



Drug Testing in the Juvenile Justice System

A Policy Brief
for Decision Makers

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Probation and
Association

Office of Juvenile Justice and
Delinquency Prevention

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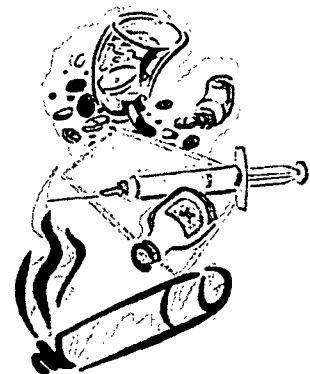


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by
Ann H. Crowe
Linda M. Sydney



American Probation and
Parole Association

Office of Juvenile Justice and
Delinquency Prevention

Prepared under Award No. 98-JB-VX-0103 from the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U. S. Department of Justice.

Points of view or opinions in this document are those of the authors and do not necessarily represent the official position or policies of the U. S. Department of Justice.

ACKNOWLEDGMENTS

The American Probation and Parole Association thanks the following individuals who served as an Advisory Group to assist with the conceptual development of this document and provided their review and comments of the draft document.

James Cronin
Program Manager
Bureau of Governmental Research
University of Maryland, College Park
College Park, MD

Rolando del Carmen
Criminal Justice Center
Sam Houston State University
Huntsville, TX

Nicholas Demos
Chief, System Development & Integration Branch
CSAT/SAMHSA
Rockville, MD

Barbara Dooley
Madison County Juvenile Court Services.
Jackson, TN

Greg Giordano
Senior Legislative Assistant
for Representative Mike Fasano
Florida House of Representatives
New Port Richey, FL

The Honorable Ernestine Gray
Judge
Orleans Parish Juvenile Court
Section A
New Orleans, LA

John Gregrich
Chief, Treatment Branch
Office of Demand Reduction
Office of National Drug Control Policy
Executive Office of the President
Washington, DC

Spurgeon Kennedy
National Institute of Justice
Washington, DC

Charles LoDico
Division of Workplace Programs
HHS/SAMHSA
Rockville, MD

Scott Reiner
Court Services Specialist
VA Dept. of Juvenile Justice
Richmond, VA

K. Jack Riley
Director
RAND Criminal Justice Program
Santa Monica, CA

Robert Stephenson
Acting Director
Division of Workplace Programs
HHS/CSAP/SAMHSA
Rockville, MD

Jim Swart
Senior Policy Advisor
Office of the Secretary
Office of Drug/Alcohol Policy & Compliance
U.S. Department of Transportation
Washington, DC

Sandy Woods
Substance Abuse Coordinator
Rhode Island Department of Children, Youth &
Families
Pawtucket, RI

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FOREWORD

The American Probation and Parole Association (APPA) was awarded funding to provide training and technical assistance on implementing drug testing through the Federal Juvenile Accountability Incentive Block Grants (JAIBG) legislation that is administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), a component of the U. S. Department of Justice. APPA has a lengthy history of supporting the implementation of effective drug testing programs as a tool for the supervision and rehabilitation of drug-involved offenders. Several national and regional training programs on development of drug testing at the local agency level were delivered by this project, and individualized technical assistance has been provided to numerous agencies.

The Conference Report through which the United States Senate and the House of Representatives reached agreement regarding the Juvenile Accountability Incentive Block Grant (JAIBG) program and other issues funded within the legislation states:

...no State or unit of local government may receive a grant under this program unless such State or unit of local government has implemented, or will implement...a policy of controlled substance testing for appropriate categories of juveniles within the juvenile justice system...

While there is sufficient information about implementing drug testing at the local agency level, scant attention has been given to the need for broad-level policy development on drug testing at jurisdictional or State levels as intended in the JAIBG legislation. To facilitate the implementation or enhancement of substance abuse testing of juveniles and the development of informed policies that support this tool for the supervision and rehabilitation of youth, among other purposes, APPA was asked by OJJDP to develop this document, *Drug Testing in the Juvenile Justice System: A Policy Brief for Decision Makers*.

This *Policy Brief* is intended for broader-based decision makers (i.e., those who make policies at jurisdiction and State levels), such as legislators, State or jurisdictional juvenile justice planners and administrators, judges, or other similar individuals charged with setting the overall policy direction for a variety of juvenile justice agencies and programs. It provides policy makers with the key elements that should be included or addressed in the development and implementation of a drug testing policy. The *Policy Brief* highlights a variety of key components of a drug testing program and thus provides a ready reference and resource for State and local jurisdictions to build upon in developing or enhancing drug programs in their locales.

This document considers only the drug testing of juveniles who come in contact with the juvenile justice system for delinquent and status offenses. As a variety of issues -- including the legal status of the youth -- are different in other settings, such as schools, the discussion in this *Policy Brief* is limited to testing that occurs in a juvenile justice context.

INTRODUCTION

The use of illicit substances is a common problem among youth in the juvenile justice system. To ensure public safety, hold youth accountable for delinquent behavior, and help them develop into healthy, productive, law abiding citizens, it is essential that the problem of illicit substance use be addressed. A program of drug testing for appropriate categories of juveniles can accomplish a variety of important purposes.

This document is written from the premise that drug testing is a tool that must be used in conjunction with other program strategies to accomplish its intended functions. Alone, drug testing accomplishes little or nothing; combined with effective rewards and sanctions and substance abuse treatment programs, drug testing can be a powerful mechanism for decreasing substance abuse and delinquent behavior. It can also be an effective tool for monitoring substance abuse and triggering other assessments of drug-involved youth so that their health and safety, and that of members of the community, is better protected. Substance testing is also an effective way of learning the extent of substance abuse, types of drugs used, and even the parts of a community where drugs are most frequently used by youth. This information can be used in a variety of ways to help decision makers and program planners assess needs, interdict drugs, and plan for treatment and other resources needed

to address substance abuse problems.

Background information on substance abuse and juvenile justice is provided as a context for decision making. This Policy Brief then discusses a policy-making framework within which juvenile drug testing can be considered as a means to achieve a variety of goals. Several criteria are suggested against which each policy decision can be examined. Several policy options for juvenile drug testing are examined, including as a tool:

- For prevention, behavior change, and treatment for substance-abusing youth.
- To promote health and safety.
- For program planning decisions.

The document then explores some of the elements that policy makers should consider when developing a drug testing policy, including legal issues and testing technologies and methodologies.

This *Policy Brief* provides three flow charts of the policy-making process from three different perspectives: jurisdictional policy, county-wide policy, and state-wide policy. Finally, the document provides a recommended reading list for those who need further information on the variety of topics addressed and an appendix summarizing the legislative process.

BACKGROUND FOR DRUG TESTING IN THE JUVENILE JUSTICE SYSTEM

Youth often use psychoactive substances to change the way they feel or to attempt to fit in better with their peers. Thus, at least initially, youth receive rewards from their drug use - both physiological rewards (feeling euphoric or calm) from the effects of the drugs they use and social acceptance from peers who condone substance use. Psychoactive substances, therefore, provide a powerful motivator for continuing and increasing use. Drugs¹ produce changes in brain chemistry, and with ongoing, significant levels of use, may produce long-term alterations in brain chemistry and functioning. Once addiction occurs, drugs seldom produce the pleasure they did at earlier levels of use, but addicted individuals need to continue using them just to achieve relatively normal feelings.

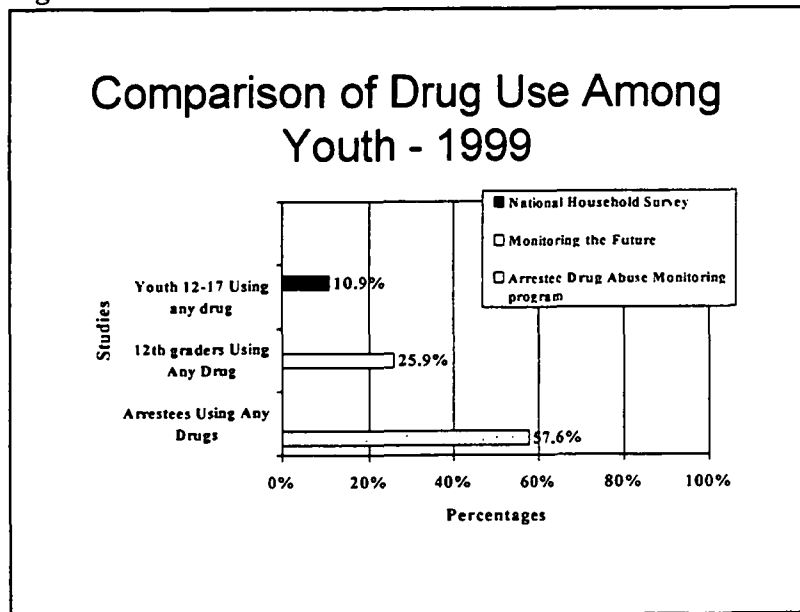
Youth's cognitive development also places them at risk for substance use. Youth tend to think in the present and to have a very egocentric view of their world. They believe that they can take risks without encountering consequences, and they have difficulty imagining a future that is very different from the present. Therefore, they are inclined to do what makes them feel better or gives them enjoyment at present without considering long-term consequences or understanding that any pain they presently experience may not always be a part of their lives.

Various methods are used to discern the type and amount of drugs used by youth including the surveys shown in Figure 1. In this example, the National Household Survey, sponsored by the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration, and conducted through face-to-face interviews with household members, detailed past month usage of illicit drugs as reported by youth aged 12

to 17 in 1999 (Office of Applied Studies, 2000). The Monitoring the Future Study, sponsored by the National Institute on Drug Abuse, asked a sample of youth to anonymously report usage of any illicit drug; in 1999, 12th graders reported usage in the past 30 days as shown in Figure 1 (Johnston, O'Malley, & Bachman, 1999).

The Arrestee Drug Abuse Monitoring (ADAM) Program, sponsored by the National Institute of Justice, uses information garnered from male arrestees based on voluntary, anonymous self-report from the youth and urinalysis for illicit drugs other than alcohol. In nine cities across the country, between 43 and 69 percent of males arrested in 1999 tested positive for one or more drugs. Female juveniles were tested in six cities, and between 24 and 48 percent of them also were positive for an illegal drug (Arrestee Drug Abuse Monitoring Program, 2000). The data from conducting urine testing of arrestees would suggest that youth in the juvenile justice system are more likely than youth in

Figure 1



¹In this document, the term "drug" is used to refer to all types of psychoactive substances used by youth including alcohol, inhalants and other environmentally available mood-altering substances, illegal drugs, and prescribed and over-the-counter drugs that are misused.

the general population to use psychoactive substances and that drug testing reveals more use than does self-reporting.

Research on the co-occurrence of delinquency and substance abuse has shown that the more serious the youth's involvement in drug use, the

more serious is involvement in delinquency, and vice versa. Researchers have concluded that "the most frequent temporal order is minor delinquency, then alcohol use, then more serious offending, then marijuana use, and lastly polydrug use" (Huizinga, Loeber, & Thornberry, 1994, p. 5-2). The sequence of behaviors suggests overlapping patterns, but does not demonstrate a causal relationship in that delinquent behavior does not cause the onset of drug use, and drug use does not cause delinquent behavior (Huizinga et al., 1994; Kimbrough-Melton and Small, in press).

The costs and consequences of drug use by youth are sustained by both the youth and the community. Youth experience changes in developmental processes and subsequent consequences socially, psychologically, physically, cognitively, academically, and legally. A youth's substance use negatively affects both his/her family and peers. The community and school endure economic and social costs, including youth gangs, income-generating crimes (including prostitution), and drug trafficking. There is also a cost of substance use and delinquency in the suffering caused to victims of crimes.

usually occurs occasionally, perhaps a few times monthly. Youth usually engage in this level of use on weekends when at parties or with friends. With problem use or abuse, youth begin using substances more regularly, such as several times a week or even daily. Dependency or addiction usually means the youth has progressed to frequent, perhaps daily, use, or in some cases, they may engage in binge drinking or periodic excessive use of other drugs.

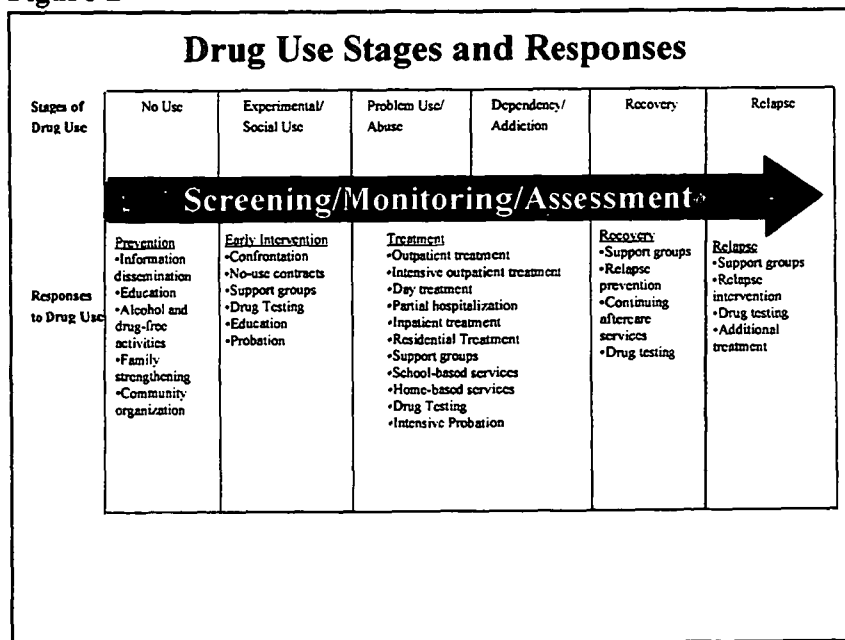
Physical, hormonal, and emotional changes during adolescence create stresses that are magnified by typical adolescent developmental drives for individuality, separation, autonomy, and social acceptance. Youth who lack life experience often have difficulty controlling their impulses or making appropriate decisions. Use of chemicals intensifies the behavior problems associated with adolescent development and delays emotional development. Substance-abusing adolescents frequently belong to dysfunctional families in which there are no appropriate role models or support (Crowe & Sydney, 2000). An estimated seven million children are growing up with at least one substance-abusing parent (Huang, Cerbone, & Gfroerer, 1998).

A Continuum of Substance Use

Generally, substance use is a progressive process, ranging from experimentation to addiction. Figure 2 depicts the various stages of use that may be found among youth. It shows three stages of substance use followed, hopefully, by recovery and then the possibility of relapse. With young people, the path is neither straight nor certain. The drug and alcohol use continuum does not imply that all youth who begin drug use will progress beyond experimental or social use. Some may misuse or abuse substances, but stop or return to an earlier position on the continuum. However, there is the potential for youth to progress through the continuum and to need the appropriate level of intervention required at a given stage.

Experimental or social use of psychoactive substances

Figure 2



Drug Testing as a Tool

The mission of the juvenile justice system is to:

- Hold youth accountable through requiring restoration of the harm they have caused both to individual victims and to the community.
- Protect the community.
- Develop youth's skills and competencies to promote prosocial behavior.

Drug testing is a *tool* that can support and further this mission by providing an efficacious method for identifying and intervening with substance-using youth, selecting appropriate services to meet their needs, and monitoring their compliance with those services. Using aggregate information obtained from drug testing can provide reliable data for assessing the extent of drug use

among youth and developing appropriate community resources for interdiction and intervention efforts.

The personal and social costs and consequences of youth's drug use and delinquency warrant efforts to identify and intervene as early as possible with substance-using youth. Those costs and consequences are also a strong argument for systemic implementation of drug testing in the juvenile justice system. "The juvenile justice system must develop and use innovative strategies for early identification and intervention for juvenile drug offenders entering the system if we are to prevent – or at least reduce – the serious consequences that continued adolescent substance abuse poses for troubled youth, their families, and communities" (Bilchik, 1997, p. 1).

DRUG TESTING POLICY ISSUES IN THE JUVENILE JUSTICE SYSTEM

In recognition of the link between drug use and delinquency, various juvenile justice policies at jurisdictional, State, and Federal levels emphasize the importance of identifying and intervening with substance-abusing youth who come in contact with the juvenile justice system. One such policy directive comes from the Juvenile Accountability Incentive Block Grants (JAIBG) Act of 1997. The Conference Report through which the United States Senate and House of Representatives reached agreement regarding the JAIBG program and other issues funded within the legislation states:

...no State or unit of local government may receive a grant under this program unless such State or unit of local government has implemented, or will implement, . . . a policy of controlled substance testing for appropriate categories of juveniles within the juvenile justice system. . .

While there appears to be little debate about the need for policies on drug testing, and many agencies have developed effective local policies, scant attention has been given to discussions of broader policies on drug testing (e.g., jurisdictional, multi-jurisdictional, or statewide policies). These broad-level policies are the focus of this *Policy Brief*. This document provides a framework for making policy decisions about drug testing of juveniles and discusses key elements to consider in policy development.

Purposes and Policy Framework for Drug Testing

In this *Policy Brief*, drug testing is discussed as a component of several approaches to address substance abuse and delinquency including, primarily, programs that decrease the demand for drug use and, to some extent, programs that aim to decrease the supply of drugs.

To achieve these goals, the results obtained from drug testing youth must be considered, and appropriate responses supporting the selected objectives must be implemented. Drug testing is not likely to be as helpful if used without other program components such as treatment and rewards and sanctions. Indeed, it can be a disservice to youth to identify their problem drug use if appropriate and sufficient services are not available to respond to it. Policy makers need to consider not only drug

testing, but other needed program components that will help meet goals of prevention, behavior change, and treatment. As John J. Wilson, Acting Director of the Office of Juvenile Justice and Delinquency Prevention stated:

It doesn't make any programmatic sense to test somebody for drug use unless you're going to do something with the result. So, in part, it [drug testing] will depend upon the capacity of the state or local government to use those results in a meaningful way (Mattingly, 1998, p. 14).

Without appropriate responses to drug testing results, the youth suffers from not receiving appropriate services, and the juvenile justice system is unable to meet its mission of accountability, protecting the community, and rehabilitation of youth.

A plan for responding to both positive and negative test results should be implemented system-wide throughout the juvenile justice continuum. The responses to positive test results should consist of a spectrum of approaches incorporating interventions and sanctions. Interventions should be based on identifying the youth's level of substance abuse and matching appropriate services to meet their needs. A range of sanctions should be available to provide increasingly stronger responses to continued positive test results. The National Task Force on Correctional Substance Abuse Strategies (1991, p. 28) found that, "Punishment alone is of questionable effectiveness (in changing behavior), but treatment without strict expectations and consequences is also likely to be ineffective. Punishment and treatment should not be seen as alternatives, but as complementary."

An often overlooked but equally important element is to provide rewards in response to negative test results. Rewards, like sanctions, should be graduated and increase in magnitude in response to continued negative test results.

Drug testing can also be used to understand larger behavior patterns, such as the prevalence among a population, for example juvenile arrestees. Such testing should be conducted not for the purpose of imposing individual responses to test results but to learn how widespread the problem of drug use is and how much of the tested population is demonstrating at-risk behavior. It can, however,

be a cost-effective method for making decisions for drug testing individuals, e.g., drugs for which to test, frequency of testing, and methodology for conducting testing.

Policy Contexts

Policy development on drug testing may occur within a variety of contexts. Authorization for drug testing may exist in Federal or State statutes, court orders, or agency policies. At a broad level, State agencies overseeing juvenile justice programs (e.g., Department of Corrections, Department of Juvenile Justice, State probation agency) may establish policies regarding drug testing for all juvenile institutions, probation agencies, or other programs. A juvenile court jurisdiction (whether it be county, regional, State, or some other configuration) also may adopt drug testing policies that apply to all cases or certain types of cases that come before the court.

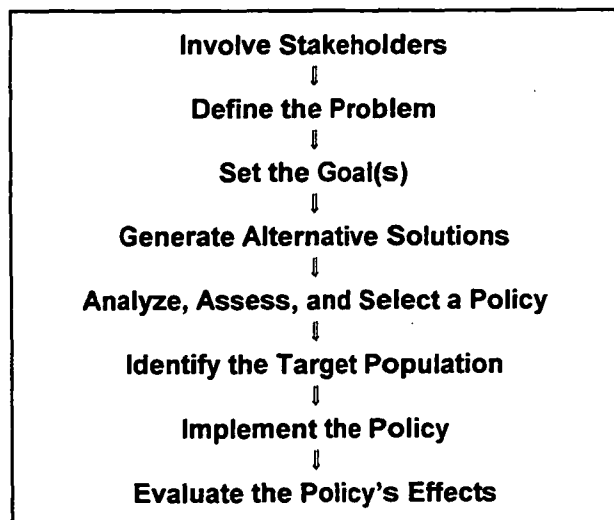
State legislatures may pass laws that establish policies for drug testing. (See Appendix for a discussion of some of the steps in enacting State laws.) The laws may be either enabling or mandatory, i.e., allowing or requiring drug testing of juveniles. Section 985.231 of the Florida Statutes provides an example of an enabling statute in that it states, "Upon the recommendation of the department at the time of disposition, or subsequent to disposition pursuant to the filing of a petition alleging a violation of the child's conditions of community control or aftercare supervision, the court may order the child to submit to random testing for the purpose of detecting and monitoring the use of alcohol or controlled substances." A 1999 publication by the National Criminal Justice Association, *A Guide to State Controlled Substances Acts*, listed only four States that had statutorily mandated drug testing of juveniles. However, 12 States had passed legislation for drug testing of adults in the criminal justice system. California, Connecticut, Illinois, and Wyoming legislation contain language indicating that for some youth, drug testing *shall* be imposed by the court as a condition of probation. California's Welfare and Institutions Code (729.9) states that youth "shall submit to drug and substance abuse testing as directed by the probation officer," and requires the youth to pay all or part of the costs of testing if they have the financial ability to do so.

When State laws (for adults or juveniles) specify certain groups of offenders to be tested, they most often focus on those who have committed drug

offenses or have histories of drug use. Some legislation specifies the drugs to be tested for, the frequency of testing, the consequences of positive results, and specific procedures to be used in drug testing (e.g., specimen collection, types of tests to be used, such as urine testing, chain-of-custody procedures, and confirmation of results). Generally, broad-level policies should provide a framework for implementation but should not be too prescriptive. Local programs will need to adapt procedures to fit their particular contexts.

A Policy Making Framework

Global policy development for juvenile justice drug testing may be driven by various public safety and health concerns. These may range from a single catastrophic incident by a drug-involved juvenile to concerns over the mounting health and welfare costs of substance abusing juveniles to issues surrounding school discipline and truancy. The juvenile drug testing policy should be rational and reflect legitimate public needs. This *Policy Brief* recommends an eight-step rational decision making process shown below. Although these steps are presented in a progressive manner, decisions at one level will affect those at both future and previous stages and may require that previous decisions be reconsidered.



Stakeholder involvement is vital for successful policy development. Representatives of a variety of groups should be included in deliberations to ensure that the policy meets intended needs. These stakeholders must explore the problem and define it accurately, which is the next step of the process.

Identifying the specific goal(s) to be achieved through policy development is the next level of consideration. Two general policy goals are usually considered as policy options: decreasing demand for drugs (usually through treatment or changing drug using behavior) and decreasing the supply of illegal drugs. Goals for intervening with substance-abusing youth that are considered in this document specify that the policy's intention may be to accomplish one or more of the following:

- Prevent youth from the initiation or continuation of drug use through drug use prevention programs and the application of rewards for those who do not use drugs and sanctions for those who do.
- Change the behavior of youth who frequently use drugs by providing sanctions for drug use and incentives to avoid drug use.
- Reduce the demand for illegal drugs among youth by providing treatment for youth who have progressed to levels of abuse or dependence in their drug use.
- Reduce the supply of drugs available to youth in the community by locating the areas of the community where drug use is most significant and/or where illegal drugs are entering the community to provide additional surveillance, interdiction, and prevention or intervention.
- Use aggregate information to determine prevalence of use and structure responses based on information obtained.

Once the broad goals for identifying and intervening with drug-using youth have been decided, stakeholders should focus on generating several possible solutions that address the defined problem and would meet the goal(s) that has been set. A variety of approaches referred to above might be appropriate, including prevention, treatment, behavior change strategies, and interdiction. Drug testing may be a component of any of these program approaches. The next step requires analyzing the options generated and selecting one or more of them for implementation. A part of this decision making also will include selecting the youth who will be targeted for the implementation of the policy. Consideration must be given to where in the juvenile justice process the policy will be applied as well as the types of youth to be targeted for the policy. Any or all parts of the juvenile justice system may be appropriate for policy implementation including detention programs, diversion programs, probation, custody facilities, and aftercare. All youth

entering the system at a given point may be included, or the policy may be limited to youth with a history of substance abuse or a drug-related offense.

After the foregoing decisions have been made, implementation of the policy is the next step. This requires that adequate resources (e.g., funding, training, staff) are available to achieve the intended goal of the policy. The final step of policy development – although it should begin with the first part of the planning process – is the evaluation of the effects of the policy. Program processes and outcomes should be studied, and those findings should be reviewed as a method of checking the entire decision making process. If the desired goals are not achieved, or are not achieved in the desired magnitude, decision makers may need to reassess the problem definition, define other goals, consider other possible solutions, and may want to choose other policy and program options.

Criteria for Examining Policy Options

A rational policy development process should have some criteria to be used in weighing alternative approaches to meet the selected goal(s). Following are several criteria that are appropriate for evaluating policy decisions and will be used throughout this *Policy Brief* to examine various options for identifying and intervening with drug-involved youth.

- ✓ **Responsive and Relevant to Public Need.** Policies should address a problem that is articulated and agreed upon by the decision makers involved. Various constituencies will perceive the issues and their impact in divergent ways. Therefore, effective policy decisions must respond to and be related to the need the public perceives.
- ✓ **Provides a Positive Benefit.** Policies should intentionally improve the defined problem. However, policy makers also need to consider the possibility of unintended consequences that might have potentially harmful effects. Careful analysis is important to ensure that unplanned negative results will not outweigh the intended positive outcomes.
- ✓ **Least Intrusive or Restrictive Alternative.** Intervention with substance abusing youth should occur at the first opportunity in the juvenile justice system. For example, outpatient treatment may be provided as a diversion, or youth on probation may be tested and provided with rewards and sanctions to change their

behavior rather than waiting until a custodial placement or inpatient treatment is necessary. This criterion also addresses the method of collecting specimens for drug testing (e.g., collecting urine samples rather than blood samples). As drug testing technologies evolve, less intrusive methods are being developed, including the use of more readily available bodily specimens such as oral fluids, sweat, and hair as well as other biological responses such as the eye's reaction to light (pupillometry).

- ✓ **Research-Based.** There should be a research-based rationale for the intervention to be used. Research has found that interventions with substance abusing youth, such as treatment and application of sanctions – including drug testing components – have reduced drug use and delinquency (Office of Applied Studies, 1998; Taxman, 2000).
- ✓ **Legally Defensible.** Interventions used in the juvenile justice system must not deny youth any of their guaranteed rights and should be able to withstand legal challenges. A later section of this document reviews the legal issues around drug testing and concludes that, when properly administered, it is legally defensible.
- ✓ **Economically Beneficial.** Any policy consideration must take into account the potential costs of its implementation when weighed against its monetary and human benefits. The question becomes: Will implementation of this policy result in cost savings or in benefits to youth that are worth an additional cost? This *Policy Brief* argues that the additional cost of drug testing youth and providing needed interventions may ultimately result in substantial cost savings as well as improvement in the life prospects for youth.
- ✓ **Scientifically Accurate.** Any technology used as a tool with youth in the juvenile justice system must comply with standards of scientific accuracy. Drug testing may be used as one

indicator that youth should be required to participate in treatment, as a measure of their progress in treatment or other programs, and, possibly, as a means of limiting their freedom. When a tool is potentially this powerful, its accuracy must meet high standards.

Potential Challenges to Policy Implementation

Policy makers must be aware of and prepared to address possible challenges to implementing a selected policy option. Among the challenges that may affect implementation of a policy that includes a drug testing component are:

- **Legal Restrictions.** Either Federal, State, or local laws may place restrictions on when or to whom drug testing may be applied.
- **Funding.** Reducing drug use will save money in the long run, but initially, there will be costs for drug testing, increased sanction and incentive responses, and other program components.
- **Treatment Resources.** For youth who have progressed to more serious levels of drug use, treatment will be required. If treatment resources are insufficient or poorly coordinated, the success of the policy will be affected.
- **Resistance from Juvenile Justice Practitioners.** Staff members in a variety of juvenile justice programs may resist drug testing as well as other program components. They may be required to perform additional duties, and in the case of collecting urine samples from youth, they may feel the task is too onerous, may pose health and safety risks, and is beyond the requirements of their positions. This resistance is minimized considerably when staff receive appropriate training in protocols for conducting drug testing and when they have the opportunity to experience first hand the benefit of access to accurate information about youth's drug use.

DRUG TESTING POLICY OPTIONS

Figure 2 indicated there are a variety of interventions that may be appropriate for youth who are using psychoactive substances and to prevent the initiation of drug use among young people who have not yet used alcohol or other drugs. For the individual young person, the most appropriate intervention will depend on where the youth is on the continuum of substance use. However, drug testing may be an important tool at every phase of use.

Prevention

Prevention efforts, especially for youth in the juvenile justice system, need to focus on cessation or restricting the progression of drug use. Youth who are randomly tested and receive definite sanctions for drug use and positive reinforcements for nonuse usually learn that maintaining abstinence is in their best interest. Coupled with education and other prevention approaches, drug testing can be effective in preventing the progression or continuation of substance use.

While it can be powerful, drug testing alone is not as likely to prevent ongoing drug use as it might be if used in combination with other prevention approaches. Pittman (1996) stresses that prevention and youth development are inseparable goals. She states that youth not only need to remain free of various problems (e.g., substance use, delinquency, early pregnancy, dropping out of school), but they also need to develop in a positive way. True prevention helps youth develop confidence, character, connections, and competencies. Young people need a sense of safety and structure, membership and belonging, mastery and a sense of purpose, and responsibility and self-worth. They need to develop competencies in:

- Academics.
- Vocational skills.
- Physical abilities.
- Managing emotions.
- Civic responsibilities.
- Social skills.
- Cultural competence.

Research on resilient children and youth emphasizes that they need (Pittman, 1996):

- A strong relationship with a caring adult.
- High expectations.

- Opportunities for meaningful participation. Services that solve problems for youth are not sufficient; youth also need support and opportunities that increase their potential (Pittman, 1996).

Research on prevention programs has found several approaches that have been proven effective or show promise. Those that work or show promise for reducing both crime and substance use among adults and/or juveniles include (Sherman, Gottfredson, MacKenzie, Eck, Reuter, & Bushway, 1998):

- Clarifying and communicating norms about behavior through rules, reinforcement of positive behavior, and school wide initiatives.
 - Social competency skills curricula that teach skills such as stress management, problem solving, self-control, and emotional intelligence.
 - Training or coaching in thinking skills for high-risk youth using behavior modification techniques or rewards and punishments.
 - Nuisance abatement activities that threaten civil action against landlords for not addressing drug problems on their premises.
 - Community-based mentoring.
 - School programs that group students into smaller units for more supportive interaction or flexibility in instruction.
 - Building school capacity to initiate and sustain innovation through the use of school teams or other organizational development strategies.
 - Improved classroom management and instructional techniques.
 - Drug Courts that order and monitor a combination of rehabilitation and drug treatment.
 - Drug treatment in detention followed by treatment and urine testing in the community.
- Many of these prevention approaches also are appropriate as behavior change strategies (see next section).

Drug testing for prevention in the juvenile justice system provides a mechanism for identifying youth who use drugs and deciding which of those youth should be matched with appropriate prevention and/or treatment programs. This approach would likely involve conducting screening tests and substance abuse assessments of all youth entering the juvenile justice system to determine which ones have

begun substance use and those who have progressed to a stage where treatment is needed. After this initial determination, youth should be tested randomly to determine whether or not they are continuing to use substances. For those with negative tests (no drug use) reinforcement of their positive behavior in the form of rewards, praise, and encouragement should be given, and the frequency of testing can be diminished after several negative tests. For those with positive test results (indicating drug use), sanctions and more frequent testing, combined with other interventions, may help to prevent their progression to more serious levels of substance use.

Behavior Change

Behavior change must be a key outcome of youth's involvement in the juvenile justice system to modify behavior that is unlawful – including the use of alcohol and other drugs – toward prosocial behavior that helps youth become healthy and keeps communities safe. Changing substance abuse and delinquent behavior must consider the rewards youth receive from using psychoactive substances and how young people perceive their world. Effective behavior change strategies utilize principles of behavior modification and help youth develop better cognitive skills. Behavior modification works on the principle that behavior that is rewarded will be repeated, and behavior that is punished will be reduced or eliminated. In the case of substance abuse, the aim is to provide rewards that will outweigh, and consequences that will counteract, the benefits of drug use.

If the goal of a drug testing policy is to change the substance using and delinquent behavior of youth, several key factors need to be in place. A response should follow as soon as possible after every drug test. To maximize the potential for learning from their experiences, responses should occur as close to the time of the drug consumption and testing as possible. Positive tests (drugs present) should be followed by sanctions to thwart the unwanted behavior, and negative test results (no drug use) should be followed by rewards to reinforce this positive behavior.

Juvenile justice agencies should employ a system of graduated sanctions and rewards so that continued drug use is followed by more severe sanctions, and ongoing abstinence is

followed by increasingly greater rewards. Taxman, Soule, and Gelb (1999, p. 183) discuss and define graduated sanctions in a useful manner that also can apply to rewards or incentives. They state:

Graduated sanctions [and rewards] are structured, incremental responses to noncompliant [or compliant] behavior of probationers [or other youthful offenders] while they are under supervision. . . . The specific sanction [or reward] depends on factors such as the nature of the violation [or positive behavior] and whether it is the first violation [or positive behavior]. Thus, graduated sanctions [or rewards] provide immediate and certain consequences for defiant [or compliant] behavior.

Based on a theory of procedural justice, Taxman et al. (1999) list the following seven necessary components of a graduated sanctions (or rewards) model that are applied here to drug testing results:

- Certainty: respond to every test.
- Celerity: respond swiftly.
- Consistency: deliver similar responses for similar behaviors.
- Parsimony: respond at the least level that is likely to produce the desired result.
- Proportionality: the level of response should be equal to the level of the offense or positive behavior.
- Progressiveness: continued compliance or noncompliance results in increasingly greater degrees of responses.
- Neutrality: responses are an objective impartial reaction to a youth's behavior.

Graduated responses to drug test results may include the following types:

- Verbal feedback, such as praise or a reprimand.
- Written responses such as a letter of encouragement or a letter detailing required improvements.
- Material items, such as movie tickets or the youth having to pay a fine or give up a favorite item for a designated time as a consequence for drug use.
- Privileges, such as a later curfew or restricting driving privileges.
- Supervision, such as fewer or more contacts with a probation officer.

- Freedom, such as an earlier discharge from probation or home detention.

The juvenile justice system generally has been prone to providing more sanctions than rewards to juveniles. However, rewards are probably more important if behavior change is to occur. The “what works” literature on changing offending behavior states that rewards should be given at least four times more often than sanctions to achieve positive behavior change (Andrews et al., 1990). Policies focusing on drug testing as a tool for behavior change should dictate that graduated rewards and sanctions are to be given, but should allow flexibility for agencies and practitioners to select the specific responses that will be most effective for each youth.

Frequent and random drug testing are vital elements of a program that is designed to change behavior. Initially, tests should be administered often enough that it would be unlikely that youth could use drugs and not be detected. Because many drugs, such as alcohol, amphetamines, cocaine, and opiates, stay in the body for brief periods (24 - 72 hours), testing should occur two to three times weekly to ensure that youth are not using drugs that are eliminated before tests occur. With repeated negative tests (no drug use), the tests can be given less frequently. Randomness of testing is very important. If youth discern a pattern to the testing, they can schedule their drug use accordingly. With random testing, there is no recognizable pattern, and each person has an equal chance of being selected for testing each time tests are given.

Involvement of other community resources can bolster the juvenile justice system’s ability to effectively reward youth. For example, businesses might be asked to contribute merchandise, fast food coupons, movie passes and the like to use as rewards. School personnel, religious leaders, community members, and parents can assist in providing praise, recognition, and encouragement to youth as their behavior changes.

Expanding cognitive skills is a critical aspect of adolescent development. As each response is given to drug test results, juvenile justice practitioners also can use effective counseling/teaching skills to help youth develop better cognitive skills. For example, they might help youth think about ways to avoid situations where drug use might likely occur, to cope with problems in ways other than drug use, and to plan ahead for avoiding drug use.

Cognitive interventions can help youth learn (Lester & Van Voorhis, 2000, p. 179):

- Self-control.
- Empathy.
- Problem solving.
- To formulate short- and long-term plans.
- To avoid high-risk situations.
- To anticipate the consequences of their behavior.
- Decision making.
- Coping.
- To develop mature thinking strategies.

Youth often have deficits in one or more of these skills and do not respond in appropriate ways, even when they face negative consequences. Cognitive instruction provided by juvenile justice practitioners, along with graduated rewards and sanctions, can help youth overcome these deficits and achieve more prosocial behavior.

Substance Abuse Treatment

As youth progress along the continuum of drug use, those who advance to problem use or dependence/addiction may need help beyond the interventions just discussed to prevent use and change behavior. Drug testing also can be a valuable tool to assess youth’s need for treatment, leverage them into treatment, and monitor their progress in treatment and aftercare.

From the very outset of a youth’s involvement in the juvenile justice system, drug testing can be used to identify youth using psychoactive substances. If a youth’s drug tests continue to be positive, he or she should be assessed by a professional substance abuse treatment provider to determine whether and what type of treatment is needed. From the assessment, a detailed treatment plan should be developed that includes coordinated efforts by juvenile justice and treatment staff and employs ongoing drug testing, rewards and sanctions, and specific interventions.

Drug testing can also be useful in the pretreatment process and can help develop readiness for the treatment experience. A common characteristic of substance abusers is denial. Many people try to avoid admitting the seriousness of their substance abuse problem and its consequences for their lives. They often claim they can stop using drugs whenever they want. But continuing positive test results, even in the face of increasingly severe sanctions, can help them realize they may not be able to control their substance use. With appropriate

confrontation from juvenile justice professionals, the drug testing experience and the consequences of ongoing positive tests can help motivate youth for treatment.

There is not a single, simple definition of substance abuse treatment. Treatment approaches vary based on the drugs a person uses as well as individual characteristics. Treatment may include behavioral therapies (e.g., group counseling, cognitive therapy), medications, or a combination of these. Case management is also an important component of successful treatment. Substance abuse treatment is guided by the goals of stopping drug use and returning the individual to productive functioning. Indicators of success in treatment include (National Institute on Drug Abuse, 1999):

- Decreased levels of offending activity.
- Improved family functioning.
- Increased employment or academic success.
- Improvement in related medical conditions.

Numerous reputable studies of substance abuse treatment have shown that it is effective. Indeed, treatment does achieve positive results in the four areas just listed. These studies have found that treatment outcomes improve in direct relationship to the amount of time a person spends in the treatment process and that coercive treatment is as effective or more effective than voluntary treatment. People who are required to participate in treatment (usually through court directives) tend to stay in treatment longer, and therefore, have more successful outcomes (Satel, 1999).

Substance abuse treatment can be very cost effective. Although treatment is costly, it is much less expensive than holding youth in custodial facilities. When treatment is effective in decreasing levels of delinquent activity, future costs of crime and juvenile or criminal justice processing are saved. Similarly, substance abuse treatment can be effective in preventing future medical costs. Substance abusers often need collateral health care during treatment, but savings may be realized in major medical costs for diseases related to substance abuse such as AIDS and for emergency room treatment for drug overdoses and drug-related accidents. Treated substance abusers are also more likely to be able to work, thus saving in subsistence costs. A study of treatment costs and related savings in 1994 found that almost \$1.7 billion was saved by treatment. While one billion dollars was spent on

treatment, the study projected that without treatment services, almost \$2.7 billion would have been spent on health care, crime, and lost income for more than 340,000 clients. The authors of this study concluded, "for policy makers who often face the difficult task of justifying to taxpayers the use of public funds to support treatment, [these] findings lend support to the argument that such programs can create benefits to society that justify the expenditures" (Koenig, Denmead, Nguyen, Harrison, & Harwood, 1999, p. 33, as cited by CSAT by Fax, 2000).

Drug testing is one way of measuring the impact of the treatment process. Negative drug test results throughout the treatment process and during aftercare services show the youth is abstaining from drug use, a primary objective of treatment.

Treatment for juvenile substance abusers cannot be replicated from adult treatment models and be expected to be successful with youth. Treatment for adolescents must be tailored for the youth's developmental levels and must be carefully designed to meet youth's needs. There are several characteristics of effective substance abuse treatment for adolescents (Crowe & Sydney, 2000; Kimbrough, 1998):

- Treatment should be comprehensive, addressing the broad array of psychological, family, and environmental influences that are associated with adolescent substance abuse.
- Treatment services should be individualized, based on an assessment of each youth. However, there are significant benefits to providing interventions in group settings for youth.
- Services should be coordinated and monitored to assure they are meeting the youth's and his or her family's needs.
- Treatment services should be intensive and concrete including cognitive, behavioral, and social learning approaches that focus on developing specific skills within the youth and providing needed support and reinforcement. Skill development may include refusal and avoidance skills, independent living skills, and stress and anger management.
- Family involvement in the treatment process is vital and the use of family therapy models is encouraged, both to strengthen the family unit and to address substance abuse issues of other family members.

- Preventive and primary health care services should be provided, if needed.
- Some youth will need mental health services for co-occurring substance abuse and mental health disorders.
- Treatment services should be gender-specific (for example, girls' treatment may need to address issues of victimization, pregnancy, and child care).
- Treatment also should be sensitive to racial, ethnic, cultural, and social minority issues.

A variety of treatment modalities may be effective for young people, providing the youth are properly assessed and matched with programs that are adolescent-specific and meet their particular needs.

Several effective programs have found that the combination of drug testing, rewards and sanctions, and treatment can be used in a coordinated fashion to help youth stop using drugs. The principles of juvenile drug courts provide an example of procedures that can be administered: the ability to intervene early with youth, provision of treatment and other services, monitoring progress during treatment, and closer judicial oversight through regular status hearings. Sanctions are applied as needed and rewards are used to encourage progress in treatment. Drug courts use a team concept, including the judge, prosecutor, public defender, treatment providers, probation officers, and others, who work cooperatively to help the youth succeed in the program (Kimbrough, 1998). They also encourage, and may require, more parental involvement in the process. Evaluations including both adult and juvenile drug courts have found that (Belenko, 1999):

- They are successful in reducing drug use and criminal behavior.
- During their involvement in drug court programs, drug use by participants remains low compared to similar defendants not in a drug court.
- Program retention and graduation rates among drug court participants is high compared with other outpatient treatment programs.
- Rates of rearrest of drug court participants are lower than those of offenders who do not participate in drug court.
- Drug courts save on the costs of law enforcement, probation, and jail.

Even in the absence of specialized drug courts, many of these strategies can be applied.

The Juvenile/Criminal Justice Treatment Networks (funded by the Center for Substance Abuse Treatment) and Breaking the Cycle (funded by the National Institute of Justice) are working in several metropolitan jurisdictions to reduce recidivism among substance abusing juvenile or adult offenders. They emphasize a system-wide approach, combining drug testing, common screening and assessment instruments, enhanced justice supervision, case management, and a comprehensive treatment network. Information is shared through enhanced MIS linkages. A probation and parole drug testing program in Maryland tested frequently, and program evaluators found that "more frequent drug testing resulted in a more expeditious and significant drop in the rates of positive drug tests" (Taxman, 2000).

Drug testing can be a powerful implement in efforts to prevent the progression of drug use, change substance-abusing behavior, and in assessing youth's treatment needs, motivating them for treatment, and monitoring their progress in treatment and aftercare.

Health and Safety

Drug use by youth is associated with a variety of other problems including delinquency, diseases, pregnancy, mental health problems, malnutrition, and poor school performance. These issues can affect the health and safety of both the youth who are using psychoactive substances and others who share their environments. Youth who are significantly involved in drug use may commit a variety of crimes, such as stealing and prostitution, to obtain their drugs or money to purchase them. Some youth also may act in violent or impulsive ways because of the effects of the drugs they have taken, leading to possible accidents or assaults on others.

Youth who are under the supervision of the juvenile justice system, whether in the community or in custodial facilities, may be intoxicated or experiencing withdrawal from drugs or alcohol. Intoxicated youth may be difficult to manage and may pose a danger to staff or other youth. Drug overdoses as well as the effects of withdrawal can cause a variety of problems, and may even be life threatening. Youth who use alcohol and other drugs are at higher risk than nonusing youth for infectious diseases, such as sexually transmitted

diseases, tuberculosis, and HIV/AIDS. These diseases not only diminish the health and quality of life for the substance-abusing youth who contract them, but there is also a danger that they could transmit diseases, in certain circumstances, to other youth and staff working with them. Malnutrition is another risk for youth who are heavy drug users. They may use money intended for food to purchase drugs, or the effects of the drugs may depress their appetites. Pregnancy is yet another possible risk for substance-abusing youth who are more likely to engage in unprotected sex because their judgment is clouded by the effects of drugs or because it is a way they can obtain drugs or money to buy them. Drug use during pregnancy causes significant risks to the fetus and may have lasting detrimental effects on the development of children.

There is a much higher incidence of mental health problems among substance abusers than nonabusers. These problems often cause youth emotional pain that they attempt to medicate by using psychoactive substances. However, this course of action is likely to exacerbate, rather than alleviate, their mental health symptoms.

Drug testing can be a tool to promote the health and safety of substance abusing youth and those with whom they come in contact. Identifying youth who are using psychoactive substances through drug testing allows juvenile justice staff to respond appropriately regarding health and safety issues. Responses may include:

- Applying rewards and sanctions to change behavior, including offending behavior.
- Providing or referring youth to appropriate treatment services.
- Screening or referring youth for evaluations for infectious diseases, malnutrition, pregnancy, and mental health problems.
- Observing youth carefully and obtaining needed health care if they have overdosed or are experiencing dangerous withdrawal symptoms.
- Ensuring that youth are supervised carefully to safeguard against impulsive behavior that may be harmful to themselves or others.
- Supervising groups of youth (e.g., in detention or custodial facilities) to be sure that substance abusing youth do not become aggressive toward other youth or staff.

Program Planning Decisions

Drug testing can also be a tool for program planning, either in conjunction with identifying individual drug users or solely for that purpose. When using drug testing for planning, it is the aggregate results from testing many youth that are important. There are a variety of ways this information can be employed.

Collective drug test results can be used to assess the need for services for youth and the resources required to support them. This might include substance abuse treatment – whether outpatient or inpatient; other resources such as health and mental health services; and the types and continuum of appropriate sanctioning responses needed.

Further, drug test results can identify the types of drugs most often used by youth, changes in drug use patterns, and changes in the characteristics of youth who are engaged in drug use. As drug treatment and other services often must be customized according to the types of drugs used and the traits of youth, this can help in program planning and allocation of resources.

The results of drug tests also can be used by law enforcement and corrections personnel to determine the need for interdiction efforts. By studying patterns of drug test results, certain localities in the community, or particular groups of youth can be identified as using drugs more heavily or using particular types of drugs. Then the appropriate resources can be applied toward reducing the supply of drugs available. One juvenile detention center that reviewed drug test results of youth entering the facility learned that PCP was being used almost exclusively by youth in a particular Zip Code area. They provided this information to law enforcement who increased surveillance in this area (Crowe, 1998). It is essential that increased surveillance and interdiction efforts be based on accurate data, appropriately obtained, and not used to target any groups unfairly.

LEGAL ISSUES TO CONSIDER WHEN DEVELOPING A DRUG TESTING POLICY FOR THE JUVENILE JUSTICE SYSTEM²

Policy Should Articulate the Authority for Drug Testing

Drug testing has been accepted as part of the juvenile and adult legal process for decades, and legal challenges to testing have been refuted in a variety of settings and court cases. Once a youth is under the juvenile court's jurisdiction, drug testing can be administered in a range of community or institutional settings; however, it is wise to establish a solid legislative or legal base for testing, and to use valid consent forms when the testing information is to be shared among court, supervision, and treatment personnel. Legal authority for conducting drug testing in the juvenile justice system can come from legislation, judicial order, parole board, agency policy, or valid consent. The U.S. Constitution does not permit or prohibit drug testing. However, Federal law does set limitations on the release of confidential information that identifies individuals as drug users and thus sets requirements governing the release of test results.

Few states have legislation specifically authorizing broad drug testing of juveniles, but state legislation empowering agencies to conduct testing offers the greatest protection for establishing a legally defensible drug testing program to be applied throughout the components of the juvenile justice system. Legislation should denote the requirement for drug testing, but it should not delineate the specifics of the testing program. Each component agency in the juvenile justice system should be empowered and expected to determine the specifics of its testing program, including which youth will be tested, how frequently testing will occur, the testing methodology that will be used, and the range of sanctions and incentives that will be employed.

In the absence of or in addition to legislation authorizing drug testing, court or parole board orders provide a strong legal basis for conducting drug testing. The orders can be either a standard condition of probation or release, or the orders can be directed on a case-by-case basis. Drug testing

conditions imposed by the court or parole board should be broad enough to allow the supervising agency the latitude to test more or less frequently as needed and to provide a range of responses to testing results.

If neither court or parole board orders nor legislation authorizes drug testing, or in addition to these forms of authorization, an agency can establish a testing protocol as part of its departmental policy. The policy should specify which youth will be tested, testing methodology, and appropriate responses to test results. Agency policy should also dictate responses to predictable issues the drug testing program may encounter, such as youth who claim inability to provide a specimen for testing or who engage in actions to mask testing results.

Even if no specific authorization for drug testing exists from any source, the testing may still be done if valid consent is obtained. However, for consent to be valid, it must be voluntary and the person giving consent must have authority to do so and be adequately informed. In the case of juveniles, their ability to give consent may be determined by laws setting a chronological age they must reach before being able to act on their own behalf. This age of legal empowerment varies from state to state. When the authority for performing drug testing is as a result of consent of the individual, it is incumbent upon the entity conducting the testing to show that the consent was valid.

Possible Challenges to Drug Testing

Legal challenges to drug testing may be based in the presumption that the youth has been deprived of constitutional rights. The rights alleged most often as being violated by mandatory drug testing are the right against unreasonable searches and seizures, the right against self-incrimination, the right to due process, the right to confrontation and cross-examination, the right to equal protection, and the right to privacy. Most challenges have occurred relative to drug testing of adult offenders, but the case law also applies to juveniles unless the decision itself precludes application.

² Information in this section is based on the article, "Legal Issues in Juvenile Drug Testing," by Rolando V. del Carmen and Maldine Beth Barnhill published in *Federal Probation*, December 1999, and from four training presentations given by Mr. del Carmen for this project.

- *Right against unreasonable searches and seizures (Fourth Amendment)*. Drug testing is a form of search and seizure and has been challenged as being in violation of the fourth amendment. The rationale and conditions for drug testing must be reasonable and articulable.
- *Right against self-incrimination (Fifth Amendment)*. Since the right against self-incrimination pertains to giving oral testimony, not physical evidence, this right is not abridged by drug testing which is the collection of physical evidence similar to obtaining fingerprints or requiring an offender to participate in a line-up.
- *Right to due process (Fifth and Fourteenth Amendments)*. It is incumbent upon the agency conducting the testing to do so in a manner that meets scientific standards for testing and ensures the specimen tested is from the identified individual. Initial screening tests that show a positive result but do not indicate the amount of the drug or drug metabolite that is present should be confirmed if the positive result is disputed. The agency conducting the testing should follow chain-of-custody procedures to document the integrity of the specimen being tested.
- *Right to confrontation and cross-examination (Fifth Amendment)*. An offender has the right to confront and cross examine witnesses against him or her. In the case of drug testing, if the person conducting the testing is not present in court, information presented may be considered hearsay. Most courts have ruled that the right to confront and cross-examine is not compromised if the reliability and validity of the test can be confirmed by other means.
- *Right to equal protection (Fourteenth Amendment)*. Individuals cannot be treated differently unless the basis for the different treatment is legally valid. In the juvenile justice system, the basis for drug testing is related to illegal activity, not to race, sex, social status, or other personal characteristics. Since a goal of the juvenile justice system is the rehabilitation of youth, it can be argued that identifying those who are using drugs and assisting them in stopping their use is a necessary step in the rehabilitation process and not unequal treatment.
- *Right to privacy*. While the right to privacy is not specifically articulated in the Constitution, it is considered inherent. Agencies can eliminate

the cause for challenges to drug testing based on its breaching one's right to privacy by conducting same-sex supervision of the offender during specimen collection, by assuring the testing process is not deliberately humiliating or demeaning to the youth being tested, and by ensuring that results are not released inappropriately.

Drug testing may also be challenged on issues other than the offender's being deprived of constitutional rights. It may be argued that relatedness is an issue if the offense committed is not a drug-related offense. Courts are split on this issue, but more recent court decisions require relatedness for drug testing to be valid. However, the juvenile justice system's goal of rehabilitation of youth is again applicable, and thus it can be argued that drug testing is needed to identify those who are using substances, regardless of whether the offense that brought them into the system was drug related.

Challenges might also be made on the basis that juvenile justice personnel conducted testing when there was no specific condition set by the court or paroling authority for testing and when agency policy did not delineate a requirement for testing. However, two federal cases have upheld the right of officers to conduct testing despite the absence of a specific condition authorizing it if the purpose is to:

- Determine if the offender is in compliance with the condition of not violating any laws and the officer has reasonable suspicion to believe the offender is using drugs, an act which would be in violation of the law. (*U.S. v. Duff, 1987*)
- Ascertain compliance with a condition prohibiting use of controlled substances. (*U.S. v. Wright, 1996*)

These rulings were in criminal court but are applicable to juveniles as well.

Confidentiality Issues

Drug testing results must be maintained within the confidentiality regulations promulgated by states to limit access to juvenile justice records and any laws that pertain specifically to confidentiality of drug testing and treatment records. Additionally, if the agency receives any Federal funds, either directly or indirectly, it must comply with Federal regulations designed to encourage treatment attendance by prohibiting disclosure of information that would identify the youth as an alcohol or drug

user.

Drug test results should be released only to those authorized to receive them, and policy should state to whom results may be released. The youth and/or parents may be required to sign consent forms, or in some cases, it may be necessary for the court or paroling authority to give permission for release of test results. Potentially interested parties include juvenile justice professionals, parents, schools, medical professionals, and treatment programs. If law or agency policy does not specify to whom test results are to be released, questions should be referred to the judge or parole granting authority. In general, policy should be aimed towards restricting release of drug test results; mandating requests for release be made and fulfilled in writing, including requiring a statement of how the information is to be used if it is obtained; and not releasing results if there is any doubt regarding authorization.

Other Legal Issues

When using drug testing results to make case processing decisions, especially in making custodial decisions and in identifying a youth as a drug user, obtaining reliable results is essential. Results may

be confirmed through admission of drug use by the youth. However, if the youth denies use, it is recommended that initial screening or test results be confirmed through a second test using a methodology with equal or greater reliability and accuracy than the original test.

Rigorous chain of custody procedures must be followed to assure the specimen used for testing is collected from the identified youth and remains inviolate through the testing procedure, including any subsequent confirmation testing. Chain of custody can be documented through appropriate record keeping.

Drug testing of youth in the juvenile justice system is most often performed with youth who have been adjudicated. Youth who have not been adjudicated can be tested if the testing meets the criteria established for testing adjudicated youth and, in addition, there is a justification for obtaining information for making case processing decisions, for example, whether to grant pre-hearing release or hold someone in detention pending court action. The results obtained from drug testing nonadjudicated youth should not be used for punitive purposes.

IMPLEMENTATION: ESTABLISHING A VALID DRUG TESTING PROTOCOL

Broad-level policy should address the principal issues and parameters of drug testing. Decision makers should have a basic knowledge of drug testing process to develop effective policies, and each individual department or agency should work within that policy framework to establish its protocol for conducting testing.

Preliminary Testing Issues

The term drug testing refers to any chemical testing methodology used to discern an individual's use of psychoactive substances. The testing may be done through hand-held test kits (also called point-of contact tests), through onsite instrument-based equipment, or by laboratories. Various bodily substances may be used for testing.

Some drug test methods show the presence or absence of the drug or drug metabolite (an organic compound that is excreted as a result of the body's processing ingested drugs), but do not indicate the quantity of drug or metabolite. These types of tests, sometimes called screens, are designed to indicate as positive those specimens having a concentration of drug or drug metabolite that exceeds a certain level or cut-off point. Specimens containing a concentration of drug below the fixed cut-off level will register as a negative on the test. A more specific process, a quantitative test, can both show how much drug or drug metabolite is in the specimen being tested and can identify with greater accuracy that a drug or drug metabolite is exclusively the result of use of a particular drug.

Decisions on the type of testing methodology to use will depend on the purpose for testing for drugs, the types of drugs for which testing is conducted, the intended use of the results, and the financial resources of the entity conducting the testing. In most cases the cost per test is dependent on the number of tests conducted with a greater number of tests resulting in less cost per test.

The types of drugs used by youth vary by region throughout the country; therefore, drug testing should be structured to test most frequently for the drug(s) identified as most often used within the locality in which the testing is conducted. However, periodic testing should be conducted for a broader spectrum of drugs as youth's use may change, or new drugs may be introduced into the community.

Decide Where in the Juvenile Justice System To Implement Drug Testing

Drug testing can be valuable at any point in the juvenile justice system. The following illustrates purposes for and types of testing that might be conducted by various components of the juvenile justice system:

- Intake: conduct screening tests for commonly used drugs to determine if drug use is an issue for a youth. Individual test results should be used only for case management and positive drug tests should not be used to levy further delinquent charges. Conduct testing to acquire aggregate information which can be used for analysis of drug use trends in the community or to determine needs for various services such as prevention programs, education, or treatment.
- Detention: conduct screening tests to determine health and safety issues, medical issues, and need for detention. Use results for making decisions about release or provision of appropriate services while the youth is in detention. (See, for example, *Corrections Today*, April 1993, June 1994, July 1994, and August, 1994.)
- Pretrial: use drug testing to monitor compliance with release conditions and to secure information about drug use to formulate recommendations for services or court action.
- Probation: conduct drug screening tests to monitor compliance with conditions of probation, to apply graduated rewards and sanctions, to identify youth's need for services, to monitor compliance with treatment, and/or to make decisions about further court action or release from supervision.
- Incarceration: conduct screening tests to determine substance abuse service needs, to make appropriate housing decisions, to assure youth and staff health and safety, and to determine if contraband substances are being brought into the facility.
- Parole/aftercare: conduct drug screening tests to monitor compliance with conditions of release, to monitor relapse, and to provide graduated incentives and sanctions.

Because each component agency or department in the juvenile justice system has a unique mission and possibly a different purpose for implementing drug testing, each entity should

become familiar with specimen collection protocols and testing technologies to implement drug testing that is best suited to its purpose and its clients' needs. The responsibility for making the decisions about the day-to-day implementation of the testing should reside with those who have direct oversight of the testing. Among the issues to be considered are:

- Location. Will the drug testing be conducted by the agency or referred to an outside source? What accommodations in the current facility are needed to implement drug testing?
- Technology. What technologies for testing are available and which are best suited for that agency?
- Locally used drugs of abuse. Which drugs will testing need to identify?
- How will testing results be used?

Various technologies exist for conducting drug testing, and agencies, working within the parameters set by policy makers, may wish to use one or more depending on individual circumstances. In evaluating a particular technology the following should be considered:

- Does the technology produce accurate results?
- Is it reliable and accepted by courts?
- If immediacy of results is needed, can the technology provide it?
- Must disputed results be confirmed?
- How expensive is the technology?

Drug Testing Technology

The technologies available to test for drugs have changed rapidly since drug testing began in the justice system in the late 1970's, and new developments continue to facilitate more precise and thorough information. It is important, therefore, that policy makers not limit drug testing to a particular technology, but enable departments and agencies to make use of the technology that is most practical. The following provides information about technologies for testing bodily products for drugs:

- *Urinalysis* is presently the most practical and widely used technology for testing for illicit substances. It can be used to test for most substances, and it can be done onsite or by laboratories. The results are very accurate and generally accepted by the courts, and it is presently the most cost-effective method for testing.
- *Breath analysis* can test for alcohol and can show the level of alcohol present. Instruments

for breath testing are expensive, but per-test costs are low, and results are accepted by the courts. Onsite test kits are available to conduct breath analysis but are less reliable than instrument testing.

- *Sweat analysis* is conducted by applying a patch to the skin, usually on the arm, to collect products excreted. The patch is designed to disclose attempts at tampering or unauthorized removal. At the conclusion of the testing period, it is removed in the presence of authorities and sent to a laboratory for analysis. A sweat patch may stay on the skin up to three weeks and will detect drug use during the time it is worn. Sweat testing can disclose most drugs of abuse, but it is more expensive and does not offer the immediacy of results that urine testing provides.
- *Hair analysis* provides information to disclose a history of drug abuse over a longer period of time than does urine testing, but it takes longer for drugs or drug metabolite to enter the hair so it does not detect recent use. Hair analysis is more expensive than urinalysis, and there are a limited number of laboratories that can conduct hair analysis. Questions regarding influences that affect hair analysis, such as environment, race, and sex differences, are still being researched, and, as a consequence, results obtained may be more frequently challenged.
- *Oral fluids analysis* shows promise as a testing methodology that is less invasive than urine testing and poses fewer privacy issues. However, presently, it is more expensive than urine testing, cannot test for the range of substances that urine testing can, and it does not have as great a degree of acceptance as urine testing.

Urine Testing

Urinalysis is the technology most juvenile justice agencies currently choose for drug testing. The testing process may be conducted by a certified laboratory, by using onsite instrument-based testing equipment, or by using onsite noninstrument test kits. If agency personnel are conducting testing onsite or collecting specimens to send to the laboratory, the agency must develop protocols for specimen collection and assuring that chain of custody is maintained.

Onsite testing, whether by instrument or point-of-contact test kit, offers the opportunity for

immediate results and is less expensive than laboratory testing. However, for questionable or disputed results, confirmation procedures should be used.

Laboratory testing offers greater accuracy and reliability of test results, but it is more expensive and may be less useful for offender management because of the length of time to get results and the expense. In locations with a high volume of testing, onsite instrument-based testing may offer the most workable alternative for both immediacy and accuracy of results.

Testing Frequency and Planning

A number of factors influence how long drugs are detectable through urinalysis, e.g., type of drug, frequency of use, and the amount of the drug ingested. Some drugs may be detectable for only a few hours while others can be detected for several days or weeks. Consequently, testing personnel must recognize the limitations of basing identification of use (or nonuse) on the results of one test.

For youth under supervision, testing may be scheduled, random, or based on a reasonable suspicion of use, but it should occur frequently enough to detect and deter illicit drug use. Random testing offers a cost-effective approach to identifying youth's drug use, but care should be taken to assure the test scheduling is truly random (without pattern).

Assuring Valid Specimens for Testing

To assure that a valid urine specimen is collected for testing, personnel must be aware of the potential for deliberate tampering. Youth may ingest substances, attempt to add substances to the specimen, or try to substitute a specimen from someone else in order to obscure test results. Testing personnel should also be aware that some food products, over-the-counter medicines, or other products may cross-react to produce positive test results.

Personnel should consider the following to increase the likelihood valid specimens are presented for testing (Crowe & Sydney, 2000, p. 10):

- Appropriately identify the person being tested.
- Observe all specimen collections.
- Follow appropriate chain-of-custody procedures.
- Obtain information from manufacturers of onsite test devices on the foods or products that may affect test results.

- Require youth to report consumption of any prescribed or over-the-counter medication or use of any of the identified food products.
- Prohibit consumption of identified cross-reacting foods, over-the-counter medication, or other products.
- Check urine samples for adulterants.
- Conduct confirmation testing when positive test results are disputed.

Consequences of Test Results Will Depend on the Setting

Whatever the technology used, when testing results are obtained, the agency must generate an appropriate response. The responses will vary depending on the agency, the purpose for testing, and the resources available. Unless the results are used solely to gather aggregate information, each agency should develop its own system of graduated incentives and sanctions to assure that each test result receives an appropriate response.

Staff Training

Staff who are conducting drug testing should receive adequate training, and decisions about the provision of training should accompany other decisions made in selecting technology. Depending on the technology used for testing, staff may have concerns about health-related issues from exposure to specimens used for testing. Staff must receive training on all aspects of the testing program, and agencies must comply with any union or personnel policies regarding duties assigned to staff conducting testing.

Cost Issue

Selection of technology and implementation of a drug testing program are dependent on what an agency/facility can afford. Funding sources must be evaluated and policy makers must recognize the need to apportion adequate funding to enable full implementation of drug testing.

Various technologies have different costs and both immediate and long-range expenses should be evaluated to determine the most cost-effective technology. After choosing a technology, agencies and departments should evaluate several vendors to secure competitive pricing.

Evaluation

Because drug testing is a tool to be used in conjunction with other services to effect the desired

outcome, it should be evaluated as a component of an overall strategy to respond to youth who are using drugs. Drug testing should be evaluated from the perspective of the utility it provides in the overall response to drug use by youth.

To determine if policy for the implementation of drug testing has fostered the desired impact of reduced drug use and subsequent delinquency, it is necessary to examine individual agency's or department's implementation of drug testing and to also examine the results of the testing from a broader jurisdictional perspective. Each component in the juvenile justice system in which drug testing is conducted should evaluate its individual implementation of testing to determine to what extent program goals have been met.

Planning for Evaluation

In developing policy for implementing drug testing, planning for evaluation of the effect of testing should commence when planning for implementation begins. Too often, the evaluation process is not considered until the testing is underway, and evaluation is thus less useful and more difficult to conduct. With advance planning, evaluation can be designed to disclose the worth of drug testing and by correlation, the worth of a policy directing the implementation of drug testing. Evaluation can be used to:

- Document that testing objectives have been met.
- Disclose information about service delivery, substance use among youth, and kinds of drugs being used.
- Gauge the effectiveness of testing as a factor in reducing drug use and delinquency.
- Enable program staff to make changes that improve program effectiveness.

Evaluation is the last step in the policy making framework, but it is also a bridge to previous steps. If the evaluation shows the need for improvements, returning to former steps and using the evaluation information to redesign the policy may produce testing implementation protocols with increased likelihood of success. Policy makers need to allocate enough funding to support evaluation and be prepared to make alterations if the evaluation discloses changes are needed.

Information Needed

Evaluation may be oriented toward assessing process, outcome, or impact. A *process* evaluation examines the implementation of drug testing to determine which youth were tested, number of youth tested, number of tests conducted, frequency of testing, number of youth testing positive or negative, kinds of drugs used, and what sanctions or incentives were administered. It serves to establish the credibility of the testing, i.e., whether it was implemented as designed. The information required to conduct a process evaluation is an accurate, complete record of participants and activities of testing.

An *outcome* evaluation examines the effects of drug testing to determine whether it was a success or failure. To measure the outcome of drug testing, information is needed regarding the responses that followed testing results, further incidence of drug use among the youth being tested, further arrests among tested youth that involved substance use, and further delinquent acts committed by tested youth.

An additional consideration is to evaluate the long term effects of drug testing youth. This *impact* evaluation can provide information on the effect of drug testing beyond its direct influence on the program participants. The following would be considered in conducting an impact evaluation: effects on juvenile justice personnel and other stakeholders, delinquency rates and substance use among youth over the longer term, changes in the juvenile justice system (or other systems such as treatment providers), and unintended program effects.

Managing Information

It is an injudicious use of resources to collect and maintain more information than is needed or will be used to conduct evaluation, but it is important to secure enough information to conduct a valid evaluation. During the policy development process for implementing drug testing, decision makers should decide what types of evaluation information will be needed and ensure that a process for recording the necessary data is established. Information may be maintained manually or electronically, and it is important to apportion adequate staff and equipment for whichever method is chosen and to provide appropriate training.

Policy Development Example

Promoting Health and Safety in Juvenile Facilities

Court Policy

Policy Decisions

Problem Definition

Danger to delinquent youth and others from substance abuse

Goal

Promote health and safety of youth and others in juvenile facilities

Select a Policy

Drug test all youth at intake to detention and custodial facilities and use information to screen for other health problems and observe youth for health and safety problems

Identify the Target Population

All youth entering detention or custody facilities

Allocate Resources

Drug tests based on number of youth and times tested; Health screenings; Staff to observe drug-positive youth

Assess the Policy Based on Criteria

- ✓ Responsive & relevant to public need
- ✓ Provides positive benefit
- ✓ Least intrusive or restrictive alternative
- ✓ Research-based
- ✓ Legally defensible
- ✓ Economically beneficial
- ✓ Scientifically accurate

Agency Implementation Considerations

- > Type(s) of testing technology to use
- > Specimen collection procedures, including methods to ensure a valid sample
- > Onsite or offsite processing of tests
- > Chain of custody procedures
- > Confidentiality procedures
- > Procedures for obtaining additional health screenings for youth with positive test results
- > Procedures for observing youth who test positive to ensure their safety and the safety of staff and other youth
- > Data collection and management of information

Policy Development Example

Reducing Drug Supply

County-wide Policy

Policy Decisions

Problem Definition

Extent, types, and sources of substances used by juveniles are unknown

Goal

Reduce the supply of drugs reaching youth

Select a Policy

Drug test all youth at intake to juvenile justice programs; compile & analyze data; identify sources of drugs; take steps to stop flow of drugs

Identify the Target Population

All youth entering a juvenile justice program

Allocate Resources

Drug tests based on number of youth and times tested; Law enforcement tasks; Added court cases

Assess the Policy Based on Criteria

- ✓ Responsive & relevant to public need
- ✓ Provides positive benefit
- ✓ Least intrusive or restrictive alternative
- ✓ Research-based
- ✓ Legally defensible
- ✓ Economically beneficial
- ✓ Scientifically accurate

Agency Implementation Considerations

- > Type(s) of testing technology to use
- > Specimen collection procedures, including methods to ensure a valid sample
- > Onsite or offsite processing of tests
- > Chain of custody procedures
- > Confidentiality procedures
- > Data collection and management of information

Policy Development Example

Reducing Drug Use

State-wide Policy

Policy Decisions

Problem Definition

Human suffering and economic costs of drug use by delinquent youth

Goal

Reduce drug use by juvenile offenders

Select a Policy

Use drug testing as a tool with prevention, behavior change, and treatment interventions to reduce drug use among youth on probation

Identify the Target Population

All youth on probation will be screened; those with positive results will be tested on an ongoing basis until drug use has stopped

Allocate Resources

Drug tests based on number of youth and times tested; Rewards and sanctions; Treatment programs

Assess the Policy Based on Criteria

- ✓ Responsive & relevant to public need
- ✓ Provides positive benefit
- ✓ Least intrusive or restrictive alternative
- ✓ Research-based
- ✓ Legally defensible
- ✓ Economically beneficial
- ✓ Scientifically accurate

Agency Implementation Considerations

- > Type(s) of testing technology to use
- > Specimen collection procedures, including methods to ensure a valid sample
- > Onsite or offsite processing of tests
- > Chain of custody procedures
- > Confidentiality procedures
- > Responses to every test (rewards and sanctions)
- > Referrals for assessment and treatment
- > Data collection and management of information

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APPENDIX

SUMMARY OF THE LEGISLATIVE PROCESS³

Legislation offers the greatest opportunity to implement drug testing across the scope of the juvenile justice system and to signal its importance. However, the process of enacting legislation is rarely speedy and is often dependent upon the efforts of diligent proponents to bring it to fruition. The following provides a brief synopsis of some of the steps in the enactment of a state law.

- **Securing the support of a legislator to propose the bill.** In some cases, legislators have a limit on the number of bills they can file and proponents of the bill may need to lobby for the legislator's support.
- **Legislator's staff conduct research.** If the legislator decides to file a bill, intensive research is conducted. The legislator explores the possibility of modifying an existing statute to achieve the objective. If a new statute is to be created, facts are compiled and language is developed. Experts in the content area may be consulted to determine how to address an issue. Sometimes public hearings are conducted or public input is solicited before a bill is introduced.
- **Bill is drafted.** After the details of a bill are identified, they are submitted by the legislator to a legislative bill drafting service. The bill is crafted to conform to proper form and language and returned to the legislator. The bill is reviewed by the legislator, and may be returned to the bill drafting service for further changes. The process continues until all interested parties agree that the product reflects the intent of the legislation.
- **Bill is filed.** The bill is submitted to the Clerk where it is assigned a number that will be used to track it from that point on.
- **Bill is assigned to committee(s).** The bill is reviewed by the leader of the legislative body in which it is introduced and, depending on the content and complexity, it is assigned to one or more standing committees for review.
- **Bill is analyzed and voted on by committee.** A bill must be heard in and passed out of or withdrawn from every committee to which it is referred. Any bill that does not successfully pass out of each committee to which it is referred is considered a dead bill and will not be considered any further in the legislative process. Committees may have mandated criteria to apply to the analysis of the bill and may be required to research the anticipated impact if the bill were enacted. Committee staff conduct research and prepare a bill summary. The chairperson of the committee reviews the summary and determines if the bill will be heard by the committee or if further analysis is required. If the bill is to be presented to the committee, it is placed on the agenda and the public is notified. Individuals and organizations can appear before the committee to voice support or opposition. The legislator who sponsored the bill also appears before the committee to formally present the bill and to discuss the merits of the bill. Amendments to the bill may be made during this process to address areas of controversy. The bill may be voted on and passed or voted down and thus considered dead, or it may be set for further research and another hearing.
- **Bill is placed on the legislative body calendar.** After a bill has passed all committees, it is placed on the regular calendar for a legislative body vote. If a bill is noncontroversial, it may be placed on a consent calendar where it is voted on along with other noncontroversial bills and passed en masse if there are no objections. If a bill is of a more controversial nature, it is voted on separately and appears on the agenda for vote based on an order of ranked priority.
- **Voting on the bill.** Often a bill must be read a specified number of times before it can be voted upon. At the conclusion of the last required reading, a vote is taken. If the bill is passed, it is sent to the other body of a bicameral legislature for a vote there. A bill must pass both chambers of the legislature in identical form to be sent to the governor. If either chamber makes amendments, it must be sent to the other chamber for another vote. Sometimes, a bill is sent to a conference committee to work out differences in versions passed by each legislative body.
- **Bill is sent to the governor.** Once a bill has passed both chambers of the legislature, it is sent to the governor. The governor can sign the bill, a process usually reserved for bills that have his full support,

³ Information in this section is based on materials provided by Greg Giordano, Senior Legislative Assistant to Representative Mike Fasano, Florida House of Representatives.

or he can veto the bill, an action that will kill the bill unless the legislature can secure enough votes to pass a veto override. If the governor neither signs nor vetoes the bill, it is allowed to become law.

Throughout the process of enacting legislation, there is much opportunity for private citizens and elected and public officials at all levels to work together to construct laws that set effective policy for conducting substance abuse testing of juvenile offenders.