, or a juvenile taken into custody pursuant to § 16.1-246 ~~said~~ , the judicial officer shall consider the release pending trial or hearing of the accused on his written promise to appear in court as directed or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer. In determining whether or not to release the accused or juvenile on his written promise to appear or an unsecured bond , the judicial officer shall take into account the nature and circumstances of the offense charged, the accused's or juvenile's family ties, employment, financial resources, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings, and any other information available to him which he believes relevant to the determination of

whether or not the defendant or juvenile is likely to absent himself from court proceedings.

In the case of a juvenile or in any case where the judicial officer determines that such a release will not reasonably assure the appearance of the accused as required, the judicial officer shall then, either in lieu of or in addition to the above methods of release, impose any one ~~,~~ or any combination of the following conditions of release which will reasonably assure the appearance of the accused or juvenile for trial or hearing:

~~(1)~~ __.__ Place the person in the custody of a designated person or organization agreeing to supervise him;

~~(2)~~ __.__ Place restrictions on the travel, association or place of abode of the person during the period of release and restrict contacts with household members for a period not to exceed seventy-two hours;

~~(3)~~ __.__ Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof. The value of real estate owned by the proposed surety shall be considered in determining solvency; or

~~(4)~~ __.__ Impose any other condition deemed reasonably necessary to assure appearance as required, and to assure his good behavior pending trial, including a condition requiring that the person return to custody after specified hours.

In addition, where the accused is a resident of a state training center for the mentally retarded, the judicial officer may place the person in the custody of the director of the state facility, if the director agrees to accept custody. Such director is hereby authorized to take custody of such person and to maintain him at the training

center prior to a trial or hearing under such circumstances as will reasonably assure the appearance of the accused for the trial or hearing.

B. In any jurisdiction served by a pretrial services agency which offers a drug testing program approved for the purposes of this subsection by the chief general district court judge, any such accused or juvenile charged with a crime may be requested by such agency to give voluntarily a urine sample. This sample may be analyzed for the presence of phencyclidine (PCP), barbituates, cocaine, opiates or such other drugs as the agency may deem appropriate prior to the initial appearance of the accused or juvenile at a hearing to establish bail. The agency shall inform the accused or juvenile being tested that test results shall be used by a judicial officer at the initial bail hearing only to determine appropriate conditions of release. All test results shall be confidential with access thereto limited to the judicial officer, the Commonwealth's attorney, defense counsel and, in cases where a juvenile is tested, the parents or legal guardian or custodian of such juvenile. However, in no event shall the judicial officer have access to any test result prior to making an initial release determination. Following this determination, the judicial officer shall consider the test results and the testing agency's report and accompanying recommendations, if any, in setting appropriate conditions of release. Any accused or juvenile whose urine sample has tested positive and who is admitted to bail may, as a condition of release, be ordered to refrain from illegal drug use and may be required to be tested on a periodic basis until final disposition of his case to ensure his compliance with the order. Sanctions for a violation of any condition of release pertaining to

abstention from drug use, which violations shall include subsequent positive test results or failure to report as ordered for testing, may be imposed in the discretion of the judicial officer and may include imposition of more stringent conditions of release, contempt of court proceedings or revocation of release. Any test given under the provisions of this subsection which yields a positive result shall be reconfirmed by a second test if the person tested denies or contests the initial positive result.

~~(b)~~ C. Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

~~(c)~~ D. Nothing in this section shall be construed to prevent an officer taking a juvenile into custody from releasing that juvenile pursuant to § 16.1-247 of this Code. If any condition of release imposed under the provisions of this section is violated, the judicial officer may issue a capias or order to show cause why the bond should not be revoked.

#

APPENDIX C

Code of Virginia: Section 19.2-119 - Section 19.2-123

ARTICLE 1.

Bail.

§ 19.2-119. "Judicial officer" defined. — As used in this article the term "judicial officer" means, unless otherwise indicated, any magistrate within his jurisdiction, any judge of a district court and the clerk or deputy clerk of any district court or circuit court within their respective cities and counties, any judge of a circuit court, and any justice of the Supreme Court of Virginia. (Code 1950, § 19.1-109.1; 1973, c. 485; 1974, c. 114; 1975, c. 495.)

§ 19.2-120. Right to bail. — An accused, or juvenile taken into custody pursuant to § 16.1-246 who is held in custody pending trial or hearing for an offense, civil or criminal contempt, or otherwise shall be admitted to bail by a judicial officer as defined in § 19.2-119, unless there is probable cause to believe that:

(1) He will not appear for trial or hearing or at such other time and place as may be directed, or

(2) His liberty will constitute an unreasonable danger to himself or the public. (1975, c. 495; 1978, c. 755; 1979, c. 649.)

§ 19.2-121. Fixing terms of bail. — If the accused, or juvenile taken into custody pursuant to § 16.1-246 is admitted to bail, the terms thereof shall be such as, in the judgment of any official granting or reconsidering the same, will be reasonably calculated to insure the presence of the accused, having regard to (1) the nature and circumstances of the offense, (2) the weight of the evidence, (3) the financial ability to pay bail, and (4) the character of the accused or juvenile. (1975, c. 495; 1978, c. 755; 1980, c. 190.)

Applied in Lee v. Winston, 551 F. Supp. 247 (E.D. Va. 1982).

§ 19.2-122. Bail by arresting officer. — A person arrested on a capias to answer, or hear judgment on, a presentment, indictment or information for a misdemeanor, or on an attachment, other than an attachment to compel the performance of a judgment or of an order or decree in a civil case, may be admitted to bail by the officer who arrests him, the officer taking a recognizance in such sum, not being less than $200 unless by general or special order of the court a less sum be authorized, as he, regarding the case and estate of the accused, may deem sufficient to secure his appearance before the court from which the process issued at the time required thereby. The officers shall return

the recognizance to the court on or before the return day of such process. If without sufficient cause he fail to make such return, he shall forfeit twenty dollars. (Code 1950, § 19.1-109; 1960, c. 366; 1966, c. 521; 1975, c. 495.)

Cross reference. — As to constitutional provision for bail, see Va. Const., Art. I, § 9.

Law Review. — For article, "Bail Reform and the Constitutionality of Pretrial Detention," see 55 Va. L. Rev. 1223 (1969).

§ 19.2-123. Release of accused on unsecured bond or promise to appear; conditions of release. — (a) If any judicial officer has brought before him any person held in custody and charged with an offense, other than an offense punishable by death, or a juvenile taken into custody pursuant to § 16.1-246 said judicial officer shall consider the release pending trial or hearing of the accused on his written promise to appear in court as directed or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer. In determining whether or not to release the accused or juvenile on his written promise to appear or an unsecured bond the judicial officer shall take into account the nature and circumstances of the offense charged, the accused's or juvenile's family ties, employment, financial resources, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings, and any other information available to him which he believes relevant to the determination of whether or not the defendant or juvenile is likely to absent himself from court proceedings.

Should the judicial officer determine that such a release will not reasonably assure the appearance of the accused as required, or, in the case of a juvenile, the judicial officer shall then, either in lieu of or in addition to the above methods of release, impose any one, or any combination of the following conditions of release which will reasonably assure the appearance of the accused or juvenile for trial or hearing:

(1) Place the person in the custody of a designated person or organization agreeing to supervise him;

(2) Place restrictions on the travel, association or place of abode of the person during the period of release;

(3) Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof. The value of real estate owned by the proposed surety shall be considered in determining solvency; or

(4) Impose any other condition deemed reasonably necessary to assure appearance as required, and to assure his good behavior pending trial, including a condition requiring that the person return to custody after specified hours.

In addition, where the accused is a resident of a state training center for the mentally retarded, the judicial officer may place the person in the custody of the director of the state facility, if the director agrees to accept custody. Such director is hereby authorized to take custody of such person and to maintain him at the training center prior to a trial or hearing under such circumstances as will reasonably assure the appearance of the accused for the trial or hearing.

(b) Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(c) Nothing in this section shall be construed to prevent an officer taking a juvenile into custody from releasing that juvenile pursuant to § 16.1-247 of this Code. If any condition of release imposed under the provisions of this section is violated, the judicial officer may issue a capias or order to show cause why the bond should not be revoked. (Code 1950, § 19.1-109.2; 1973, c. 485; 1975, c. 495; 1978, cc. 500, 755; 1979, c. 518; 1981, c. 528.)

APPENDIX D

Report on Pilot Drug Testing Program in the District of Columbia

National Institute of Justice

Research in Action

James K. Stewart, Director

Reprinted from *NIJ Reports/SNI 199* September/October 1986

Drugs and crime:
Controlling use and reducing risk through testing

by John A. Carver, J.D.

Drugs. Hardly a day goes by without more news reports detailing the extent of drug use in our society.

The costs in human lives and public resources are staggering. Twenty-five percent of all general hospital admissions arise from drug abuse. Forty percent of admissions from accidents are drug related. The national cost of accidents has been calculated at $81 billion per year, half of which is directly attributable to drug abuse.

Despite the well-publicized deaths of two top athletes from cocaine poisoning, cocaine overdose deaths are now running at a rate of 25 per week, up from 25 per *year* only a few years ago. Drug addiction of newborn babies is now a serious public health concern. Yet our drug abuse treatment programs have long waiting lists. Our public education efforts have had little effect on the growing demand for drugs.

At all levels, our criminal justice system is being strained to the breaking point by drugs, from the cop on the street, to crowded court dockets, to our teeming jails and prisons. With the number of drug cases increasing exponentially in recent years, and the number of drug-related cases even higher, criminal justice practitioners face a major crisis. How do we manage a problem of this magnitude?

The problem is especially acute in our courts. How are we to cope with the added dangers posed by drug abusing defendants at various decision points from pretrial release, to trial, to sentencing? How do we utilize our already over-burdened resources in a way that affords both fairness to the individual and a reasonable expectation of community safety? While the solution to many drug-related problems lies beyond the reach of the criminal justice system, there are a few rays of hope on an otherwise bleak landscape.

New techniques for managing the problem of drug abuse in the context of the criminal justice system have been implemented and are currently operating in the District of Columbia. With the assistance of the National Institute of Justice, judges in that jurisdiction are now much better equipped to *identify* those drug abusing defendants who pose the greatest threat to community safety, and to *monitor* their behavior and *control* their drug abuse while under the court's jurisdiction in a way that *reduces* the risk associated with drug abusers.

How? Through the latest in drug testing technology, coupled with the careful and effective use by judges of the information it provides. This article describes this new program of comprehensive drug testing, how it was implemented, and what it has meant to the court system.

The program was part of a major research study by the National Institute of Justice carried out in Washington, D.C., and New York City. Highlights of the findings from Washington, D.C., appear in the accompanying figures.

Project background

The drug testing program in the District of Columbia is the latest in a series of research efforts on drug abuse and crime sponsored by the National Institute of Justice. (For a review of recent research, see *Probing the Links Between Drugs and Crime*, by Bernard A. Gropper.)

The theoretical basis for the program is derived from earlier studies that show, among other things, that drug use is very much a characteristic of serious and violent offenders. On the other hand, even among high-risk individuals with established patterns of both drug abuse and criminality, increasing or reducing the level of drug abuse is associated with a corresponding increase or reduction in criminality (Gropper).

John A. Carver, J.D., is the Director of the Pretrial Services Agency in Washington, D.C.

Practical application of this research raises two major issues. First, how can courts determine who is a high-risk drug abuser? Second, once determined, what can a court system do to control drug use and reduce risk?

In the District of Columbia, the first task—identifying drug users—was accomplished through a new program of drug testing set up within the District of Columbia Pretrial Services Agency. With a statutory mandate to collect relevant information on each arrestee for use by the court in determining appropriate release conditions, the Agency was a logical (and neutral) place in which to implement a program of drug testing.

The second task—to integrate the technology into the court processes to *control* drug use and *reduce* risk—was more challenging. With the earlier research as the foundation, the program's working hypothesis was that close monitoring of a defendant's drug use, coupled with quick sanctions for violations, could prove effective in deterring drug use and reducing criminal activity.

An independent evaluation conducted by Toborg Associates, Inc., indicates that the District of Columbia has achieved remarkable success in demonstrating the effectiveness and feasibility of such an approach. It is hoped that the District of Columbia's experience will prove a useful guide to other jurisdictions in adopting similar programs.

Photo by Charlene Hennessy, NCJRS

The author, John A. Carver, J.D., is the Director of the Washington, D.C., Pretrial Services Agency.

Drug testing in operation

Drug testing of arrestees has existed in one form or another in the District of Columbia since the early 1970's. For a variety of reasons, its usefulness and impact on criminal case processing were minimal. With initial assistance from the National Institute of Justice, the D.C. Pretrial Services Agency established in March 1984 an entirely new approach to drug testing.

Relying on state-of-the-art technology to produce highly accurate drug tests in a very short time (generally 1 to 2 hours), the Agency has sought to put this information in the hands of judges at decision points where it can be of greatest use. These include the initial release decision (first appearance), throughout the pretrial period, and at sentencing. The Agency not only provides this important information to the court but offers judges a plan for dealing with the potential risks of releasing drug-abusing defendants. There are three situations in which the Agency conducts drug testing for the court: before the initial appearance, as a condition of release, and by special court order.

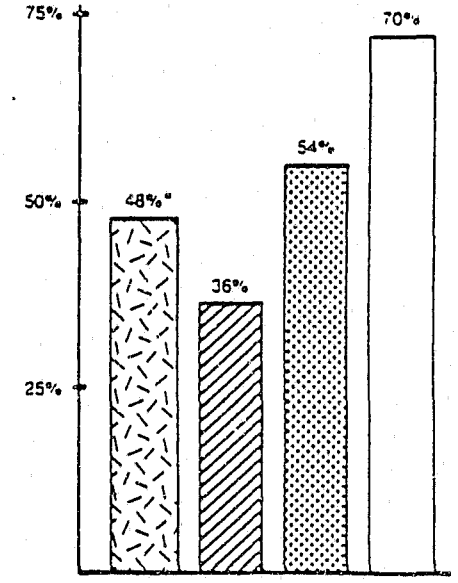
Initial or "lock-up" testing

The first and perhaps most important decision a judicial officer must make is the pretrial release decision. In the District of Columbia, this decision is made largely on the basis of information provided in a written report submitted by the Pretrial Services Agency in every case. The report summarizes the defendant's residence, family, and employment ties to the community, as well as prior criminal history and current status of pending charges, probation, parole, or warrants from other jurisdictions.

While the Agency has always asked arrestees about their drug use, only after the implementation of the drug detection program in 1984 could these important data be corroborated with a scientifically accurate test. Not surprisingly, the urinalysis testing program showed drug use to be far higher than the self-reported data indicated. (See Figure 1.)

Figure 1.

Percentage of drug users identified by urine tests who self-reported drug use (June 1984–January 1985)



*This shows that 48% of those who tested positive self-reported; or, alternatively, 52% of those who tested positive *failed* to report drug use.

Source: Toborg Associates, Inc.

In the District of Columbia, as well as the Federal system and most State court systems, the judicial officer must consider two factors at the initial release hearing: the risk of flight and risk to community safety. The court may set release conditions designed to deal with risks apparent in the defendant's background.

Since drug use correlates so strongly with increased risk in both categories (see "Drug Use and Pretrial Crime in the District of Columbia," *NIJ Research in Brief* by Mary A. Toborg and Michael P. Kirby), it is important that judges have this information when the defendant appears before the court. Accordingly, the Agency established its testing facility in the courthouse, adjacent to the cellblock.

Using Emit technology and five Autolab Carousel Units manufactured by the Syva Company, the Agency analyzes urine samples simultaneously for five drugs:

- Phencyclidine (PCP)
- opiates (heroin)
- cocaine
- methadone
- amphetamines.

(The technology permits testing of other substances of abuse on the same equipment.)

Beginning at 7:00 a.m. each morning, the Agency is generally able to collect urine samples and complete an entire day's lock-up (an average of 70 arrestees, but sometimes as high as 120) by 9:30 or 10:00, and have the results available to the judicial officer when the "arraignment court" commences at 11:30. All test results are entered into the Agency's online computer system.

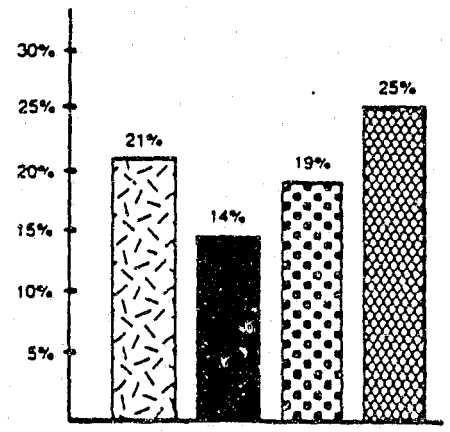
Very few defendants refuse to give a urine sample when requested. Why? Because they are told that the test result will be used *only* for determining their conditions of release. The results are not used as evidence on the underlying charge. While defendants have a right to refuse to give a sample (just as they have a right to refuse to be interviewed by the Pretrial Services Agency), in practice they realize there is little to be gained by this maneuver. Since the court considers this information vital to informed decisionmaking, refusal to provide a sample usually results in any nonfinancial release for the defendant being conditioned on submitting a urine sample, with appropriate placement based on the results.

Having this information available for the defendant's first appearance has meant that judges are now much better equipped to assess the risk posed by the pretrial release of an individual. Prior to the implementation of this program, many drug users slipped through the system, their drug use undetected. As a result, no conditions were set to deal with the problem, and their pretrial conduct (at least with respect to drug use) went unmonitored. As a group, drug users in the District of Columbia have consistently been found to be disproportionately involved in pretrial misconduct—as measured by rearrests while on release or failure to appear in court. (See Figure 2.)

Judges are well aware that drug users pose increased risks if released, and they are sensitive to the public safety concerns of the community. But judges traditionally have felt the frustration of having very few options. The District of Columbia jail, like most other urban jails, is already seriously overcrowded. There are long waiting lists for the few good treatment programs that exist.

Figure 2.

Pretrial rearrest rates of released arrestees, by urine test results (June 1984–January 1985)



Source: Toborg Associates, Inc.

Against this background, the Pretrial Services Agency stepped forward to offer a new and hitherto untested option—regular drug testing as a *condition of release*, the second component of the Agency's drug detection services.

Regular drug testing as a condition of release

Perhaps the most significant aspect of the new testing program was the development of regular drug testing as a condition of release. The goal of this aspect of the program was simple—to *reduce* the use of drugs, thereby *reducing* (it was hoped) the increased risks of pretrial misconduct posed by the release of drug users. The program was premised on earlier research and the recognition that drug users do not change their habits simply because somebody tells them to. For the program to deter drug use, releasees would have to be held accountable for violations.

To translate this concept into reality, the Agency carefully designed a program of drug testing with close supervision and real sanctions for violations. Defendants are released with a specific, court-ordered condition to refrain from illegal drug use. (Drug users who request treatment are referred to appropriate treatment facilities.)

Once enrolled in the testing program, defendants are initially scheduled to report weekly on a specific day. Defendants *must* report according to their testing schedule. Samples will not be accepted on any other day. They are told that a failure to report for a test is just as serious as a positive test. They sign an appointment slip *each time* they report, so there can never be any ambiguity or confusion about their obligation.

The Agency's automated records system maintains the defendant's entire history of test results, which is reviewed each time he or she appears. A staff member observes urine sample collection to avoid the possibility of tampering or substituting someone else's urine.

The court is immediately notified of those defendants who fail to report as

directed. Positive test results lead to sanctions, which escalate if drug use continues. Initially, those who continue to use drugs are placed on an intensified or more frequent testing schedule and are once again warned of the consequences of continued drug use. Further violations lead to a request for a hearing before the releasing judge.

It is in the area of sanctions that the greatest changes in criminal case processing have occurred—changes that contributed substantially to the success of the program. The Pretrial Services Agency actively encourages the court to hold "show cause" hearings, i.e., hearings where the defendant is directed to show cause why he or she should not be held in contempt for violating the court's release conditions. Furthermore, the Agency recommends that should the defendant be found guilty of violating conditions of release, short jail sentences, followed by re-release, be imposed.

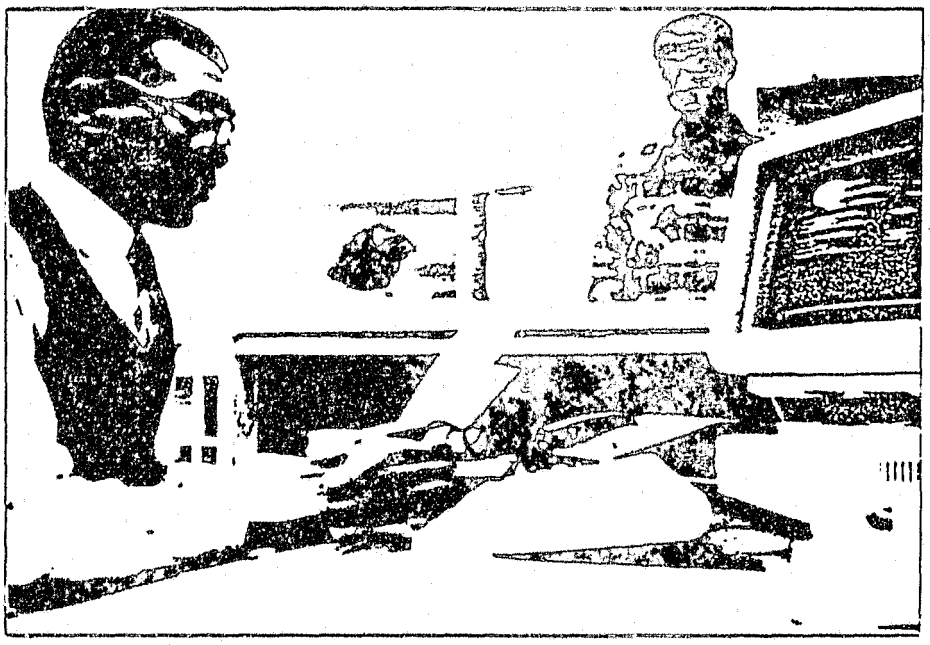


Photo courtesy of NII

Pretrial Services Agency staff member enters the results of drug testing on the computer.

This method ensures certainty of punishment. The more traditional approach of revoking release and setting a money bond, on the other hand, may not result in any detention of the defendant, and may in fact be a welcome alternative to the requirement of twice-weekly trips to the courthouse to submit a urine sample. If the program is to have the intended deterrent effect, defendants must know that violations will be detected and punishment will follow.

Once armed with reliable and timely information, the judges of the District of Columbia's Superior Court were more than willing to use the program first as a release option for those drug users who might not otherwise be considered for release, and then as the mechanism to enforce court orders and hold defendants accountable for their conduct.

Hearings *were* held, and defendants *were* held in contempt of court and punished. Quickly, the word got around that the court was serious about enforcing its orders, and defendants began to act accordingly.

Predictably, not all drug users abide by the release conditions, even though they know the consequences. But what the program offers the court is an accurate method for determining who among the vast numbers of drug-abusing defendants will comply with the program and who will not. After first determining (through the "lock-up" testing) the group posing the highest risk if released, the court is then able to utilize an "early warning" mechanism to identify those who cannot or will not refrain from drug use. With the backing of a scientifically reliable test, the court can and does take action against this "sub-set" of drug users.

The evaluation team has confirmed the validity of this "signaling" mechanism. Of all those placed in the Agency's program of regular drug testing, the individuals that either never showed up or dropped out after one, or two, or three appointments, had very high rearrest rates (33 percent for no-shows and 30 percent for early drop-outs). Those who stayed with the program for at least four drug tests had substantially lower rearrest rates (14 percent)—so low, in fact, that they posed no higher risk of rearrest than the group of *non*-drug users.

In other words, for this group of releasees, the intervention of the program and the willingness of the judges to put some teeth into it succeeded in eliminating the *additional* risk associated with drug use. It strengthened the concept of conditional release, providing hard evidence that as an alternative to incarceration, the technique can operate without burdening the community with additional risks. At a time of serious jail crowding, the benefits of such a program have been substantial and have led to the further development of an intensive pretrial supervision program, of which drug testing is an important component.

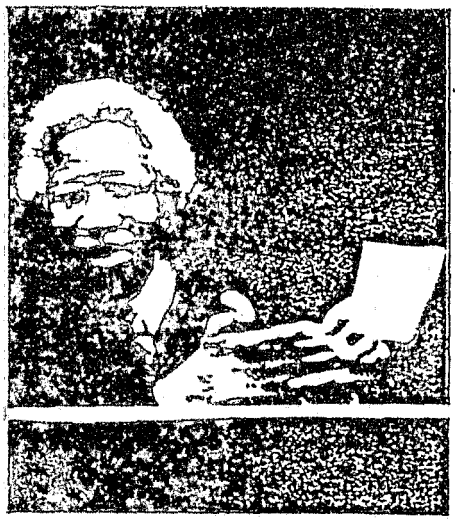


Photo courtesy of NII

The late Chief Judge H. Carl Moultrie I was instrumental in establishing the drug testing unit in the D.C. Superior Court.

Drug testing by special court order

The foregoing has described the use of the testing program as a risk assessment mechanism to assist judges at the defendant's initial appearance, and as a condition of release to monitor the defendant's behavior throughout the pretrial period. Yet another benefit of the program is the ability to provide judges with immediate information on drug use at any time during the court process. With the drug testing facility located in the courthouse, judges can have a defendant tested and pass over the case until the results are ready. This drug testing service often occurs in as little as 10 or 15 minutes and is frequently requested at all stages of criminal case processing, including sentencing.

Testing—an "early warning" system

Not to be overlooked are the benefits of the testing program that go beyond the criminal justice system to the general community.

Once comprehensive testing had begun, it quickly became apparent that the extent of drug abuse was far greater than anyone had imagined. Nearly two out of every three arrestees is a drug user.

The testing also revealed that the nature of the drug problem had shifted. While heroin addiction was still significant, the number of defendants testing positive for PCP was far greater—35 percent compared to 16 percent. Cocaine use was on the rise and eventually eclipsed both opiate and PCP use as the drug of choice. (See Figure 3.)

Only after this program was initiated did the city government begin to realize the extent of PCP and cocaine use in the community. This in turn has led to both a redirection of the city's treatment resources and a substantial increase in the funds appropriated for public education and drug abuse treatment.

Legal issues

Drug testing is an issue much in the news and is often the subject of legal or constitutional challenges. Thus, the experience of the District's drug testing program with respect to legal challenges is useful for other jurisdictions to know.

The program has faced challenges. That it is still in operation after 2½ years is due in no small part to the care with which the program was set up. Most of the legal issues fall into three categories. These are:

1. The constitutionality of collecting urine samples.

2. Challenges to the reliability of the technology.

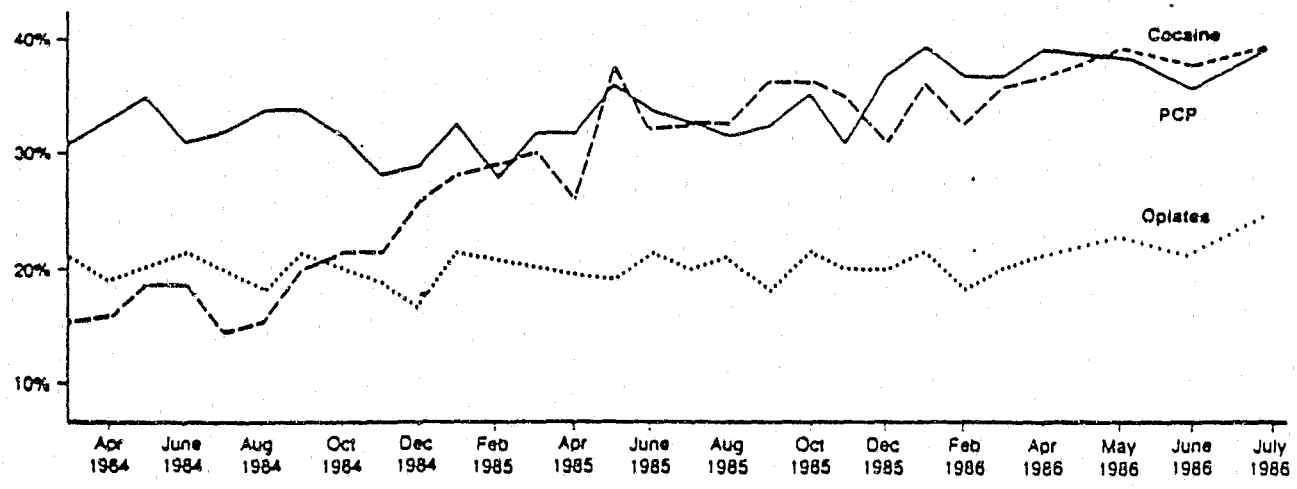
3. Challenges based on chain of custody.

The first and most important issue deals with the admissibility of test results. There is a very important limitation on the use of the drug test. When samples are first collected in the courthouse cellblock, arrestees are told that their test results will be used *only* for determining appropriate conditions of release. Consistent with statutory guidelines governing the use of information in the Agency's files, the results are *not* admissible on the issue of guilt. Since a positive drug test is not used to convict the defendant of any crime, the issue of self-incrimination does not arise. Therefore, challenges raised in other contexts have been avoided.

Once the individual is arraigned on the criminal charges, judges have broad discretionary power to set and enforce conditions of release. And they have been quick to convene show cause hearings to determine if the defendant should be found in contempt of court when the conditions are violated. In this context, the Agency frequently finds

Figure 3.

Arrestees who tested positive for opiates, cocaine, or PCP (Based on 34,687 total tests)



Source: Toborg Associates, Inc.

Photo by John McDonnell, Washington Post

Chief Judge Fred B. Ugast has spearheaded task force efforts to ensure adequate drug treatment services for defendants in Washington, D.C.

itself in court to respond to challenges to either the reliability of the testing procedure or to the chain of custody question.

The question of the reliability of the Emit technology has been carefully scrutinized in at least one lengthy proceeding where expert witnesses were brought in for several days of testimony. (For a general discussion of drug testing technologies, see "Testing to Detect Drug Use," *TAP Alert*, National Institute of Justice.) Since the program uses the stationary equipment (as opposed to the less reliable portable equipment) and follows all of the manufacturer's procedures for calibrating the instrumentation and reconfirming every positive test result, the program has withstood every legal challenge on reliability grounds.

Chain of custody is another issue frequently litigated in drug testing situations. As a result of careful procedures, numerous checks and double-checks, and the fact that the urine sample goes almost immediately from the defendant to the testing equipment next door, the information has *never* been invalidated on the grounds of sloppy chain of custody procedures.

Program operating costs

The cost of setting up and operating a comprehensive drug testing program in a criminal justice context depends on a variety of factors. For how many drugs does the jurisdiction wish to test? Obviously, a screen for five drugs like that employed in the District of Columbia does cost more than screening for two or three drugs. How much time is available to analyze the urine samples? If a large number of samples must be processed quickly, more staff and more equipment will be needed. Will the drug testing facility remain open during extended hours to accommodate releasees with jobs or other commitments? What kind of management information system exists to maintain the test results consistent with the highest standards of data integrity? Will the drug detection program provide related services to the court, such as referrals to treatment facilities? All these issues must be addressed before arriving at a realistic assessment of the costs of operating such a program.

The costs of running a drug testing program can be broken into four categories of expenses: the testing equipment, the recordkeeping system, chemical reagents, and staff.

Testing equipment is available from several manufacturers in a variety of configurations. The instrumentation chosen by the Pretrial Services Agency was purchased at a price of approximately $16,000 per unit.

The costs of maintaining an efficient and easily accessible information system should not be underestimated. In the District of Columbia, the Agency modified its existing mainframe computer system to handle its information needs. Smaller jurisdictions might find personal computer-based systems feasible.

About half of the program's operating budget is allocated to personnel. The unit is open 12 hours per day, 6 days per week. The other half of the annual budget goes for chemical reagents and associated items needed to do the actual tests. For the five-drug screen employed by the program, the cost in chemical reagents and supplies is approximately $7.00 per test, which includes the cost of reconfirming positive results.

In considering costs, a relevant question is: What does it cost *not* to have a drug testing capability? Providing judicial decisionmakers with accurate data is certainly a value. And, as the research has indicated, data on drug use are perhaps the most relevant pieces of information because they correlate so strongly with those factors uppermost in a judge's mind—risk of flight and likelihood of rearrest.

As the NIJ-sponsored research has demonstrated, drug users are substantially more likely to be rearrested than nonusers. Should judges make release decisions without this information? Should judges have to rely on what the defendant chooses to divulge, without scientific verification, knowing that *most* of the problem will go undetected? Finally, having documented the value of regular drug testing as an "early warning" system of trouble, do we really want to continue operating in the dark?

A final point on costs: most criminal justice systems are operating within tight local budgets. The fact that almost every jurisdiction is facing a jail crowding crisis does not make the situation any easier. While a program such as the District's is no panacea for either the drug problem or the jail crowding problem, it *does* strengthen the system of conditional release—a necessary prerequisite for any strategy to reduce jail crowding.

In the District of Columbia, the drug detection program of the Pretrial Services Agency was seen as so important that it is now operating with full local funding. There has been an unequivocal determination that the program, while not cheap, is less expensive than the alternative of *not* having one.

NIJ

APPENDIX E

Department of Corrections: Pilot Program
for Pretrial Services for Misdemeanants

PILOT PROGRAM:

PRETRIAL SERVICES

FOR

MISDEMEANANTS

DEPARTMENT OF CORRECTIONS
Division of Adult Community Corrections
Community Alternatives Office

JULY 8, 1988

Introduction

The PreTrial Services Program for Misdemeanants is part of the Governor's recently announced package of alternatives to ease overcrowding in local jails. The pretrial option has received support from the Virginia State Crime Commission, the District Court Services Steering Committee, and the Sheriff's Conference on Overcrowding.

The main objective of this program is to provide the General District Court Judges and the Commonwealth Attorneys with appropriate information to make release decisions. The goal is to enhance public safety by providing assurances that offenders who are dangerous remain in jail pending trial, and those that are considered unlikely to reoffend while in the community are released. Another objective is to provide a mechanism whereby failure to appear rates are drastically reduced, thereby saving court costs in issuing capiases and processing offenders.

The project assumes that General District Court Judges are releasing as many misdemeanants as possible with little or no information. The review of the offender in this program occurs when the Judge has made the decision to hold the offender in jail pending trial.

The Department of Corrections contact for further information on this pilot program is:

Mr. C. Ray Mastracco, Jr., Deputy Director
Virginia Department of Corrections
Division of Adult Community Corrections
P.O. Box 26963
Richmond, Virginia 23261
804-674-3107

Or

Ms. Dee Malcan, Chief of Operations
Virginia Department of Corrections
Division of Adult Community Corrections
P.O. Box 26963
Richmond, Virginia 23261
804-674-3242

PROGRAM DESCRIPTION

The basic concept evolves around direct participation of the Commonwealth Attorney's office. Localities to participate were selected based on overcrowding, pretrial population size, interest from Commonwealth Attorneys, and a need to pilot in each area of the state, both in urban and suburban areas.

The basic model calls for a Pretrial Investigator to be housed in the Commonwealth Attorney's office. This Investigator provides case file management for court processes, conducts background checks, recommends release or no release (with or without any special conditions) to the Commonwealth Attorney, and is the court liaison regarding docketing the cases in this program.

If released, the offender will be released to a Community Surveillance Officer who will make face to face contact every two weeks and telephone contact on alternate weeks. The Officer will conduct drug/alcohol screening once a month, if ordered by the Court as a condition of release. The Officer also provides written and verbal reminders to the offender of the pending Court date during the pretrial period.

The Community Surveillance Officer will maintain a running record of contacts, drug test results, and any reports needed by the Commonwealth Attorney. When the case is scheduled for trial, the Officer will send a copy of these reports to the Investigator. Upon completion of the pretrial period, the Officer will submit a data form on the case to Corrections as part of the evaluation process for the pilot program.

SITES SELECTED

The following areas have been selected based on the criteria discussed in the introduction:

ARLINGTON COUNTY

CHESTERFIELD COUNTY

CITY OF NORFOLK

PRINCE WILLIAM COUNTY

CITY OF ROANOKE(to be combined with the County of Roanoke and the City of Salem)

GENERAL PLAN OF ACTION TO IMPLEMENT PROGRAMS

1. MEET WITH COMMONWEALTH ATTORNEY(S) AND SHERIFF(S) TO DESIGN PROGRAM AND PROGRAM OBJECTIVES.

2. COMMONWEALTH ATTORNEY AND SHERIFF TO GAIN LOCAL SUPPORT FOR THE PROGRAM (JUDICIAL, LOCAL GOVERNMENT OFFICIALS, ETC.).

3. DEVELOP CONTRACT, BUDGET, EVALUATION CRITERIA, FUNDING MECHANISM AND ACTION PLAN.

4. REVIEW PACKAGE WITH CRIME COMMISSION STAFF, DOC STAFF, AND OTHER APPROPRIATE OFFICIALS (ex. contract form approval from Attorney General's Office).

5. NEGOTIATE, SIGN AND IMPLEMENT CONTRACT.*
   *Community Surveillance Officers will be hired in accordance with caseload size.