

Audio Teleconference Packet

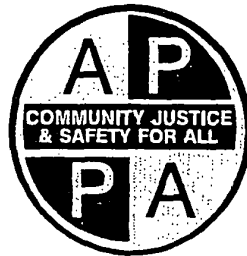
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Legal Issues in Juvenile Drug Testing

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Rolando V. del Carmen
Presenter

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LEGAL ISSUES IN JUVENILE DRUG TESTING

Training Objectives

As a result of this teleconference, participants will be able to:

- Identify three sources of legal authority for legally drug testing juveniles, and consider the advantages of each;
- State the legal rationale for testing nonadjudicated youth;
- List the issues related to confidentiality of test results that must be considered when developing a drug testing program;
- Identify five possible constitutional challenges to drug testing and indicate how these can be avoided with a properly run testing program;
- Develop program policies that are consistent with recommendations regarding authorization, when to test, confirmation tests, chain of custody, confidentiality, court challenges, testing pre-adjudicated youth, and other concerns.

ABOUT THE PRESENTER

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Rolando V. del Carmen, J.S.D., is a Distinguished Professor of Criminal Justice and Law at Sam Houston State University, Huntsville, Texas. Mr. del Carmen was the recipient of the 1990 Academy Fellowship Award given by the Academy of Criminal Justice Sciences, the national organization of criminal justice educators. He was also the recipient of the 1986 Faculty Excellence in Research Award from Sam Houston State University, the first such award given by the university, and in 1997 received the Bruce Smith Award from the Academy of Criminal Justice Services, the highest award given by the academy.

Mr. del Carmen has authored ten books and has given more than 300 seminars, presentations, and speeches on various criminal justice and law-related topics. He has also written numerous articles for various publications, including *Legal Issues in Drug Testing Probationers and Parolees* and portions of *Drug Testing Guidelines and Practices for Juvenile Probation and Parole Agencies*.

I. PRELIMINARY ISSUES

A. Legal Status of Juveniles

1. The *parens patriae* doctrine
2. Rights given by state law

B. Legal Status of Probationers and Parolees

1. Diminished constitutional rights

C. Legal Status of Pre-adjudicated Juveniles

1. Presumption of innocence
2. "Special needs"

D. Legal Implications of Various Forms of Drug Tests

1. Purely random (suspicionless and at any time)
2. Required of all at specified times
3. Periodic
4. For cause based on articulable grounds

II SOURCES OF AUTHORITY TO TEST

A. Legislation—State or Federal Law

B. Court or Parole Authority Orders

C. Agency Policy

III CONSTITUTIONAL ISSUES

A. Right Against Unreasonable Search and Seizures

B. Right to Privacy

C. Right to Due Process

1. Test accuracy and confirmation

D. Right to Confrontation and Cross-Examination

1. Appearance in court of person who made the report

E. Equal Protection

IV OTHER LEGAL ISSUES

- A. Should the condition of drug testing be related to the act committed or allegedly committed?
- B. Can an officer test in the absence of specific authorization by law, from the court or board, or in the absence of agency policy?
- C. Will one dirty test suffice to trigger sanctions?
- D. What degree of certainty is needed to trigger sanctions?

V RECOMMENDATIONS FOR ESTABLISHING A LEGALLY DEFENSIBLE DRUG TESTING PROGRAM FOR JUVENILE JUSTICE

A. Authorization

1. Prior to drug testing, agency officials should determine whether proper authorization exists.
2. Ideally, the authority to conduct drug testing should be given by state law.
3. In the absence of a state law authorizing drug testing, agencies should seek a court or board order to authorize testing as a condition of pretrial release, probation, or parole. In the absence thereof, drug testing should be authorized by agency policy.

4. Agencies should work for the enactment of law that authorizes drug testing and exempts officers and agencies from liabilities under state law arising from the imposition and implementation of drug testing.
5. The agency should have a written set of carefully crafted procedures and guidelines for drug testing. The guidelines should include how the test results will be used.
6. Drug testing procedures and guidelines must be submitted to and reviewed by legal counsel prior to implementation. They must also be reviewed periodically. If possible, the legal counsel should be a member of the team drafting the drug testing policy.

B. When to Test

1. The frequency of drug tests should be left to the discretion of the agency and not specified by law or judicial order.
2. State law and court or parole board orders should provide agencies authorization to use discretion in determining when and where to require a drug test.
3. If an officer has reasonable suspicion that an offender who is not required to submit to drug testing is using drugs, the officer should obtain a court or board modification of the conditions allowing the test to be performed instead of testing on his or her own.

4. The general rule is that drug testing at any time will be held valid by the courts if there is individualized reasonable suspicion that the offender is using drugs.

C. Confirmation

1. The agency should develop and implement a confirmation policy based on court decisions in that jurisdiction.
2. The decision to confirm or not to confirm should be based on the following considerations:
 - a. Whether the courts in the jurisdiction will accept positive test results without confirmation.
 - b. Whether, assuming the courts in that jurisdiction require confirmation, the expense of confirmation is cost-effective for the agency.
 - c. If the expense is not cost-effective, consideration should be given to not imposing sanctions based on that particular test.
3. The officer should, where feasible, obtain an admission of drug use from the offender following a positive initial screen. Such confirmation should be in writing and based on informed consent.

4. If the offender does not confirm drug use after being informed of testing positive on an initial test, the offender should have the option to challenge the test result preferably with a GC/MS confirmation test, at his or her own expense, within 30 days of testing positive.
5. Timely requests for confirmation should be honored if sanction is to be imposed.
6. Agency rules can provide that confirmation be at the expense of the juvenile, but if the juvenile is indigent, confirmation should be at agency expense.
7. Agencies should prepare a list of approved independent laboratories for juveniles wanting to challenge positive test results.
8. All specimens that screen positive on an initial screen but fail to be confirmed by GC/MS should be declared negative and treated the same as specimens that showed negative in the initial screen.
9. The specimen should be saved at least up to the time when the opportunity for a legal challenge will have lapsed.

D. "Chain of Custody"

"Chain of Custody" means that one who offers evidence in court must be able to account for the custody of such evidence from the moment it is obtained until the evidence is offered in court. The chain of custody requirement ensures that the specimen obtained from the offender is the same specimen that is tested and that the result of such test is what is presented as evidence in court.

1. Rigorous chain of custody procedures should be prescribed and implemented as part of the agency drug testing strategy.
2. The agency should develop a chain of custody form to be properly signed by every individual releasing and accepting the urine specimen.
3. Whenever possible, agency policy should require officers to confront the offender with positive drug test results as soon as possible, preferably not later than 72 hours.
4. When specimens are received from another office or facility, testing personnel should acknowledge receipt on the chain of custody form and provide a copy to the deliverer.
5. Testing personnel should inspect each package for evidence of possible tampering and compare information on the accompanying *chain of custody form*.
6. Any evidence of tampering with or discrepancies in the information on specimen bottles or the agency's chain of custody form attached to the shipment should be reported immediately to the submitting office, and should be noted on the chain of custody form which should accompany the specimens while they are at the non-instrument test site.

E. Confidentiality

1. As a general rule, confidentiality of test results must be protected. Test results should be disclosed only to those required by law or agency policy to have them.

2. Careful research must be made of applicable state statutes and case law on confidentiality before drafting agency policy. These statutes and court decisions vary from state to state.
3. If there are no state laws or court decisions governing the release or non-release of drug test result information, the agency should draft its policy in compliance with federal confidentiality laws and with whatever limitations it wants to impose. Confidentiality rather than disclosure should be the guiding principal of any agency policy. Agency policies must be reviewed periodically to conform to newly enacted laws or recently decided cases.
4. Agency policy should provide that disclosure of test result information, other than those to whom the information should or may be disclosed by statute or case law, should be made in writing. Requests by telephone for release of information should not be granted.
5. There should be proper documentation of the action taken and to whom and when disclosure was made.
6. In addition to observing state confidentiality laws, if the agency used federal funds, the agency should also comply with federal rules on confidentiality. These rules include those found in 42 U.S.C. Sec.290(dd-3) and ee-3, and 42 CFR Part 2) and administrative rules promulgated by federal agencies in accordance thereof.
7. Agency drug testing policy should state clearly the procedures to be followed for disclosing juvenile drug test results.

8. Questions concerning the disclosure of test results that are not covered by law or agency policy should be referred to the judge or board.
9. In case of doubt, do not release drug test results.

F. Court Challenges

1. The agency should establish policies for handling court challenges to test results. Agency staff should be prepared to provide evidence to support the reliability of positive test results.
2. If challenges arise concerning the validity and reliability of the test results, the responsibility for providing expert testimony should be with the supplier of the instrument used. If an outside provider is used, the expert witness should be supplied by the provider with no or pre-agreed cost to the agency. These provisions should be included in the contract with the supplier or service provider.
3. Staff training should include information and the development of skills needed for court testimony.

G. Pre-adjudication Drug Testing

Ideally, drug testing should be imposed as a condition of pretrial release, probation or parole only in cases where:

1. It is properly authorized, preferably by legislation;

2. There is justification for it, such as the offender having a history of drug use, it is reasonably related to the alleged act, or for juvenile's safety or for the safety of others in the institution (as in detention cases);
3. It is needed to identify users who may have no outward appearance or history of drug use, but there is reason to believe, may have used drugs;
4. It is linked to a treatment program and/or case management plan;
5. Procedures are clearly outlined and made known to the juvenile.

H. Other Concerns

1. Every juvenile should be properly informed about the agency's drug testing policies and procedures.
2. Drug test operators, whether in-house or from the outside, must be trained and properly qualified.
3. Drug tests should not be unnecessarily humiliating, without compromising the integrity of the test; neither should it be degrading or used to harass.
4. Cross-sex supervision when obtaining urine samples should be avoided, except in emergency situations.

*This set of guidelines (IV RECOMMENDATIONS FOR ESTABLISHING A LEGALLY DEFENSIBLE DRUG TESTING PROGRAM FOR JUVENILES) is adapted, with modification and update, from a monograph entitled, "American Probation and Parole Association Drug Testing Guidelines and Practices for Adult Probation and Parole Agencies", prepared and published by the American Probation and Parole Association, in cooperation with the Council of State Governments (Bureau of Justice Assistance, July 1991). The legal section of that monograph was researched and written by Rolando V. del Carmen.

IMPLEMENTING DRUG TESTING IN THE JUVENILE JUSTICE SYSTEM
Legal Issues in Drug Testing
 November 10, 1998
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1. Through this teleconference I learned the following new content, or different ways of looking at things:

2. What will you take from this teleconference to apply in your work?

3. The best aspects of this teleconference were:

4. The teleconference could be improved by:

5. What additional help or training do you need related to this topic?

6. Suggestions or comments:

Please evaluate the presenter of this teleconference by placing a mark (X) in the column that corresponds with your rating of each area.

Rolando V. del Carmen	Outstanding	Above Average	Average	Below Average	Poor
Knowledge and organization of content					
Presentation methods					
Responsiveness to participants					

Please rate the following aspects of this teleconference by placing a mark (X) in the column it corresponds with your rating of each area.

	Outstanding	Above Average	Average	Below Average	Poor
Organization of the teleconference session					
Quality of the teleconference (overall rating)					
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Opportunities to ask questions					
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SUPPLEMENTAL INFORMATION ON LEGAL ISSUES FOR DRUG TESTING

Legal issues require research at the local and State levels. The areas discussed in this paper generally prevail, but they may vary according to local and State statutes or regulations and emerging case law. Having the help of legal counsel in drafting policies and/or reviewing them is advised.

Authority to Test

Examine the authority to test early in the development of drug testing policies. Authority to test generally comes from one or more of three sources:

- **Statutes.** State or local statutes may mandate, permit, or prohibit practices related to substance testing of juveniles. Any such legislation should be cited in the jurisdiction's or agency's policy and procedures document. Statutory support for testing is preferred, as it provides the most protection for agencies and practitioners carrying out the program.
- **Court or Paroling Authority Orders.** Court or paroling authority orders for adjudicated youth may direct that the youth submit to substance testing. Courts or paroling authorities should impose such a condition where substance testing could facilitate the rehabilitation of the youth and/or where alcohol or other drug use is related to the youth's delinquent behavior. (For preadjudicated youth, this provision does not apply, and this situation is discussed later.) While it is preferred that courts or paroling authorities impose a condition for substance testing, they should make those orders flexible enough for the agency or practitioner to determine the frequency

of testing.

- **Agency Policy.** All agencies conducting substance testing should have *written* policies that clearly state the purpose for testing and which juveniles will be subject to testing (e.g., all juveniles, those with a history of drug use, youth with court orders for testing).

The testing program is most defensible if all three sources of authority are in place. Especially in the absence of statutory authority, both court or paroling authority orders and agency policies are recommended.

Testing Preadjudicated youth

Because of their age and their status, adjudicated youth's rights are diminished in some respects. Until youth have been adjudicated, they are entitled to all the rights and protections afforded any youth in the community. However, there is a rationale for conducting testing in a detention program, as stated by the American Correctional Association and Institute for Behavior and Health, Inc. [ACA/IBH] (1991, p. 1) project:

The issue of constitutionality of urine collection and testing in detention facilities hinges on what use is made of the test results. Test results can be used with confidence as part of a case management plan, just like other information from a medical examination. When an initial health screen reveals evidence of diabetes or a sexually transmitted disease (STD), the detention facility is obligated to devise a plan for treatment. This principle holds for urine test results. On the other hand, if testing is used

to file charges and prosecute, there is a potential for legal challenge.

When considering testing preadjudicated youth, statutory authority still is preferable. Sometimes laws do not specifically authorize drug testing, but authority may be inferred from other laws. For example, the Code of the District of Columbia contains the following three provisions that are interpreted broadly to allow for urine drug testing of youth in detention (ACA/IBH, 1995):

- Physical examinations of youth are permitted. Drug testing is considered within the definition of "physical examinations" allowed by this law.
- A preliminary determination of the need for supervision is mandated. Because the determination of illegal drug use generally justifies the need for supervision, testing to detect drug use may be viewed as an essential part of the intake process.
- A determination must be made about the necessity of detaining a juvenile for his or her protection or the protection of others. Substance abuse is among factors considered when assessing the need to keep a youth in detention.

The District of Columbia Superior Court has determined these statutory provisions are sufficient to conclude drug testing is appropriate before youth are adjudicated. Jurisdiction-specific laws must be explored to determine whether statutes are in place that support preadjudicatory testing (ACA/IBH, 1995). The ACA/IBH (1995) project recommended "[p]readjudication testing should be approached cautiously."

Voluntary Testing

Where legislation does not support testing, agencies may elect to make testing voluntary, especially at the preadjudication phase. If establishing a voluntary program, youth (and possibly their parents in some States) should give *informed consent* before testing. Informed consent includes:

- information about the specimen collection process;
- how results of tests will be used;
- consequences for positive results;
- confidentiality provisions; and
- right to legal counsel, if applicable.

This information should be given to youth orally and in writing. Youth should then sign a statement confirming they understand the information and give their consent to participate in testing. If the testing program is voluntary, youth should not be penalized for refusing to be tested.

Constitutional Issues Regarding Testing

Challenges to drug testing usually relate to five constitutional rights (Del Carmen & Sorensen, 1988).

- **Right against unreasonable search and seizure** (Fourth Amendment). Urine testing is equivalent to a search for illicit drugs and includes invasive procedures to collect body fluids. To ensure that it meets this constitutional test, the "search" must be reasonable and based on a rational belief that it is necessary.

- **Right to due process** (Fifth and Fourteenth Amendments). Before a youth is deprived of liberty, certain procedures must be followed. Tests must be accurate and meet scientific standards acceptable to courts. A second, confirmatory test, may be necessary before limiting a youth's freedom. Chain of custody procedures also are vital. There must be safeguards against the possibility of tampering with the specimen or test results, or they may be invalid for legal use. Specimens from positive tests should be kept in case of possible legal challenges.
- **Right to confrontation and cross examination** (Fifth Amendment). If the personnel who actually conduct tests are not present to provide testimony, there is a potential for challenging results on the basis of hearsay evidence. These challenges usually have not succeeded, as courts have allowed exceptions to the hearsay rule. Business records, reliability, and trustworthiness of a laboratory are factors considered in excluding a requirement for direct cross-examination.
- **Right to equal protection** (Fourteenth Amendment). Under the constitution, individuals cannot be treated differently unless such treatment is legally justified. In the case of substance abuse, different treatment is related to illegal activity rather than to racial, gender, socioeconomic, or other differences. Drug screening is reasonably related to detecting, treating, and/or preventing substance use and, therefore, is a justifiable condition.

- **Right against self-incrimination** (Fifth Amendment). Defendants are protected against self-incrimination when they give testimony in court. Urinalysis, however, is a form of physical evidence (similar to fingerprinting or appearing in a lineup). Therefore, it is not included in this constitutional protection. Substance testing does not require a youth to confess to drug use.

Challenges to Drug Testing

Substantial case law supports substance testing. For a review of drug testing case law, please refer to the document, *Drug Testing Guidelines and Practices for Juvenile Probation and Parole Agencies* (American Probation and Parole Association, 1992). Summaries of 62 cases are presented and classified for easy reference. The classifications include:

- **Topics:**
 1. Testing as a condition of probation and parole
 2. Informing offenders
 3. Reliability and accuracy
 4. Confirmation of positive results
 5. Chain of custody of specimen
 6. Court testimony and laboratory reports
- **Constitutionality:**
 1. Right against unreasonable search and seizure
 2. Right to due process
 - a. Test accuracy and reliability
 - b. Confirmation of positive test results
 - c. Chain of custody of specimen
 - d. Preservation of specimen
 3. Right to confrontation and cross-examination
 4. Right against self-incrimination

- Issues:
 1. Admissibility of test results
 2. Chain of custody
 3. Duty to preserve specimens
 4. Reliability/confirmation of test results
 5. Drug testing as a condition of probation
 6. Juvenile drug testing

There are only a few cases that are specifically related to substance testing of juveniles. Those cases are summarized briefly:

- *In Re C.J.W.*, 727 P. 2d 870 (Colo. Ct. App. 1986) - The juvenile failed to submit to urine testing which was a condition of probation, but she admitted this failure to the probation officer. The court held that hearsay testimony of the probation officer was admissible to establish the juvenile violated conditions of probation.
- *In Re Jimi A.*, 257 Cal. Rptr. 147 (Cal. Ct. App. 1989) - The juvenile disturbed the peace and committed a battery on school property. The defendant had a history of admitted substance abuse and had no parental supervision in the evening hours. A condition of probation required the defendant to submit to random drug testing. The court held this condition was appropriate given the youth's background of substance abuse and lack of parental supervision
- *In the Interest of C. P.*, 217 Ga. A.P. 1995 505) - The juvenile was adjudicated for violating probation terms imposed for possessing alcohol. She appealed, but the court held that possession of alcohol was a delinquent act and upheld the court ordered probation.

- *ALJ v State of Wyoming*, 836 P.2d 307 (Wyo. 1992) - The youth attended a party during which he pointed a gun at others and was adjudicated for reckless endangerment. He was placed on three years probation and required to submit to random chemical testing, among other things. The youth contested this condition on the grounds that it violated his right to be free from unreasonable searches and seizures. The court ruled that Fourth Amendment protections that apply to adult probationers do not necessarily apply to juvenile probationers. They held it was within the court's discretion to allow a probation officer to search a juvenile without reasonably suspecting a probation violation exists. There are differences in the rights of juveniles at the adjudicatory stage (due process and fair treatment) and at the dispositional stage. Wyoming statute requires the court must do what is best for public safety, preservation of families, and the welfare of the child. This allows the court to impose conditions for counseling, treatment, or other programs to rectify the problems contributing to the delinquency. The appellate court decided these were broad enough to include chemical testing.

Some other recent court challenges are summarized in Table 1.

Del Carmen and Sorensen (1988) say conditions of probation, to be valid, must be constitutional, clear, reasonable, and reasonably related to the protection of society and/or the rehabilitation of the individual. They make the following recommendations for implementing a drug testing program:

- Impose drug screening only when it is reasonably related to the rehabilitation of the individual and in such cases where the person's delinquent behavior could be attributed to drug use.
- Determine whether or not a confirmatory test is required.
- Ensure that those administering drug tests are trained and properly qualified, whether they are agency staff or employees of a laboratory
- Follow strict chain-of-custody procedures. These include sealing, labeling, and storing the specimens and documenting their transfer.
- Save samples with positive results until the time for all possible legal challenges has elapsed.
- Have clearly written policies and procedures for drug screening and for the responses to positive findings.

Confidentiality

Programs implementing substance testing should examine present policies, State and local statutes, and case law on confidentiality and ensure the program complies with these. There are some special considerations when substance abuse services are provided. Two federal laws and several federal regulations affirm these confidentiality rights (42 U.S.C., § 290 dd-3 and ee-3 and 42 CFR Part 2).

The Federal confidentiality laws and regulations protect any information about a youth if the youth has applied for or received any alcohol or other drug-related services - including diagnosis, treatment or referral for treatment - from a covered program. The restrictions on disclosure apply to any

information, whether or not recorded, that would identify the youth as an alcohol or other drug user, either directly or by implication (Brooks, 1990).

The purpose of the confidentiality laws preventing disclosure of information (written or oral) that would identify a person receiving alcohol or drug treatment, is to promote their participation in treatment and related programs. The federal confidentiality laws apply to programs that receive federal assistance, either directly or indirectly (e.g., tax-exempt status). Programs should establish policies and procedures for confidentiality. Federal, State and local laws on confidentiality should be researched. Some of these confidentiality concerns are more likely to apply to treatment than to juvenile justice agencies. However, juvenile justice must consider these and also be aware of restraints under which treatment providers must work.

Policies and procedures about confidentiality for drug testing should address:

- The youth's right to privacy.
- The person(s) to whom, and under what circumstances, information may be released.
- The type of information that may and may not be shared.
- The process and forms for obtaining permission to release information.
- The consequences for unauthorized disclosure of information.
- The precautions to be taken in collecting and aggregating data to ensure the confidentiality of individual youth.

(A sample consent form for release of information and statement regarding redisclosure of information follows this page.)

Table 1

RECENT CASE LAW ON SUBSTANCE TESTING

- *Alston v. State*, 646 So.2d 184 (Fla. Sup. Nov. 1994) - Urinalysis showed the defendant used cocaine and community supervision was revoked because drug use violated the condition of release that he not use intoxicants to excess. On appeal, the lower court decision was reversed because the appellate court determined that a single positive drug test was not sufficient evidence to find that the defendant had violated the condition to not use intoxicants *excessively*.
- *Bryant v. State*, 622 So.2d 620 (Fla. Dist. App. Aug. 1993) - As a condition of probation, the defendant was ordered not to use alcohol and to submit to *random testing and treatment* of alcohol use. The court found that this condition was not related to the offense of grand theft. The court affirmed that the condition prohibiting the use of illegal drugs was proper. However, there was no basis for requiring drug testing or treatment.
- *Peterson v. state*, 623 So.2d 637 (Fla. Dist. App. Sept. 1993) - A condition that the defendant not use dangerous substance was not included in the oral conditions of probation; further, it was not related to his crime of aggravated assault. Thus, the court decided the condition should be stricken.
- *Stevens v. State*, 900 S. W. 2d 348 (Tex. App. July 1995) - The defendant's urine sample tested positive for cocaine and he was found in violation of his terms of probation. The court found that proof of a single violation is sufficient to support the revocation of probation. The defendant also contended that the operator of the drug testing machine was unable to translate or interpret the results and was not qualified as an expert witness. However, as the sample also was tested by an independent toxicologist and found positive, this did not change the court's ruling.
- *United States v. Stephens*, 65 F.3d 738 (U.S. 8th Cir. Sept. 1995) - The defendant failed to appear to give urine samples for testing, as required by his conditions of release, on six occasions. He appealed the revocation of his probation, but the court found that willful failure to comply with drug testing subjected him to mandatory revocation.
- *Garcia v. State*, 661 So. 2d 1313 (Fla. Dist. A.P.. Nov. 1995). The defendant's conditions of release stated he should submit to urinalysis, breathalyzer or blood tests at any time requested by his officer or his treatment program. He appeared at the appropriate time and place for urinalysis, but failed to produce urine on three occasions. The court held that this did not comply with his condition of probation.
- *United States v. Grandlund*, 71 F.3d 507 (U.S. 5th Cir. Dec. 1995) - The defendant's probation was revoked after he tested positive for drug use. Conditions requiring the defendant to participate in testing and treatment were added to the original order. At the revocation hearing the probation officer testified about the tests and indicated the positive tests demonstrated the presence of controlled substances. The appeal claimed the probation officer's testimony was hearsay and violated his rights of confrontation and cross-examination. The appeals court held that the distance and expense of a personal appearance by laboratory personnel at the court constituted good cause to allow the evidence by the probation officer.
- *Brock v. State*, 667 So. 2d 1014 (Fla. Dist. A.P.. Feb. 1996) - The defendant pled no contest to grand theft and was placed on probation. The court imposed substance testing requirements. He appealed that use of substances had no relationship to his criminal conduct. The appellate court found the trial court did have authority to impose random testing as a condition of probation based on the fact that it is a standard condition of probation that can be imposed on all defendants regardless of whether or not it directly relates to the offense.

CONSENT FOR RELEASE OF INFORMATION

I, _____, hereby consent to communication
between _____ and
(treatment program)

(court, probation, parole, and/or other referring agency)

The purpose of and need for the disclosure is to inform the juvenile justice agency(ies) listed above of my attendance and progress in treatment. The extent of information to be disclosed is my diagnosis, information about my attendance or lack of attendance at treatment sessions, my cooperation with the treatment program, prognosis, and

I understand that this consent will remain in effect and cannot be revoked by me until:

there has been a formal and effective termination or revocation of my probation, parole, conditional release, or other proceeding under which I was mandated into treatment, or

(other time when consent can be revoked)

(other expiration of consent)

I also understand that any disclosure made is bound by Part 2 of Title 42 of the Code of Federal Regulations governing confidentiality of alcohol and drug abuse patient records and that recipients of this information may redisclose it only in connection with their official duties.

(Date)

(Signature of youth)

(Date)

(Signature of parent, guardian, or authorized representative, if required)

Source: Brooks, M. K. (1990). *Legal issues for alcohol and other drug use prevention and treatment programs serving high-risk youth*. Rockville, MD: Office of Substance Abuse Prevention, U. S. Department of Health and Human Services.

**PROHIBITION OF REDISCLOSURE OF INFORMATION CONCERNING CLIENT IN
ALCOHOL OR DRUG USE TREATMENT**

This notice accompanies a disclosure of information concerning a client in alcohol or other drug use treatment, made to you with the consent of such client. This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or other drug use patient.

Source: Brooks, M. K. (1990). *Legal issues for alcohol and other drug use prevention and treatment programs serving high-risk youth*. Rockville, MD: Office of Substance Abuse Prevention, U. S. Department of Health and Human Services.

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Del Carmen, R. V., & Sorensen, J. R. 1988. Legal Issues in Drug Testing Probationers and Parolees. *Federal Probation*, 52, 19-27.

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