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National Institute of Justice

Research in Action

James K. Stewart, Director

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Employee drug-testing policies in prison systems

by Randall Guynes and Osa Coffey

Drug use in the workplace increasingly demands attention by employers, particularly in potentially dangerous work environments such as law enforcement and corrections that require full mental and physical alertness. These positions not only involve public trust but are inherently stressful, thus at high risk for substance abuse.

Earlier National Institute of Justice reports reviewed the response of police departments to employee drug use.¹ This report deals with actions taken by prison systems to deal with drug use by correctional staff, job applicants, or both. Inquiries to all 50 State correctional systems and the Federal Bureau of Prisons brought replies from 48 States and the Bureau. Among the findings were these:

- The Bureau of Prisons and less than half the States now test employees or job applicants for drugs.
- Most of the systems that test began their programs within the last 4 years.
- Most respondents do not consider drug abuse among staff members a major problem.

- Most agencies began drug testing because of problems with contraband, work performance, or both, and in response to public concerns about drug abuse in general.

- Of the systems with testing programs, most test only employees suspected of drug use. Only two systems reported random testing of staff, and that was limited; eight systems test job applicants.

- Special staff training on drug abuse remains limited and is more likely to be available in agencies that test employees or applicants.

- Few agencies have written policies and procedures for drug testing programs.

- Few grievances or lawsuits have resulted from drug testing to date.

- False positives were a common result on first tests; therefore many systems require a second test whenever the first proves positive.

- Most agencies with testing programs contract with laboratories or hospitals to conduct the tests at an average cost of \$20 to \$30 each.

- In the 15 States with unions, 7 unions have taken no stand, 1 union supported drug testing, and the remaining 7 opposed it.

Who to test

As shown in Exhibit 1, only 19 State correctional agencies and the Bureau of Prisons (41 percent of respondents) currently conduct drug testing of either staff or applicants. (By comparison, earlier studies showed testing by 73 percent of a sample of police departments.)

Four additional States indicate they plan to start a testing program. Twelve test only employees suspected of drug use; six test all applicants and those employees suspected of use; two States test only employees.

Only two States conduct random testing of staff, and one of those limits staff testing to preservice training. Georgia is the only State with random weekly testing of staff, and that program is limited to the Reidsville maximum security institution.

Reasons for testing

Asked why drug testing was initiated, 44 percent of respondents cited problems with contraband, 29 percent cited problems in work performance, and 27 percent mentioned public concerns about drug use.

Respondents from systems that do test employees for drugs indicated they perceive a relationship between drug tests and contraband more frequently than those from systems that do not test. No empirical evidence, however, either corroborates or refutes the perception that correctional employees who use

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Today's debate: DRUGS IN HIGH SCHOOL

Drug tests fail schools

OUR VIEW Supreme Court case argued today shows how random testing usually fails to live up to expectations.

Imagine you wanted to go out for your company's softball team and your boss told you: "Pee in this cup — in front of me."

Most adults would consider such a demand outrageous. Yet, that's what some public schools were demanding from student athletes in the war against drugs when 12-year-old James Acton came along in 1991.



By Brian Foutkes
ACTON: Said no to drug test.

The would-be seventh-grade football player put a damper on such demands. First, he told Vernonia, Ore., public school officials that he wouldn't go along. Then he went to court. His claim: The district's drug tests — required of all those trying out for sports — violate Fourth Amendment rights to privacy.

Last year, a federal appeals court in San Francisco agreed. In doing so, it made such testing illegal in nine Western states under its jurisdiction. And it discouraged schools elsewhere from starting testing programs until the Supreme Court rules on the case.

Today, the high court hears arguments. And if students, schools and taxpayers are lucky, it will kill all such required drug tests for student athletes by next fall.

Drug testing can be smart, when it's conducted to protect public safety and security, as with transportation workers and drug enforcement agents. And it may even be sensible when it's done to ensure role models, such as professional and college athletes, don't abuse narcotics.

But it wastes money and violates rights when forced upon thousands of youngsters.

Vernonia began its program mostly because of increased disciplinary problems.

But school officials chose not to focus on the problem kids. They lassoed mostly innocent ones. Of 500 students tested in 4½ years, a mere 12 tested positive, not many for a district claiming huge problems.

And who paid for the willy-nilly testing? Not local folks, but deficit-riddled Uncle Sam through the federal drug-free schools program. Vernonia's cut: \$7,500 a year.

History shows there's a fairer way. Teen drug use was cut substantially during the 1980s, not because a few schools tested students for drugs but because most taught students the dangers of abuse and involved parents in their programs.

Schools should do the same today. They should call parents of kids suspected of drug use and get permission for any testing.

That would save money, focus the drug fight on those causing problems and not invade the privacy of innocent kids whose only crime is trying out for a sport.



DATE: 3-28-95

PAGE: 12-A

Fight drug use with tests

OPPOSING VIEW Let schools use this tool to combat peer pressure and help kids stay drug free.

By Rob Teir

Participation in high school sports is not a constitutional right. Rather, it is a privilege, paid for by taxpayers, open to students who promise to meet certain conduct requirements on and off the field. One of these promises is to refrain from using drugs.

Drug use is a serious problem among high school students. Studies show that as many as 500,000 high school students use muscle-pumping, life-destroying substances such as steroids. Many more use illegal drugs, which cause discipline problems and set the stage for lifelong addictions.

Drug testing works to deter and identify use. That is why drug testing is required to compete in the Olympics, the National Collegiate Athletic Association and the National Football League. Since drug testing was instituted by these organizations, use of performance-enhancing drugs has been greatly reduced. We should want nothing less in schools.

Indeed, many athletes support testing programs, and no wonder. Without testing, athletes have to choose between drug use

and a competitive disadvantage on the field.

Those who challenge the need for drug testing may be forgetting what it is like to be an adolescent. Peer pressure is enormous, and one of the few effective counterweights is the fear of being caught. More importantly, once drug use is identified, a school can reach out to the student before he or she gets addicted — or arrested.

Because of the incredible demands to perform well, high school athletes, like those in college, are particularly susceptible to the temptations of drugs. Athletes are also role models for other students, who agree to all kinds of intrusions on their privacy, including sharing locker rooms and undergoing complete physical exams. Neither drug testing nor these requirements violates the Fourth Amendment.

For 25 years, public schools have been run by federal judges and civil libertarians, with results everyone can see. It is time to return decisions on how to run public schools to locally accountable officials.

There is nothing unconstitutional about asking those who gain the advantages of school-sponsored athletics to contribute to the safety of other players, the integrity of the game and their own well-being. The Supreme Court should leave these programs alone.

Rob Teir is general counsel of the American Alliance for Rights & Responsibilities.

Letting Parents Make the Bust

Firm Offers a Do-It-Yourself Kit to Test for Drugs at Home

By Jay Mathews
Washington Post Staff Writer

NEW YORK, March 28—A leading drug detection firm today announced a potent new weapon in the battle of the generations—a \$20 kit that allows parents to check their children's rooms secretly for traces of drugs.

Executives at Barringer Technologies Inc. of New Providence, N.J., said the kit—which can be mailed to parents in a thin envelope and sent back for quick analysis—offers a new way to stymie what has been a recent surge in teenage drug use. Drug experts said they expect other companies to jump into a market fueled by parental fears of drug use when their children are moody or belligerent.

Psychologists and social workers who deal with family problems hailed the device as a way to get help early for troubled youth, before their problem becomes too great.

"It usually takes two or three years after a child is using before their behavior becomes so



deviant that parents are convinced of their drug use, and by that time they are well into addiction," said Harold Hunton, a staff therapist at the Family Therapy Institute of Alexandria.

Barringer executives said the test destroys the sample, so that it could not be used as evidence in court.

But civil libertarians and some teenagers and family counselors said the device was liable to poison relations between children and their parents, particularly if no drug traces were discovered. Some experts pointed out that home detection devices using urine tests and chemical sprays had not done much to curb teenage drug use, and the newer, more sophisticated devices also might fail to do so.

The firm's DrugAlert kit contains a three-inch premoistened pad, called a swipe, which collects any drug traces when wiped across desk tops, telephones, books, clothing or other items.

The kit is now available, by mail order from Barringer. It will include an 800 number that customers can call in its advertisements for the product.

At a demonstration, Barringer executives spilled and then brushed away cocaine from a

desk that held a computer, telephone, textbooks and a baseball trophy. A pad was wiped across these objects and then was fed into a television-

sized ion mobility spectrometer, which reported the presence of the drug.

"Anyone who has been in contact with illegal narcotics will inadvertently acquire trace amounts of the narcotic," said Stan Binder, chairman and chief executive of the company, which sells the spectrometer—called an Ionscan—to police departments and federal agencies.

Kenneth S. Wood, president and chief executive of Barringer Instruments Inc., the subsidiary that makes the device, said the \$50,000 Ionscan 400 vaporizes the drug traces and clocks the speeds of the molecules, which are different for each substance.

Edward J. Cone, chief of the chemistry and drug metabolism section of the National Institute on Drug Abuse's Addiction Research Center in Baltimore, said Barringer was using proven equipment and might soon have competition. "There is a variety of companies that have potentially useful technologies, including any of a number of chemical tests," he said.

Loren Siegel, director of public education for the American Civil Liberties Union, said that although she did not like the approach, "if this is something that parents want to do, we would probably not interfere."

But she and some family counselors and teenagers said they were troubled by the idea of taking drug samples behind a child's back. "It might be legally right, but some might think it is morally wrong," said David Feinberg, a 16-year-old Bethesda resident. Paula Barroso, a Larchmont, N.Y., resident who turned 18 today, said, "I think it would be a good thing" for detecting drug use by someone younger than she is, but said it should not be used on young adults.

David R. Glass, a clinical psychologist in Arlington, said that "for the substance abuse counselor it is a good thing to know" whether someone is handling drugs. "If you have hard data you can have a more effective intervention. But the family therapist will have trouble with the covert nature of it."

Sunny Cloud, a former teacher in Atlanta, said she has been marketing a home urine

cont'd

collection kit for six months. The kit requires a child's cooperation. Cloud said she doubted acting in secret would work well.

"The parent can say [to a teenager], 'Now, I'm seeing some behavior that concerns me, and I've got this kit sitting here,' " she said of her product. " 'I may not use it at all, or I may ask you to use it tomorrow.' "

The home-collected urine is sent to laboratories under contract with her firm, Parents Alert Inc. The results, Cloud said, are sent to the parents without the creation of permanent hospital records that might later affect the child's career.

Barringer executives indicated that parents could take samples using the DrugAlert

kit with or without their children's knowledge, as they saw fit. A booklet sent with the kit warns parents that the drug traces may have come from their child's contact with friends and welcomes them to repeat the test if they like.

Siegel said in some cities children may pick up trace bits of illegal substances without having anything to do with the drug culture. "If you walk down certain parts of 34th Street [in New York] there is no way you are not going to be exposed to marijuana smoke from total strangers," she said.

Asked if children could send in samples collected from their parents' rooms, Binder said it was possible. "We hadn't considered that," he said.

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March 1995

Deinstitutionalization Movement Rebuffed; AARR Wins in NY

A state appeals court in New York has reversed a ruling that forced the release of mentally ill persons with long records of substance abuse and irrational, violent conduct. The court rejected arguments from Mental Hygiene Legal Services that such persons should be released strictly because they are not threatening within the structured environment of a mental hospital. In over two decades of litigation over the deinstitutionalization of the dangerous mentally ill, this case is the first in which neighborhood and citizens' groups have been represented in court—thanks to the AARR.

The subject of the case, Francis Stuart, has been arrested 26 times, often for violent or reckless offenses. Since 1983, when he was found not guilty of assaulting a police officer with a knife by reason of insanity, he has been in and out of mental institutions and jail. Every time he was released, he ignored orders to take medication and seek outpatient care, reverting to violent crime fueled by his addictions to drugs and alcohol. Nonetheless, a lower court judge ruled that “the

law does not permit me to confine him to a secure hospital because he currently is not dangerous.”

The AARR, the Citizens Union of the City of New York and the West 90's/West 100's Neighborhood Coalition filed a friend-of-the-court brief in the case. It called for a broader, more realistic reading of the state hospitalization standard for dangerous mentally ill people, arguing that courts should be able to look at past conduct and assessments of psychiatric professionals in deciding whether a person is a threat to the community. The Appellate Court agreed, rejecting the trial court's view that “dangerousness” can be determined only on the basis of the person's condition at the time of the hearing. Yolanda Pizarro, assistant state attorney general representing the State Office of Mental Health, told the *New York Times* that “a diagnosis of dangerousness can now be legally based on a patient's repetitive history of destructive behavior.” The coalition was represented *pro bono* by Frank Moseley of Davis Polk & Wardwell.

School Service Requirement Upheld

A New York federal judge last month upheld a service-learning curriculum requiring students to perform community service as a condition of high school graduation. Daniel Immediato, a high school junior in Rye Neck, NY, had filed suit against his school board, claiming the school's 40-hour requirement violated the constitutional prohibition on involuntary servitude. Immediato was backed by the libertarian group Institute for Justice, which is also backing a similar suit in Chapel Hill, North Carolina.

In his decision, Judge Charles L. Brieant cited the friend-of-the-court brief the AARR filed in the case supporting the requirement. The brief was drafted *pro bono* by Dennis Hirsch of Sidley & Austin, and included affidavits from experts attesting to the educational merits of service-learning programs.

“The evidence submitted on these motions shows that the Program is aimed at teaching skills and habits perceived by Defendants as essential for good citizenship,” according to Brieant, who went on to cite testimony by education expert Dr. L. Richard Bradley that service learning helps students develop skills “that will help them become effective employees, colleagues, citizens, and leaders.” Bradley's testimony was provided in an affidavit with the AARR brief.

The Institute for Justice plans to appeal the Rye Neck deci-

sion and pursue its national litigation strategy to block the trend toward making community service a part of traditional civics programs. No decision has been reached in a similar case in Chapel Hill, North Carolina. The AARR and Sidley & Austin have mounted a strong defense of service learning in Chapel Hill, filing a friend-of-the-court brief on behalf of three Chapel Hill students who support the requirement.

That brief includes affidavits from the three students, Amy Rouse, Amy Cloud and Kate Breen, and from a variety of experts, including Dr. Benjamin Barber of Rutgers University. In her testimony, sophomore Amy Rouse describes how much she has learned as a result of her participation in the service-learning program, and why she thinks it should be required for all. Rouse has worked in a boarding school for foster children and has helped build a house for a low-income family.

“I think community service benefits the community and those who do the work,” says Rouse. “I support the service-learning requirement because if service is not mandatory for teenagers, they may never do any. Right now, everyone's stalling because of the lawsuit. Most of the students I know have not even started because they think the requirement is just going to go away. If they try it, they may discover they like it and continue for a long time.”

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Tests Show Many Bad Drivers Under Influence of Cocaine or

BOSTON (AP) Reckless drivers who don't seem drunk may well be high on cocaine or marijuana, according to roadside tests that indicate drugs may rival alcohol as a hazard on the highway.

Police in Memphis, Tenn., gave urine tests to reckless drivers who appeared not to be drunk. They found that more than half were on cocaine or pot.

``It was a surprise that so many were under the influence of drugs, although we suspected there would be a significant number,' said police Inspector Charles S. Cook.

Police routinely give breath tests to bad drivers whom they suspect to be drunk. However, on-the-spot testing for other drugs is rare, since it requires taking a urine specimen something that is not practical on the highway.

For an experiment in roadside drug testing, Memphis police put together a ``drug van,' a former ambulance fitted out with toilet, interview area and videotaping equipment.

In the summer of 1993, they gave drug tests on the spot to any reckless drivers who were not obviously drunk. Police took urine samples from 150 drivers, and 89 of them, or 59 percent, tested positive for cocaine or marijuana.

The tests, widely available from several manufacturers, can give results in 10 minutes. The standard for a positive test was the same as that used by the federal government to measure recent drug use in the workplace.

While a positive result often means people have taken drugs in recent hours, those who regularly use very high amounts of cocaine or marijuana may flunk the tests even though they have been off drugs for days.

The results of the police experiment were written for Thursday's issue of the New England Journal of Medicine by Dr. Daniel Brookoff of Methodist Hospital in Memphis.

Brookoff said he decided to get involved in the issue of drugged driving after a man hit a friend's two daughters while driving on the wrong side of the road. The man was never tested for drugs, but Brookoff believes he was high on marijuana.

``The reality is, we think it's as big a problem, or maybe bigger, as drunk driving,' said Brookoff.

Police can often tell when drivers are drunk even before they give the breath test. But drugged driving is much harder to detect, because there is no clear pattern of appearance. For instance, drivers on cocaine may act sleepy and slow, happy and talkative or combative and paranoid.

When asked to take the standard curbside sobriety test, which involves measuring coordination and attention, cocaine drivers can actually perform better than sober folks.

``We saw people who did great on the sobriety test,' said Brookoff. ``The problem was, they were driving 90 miles an hour on the wrong side of the road with their lights off.''

He said cocaine drivers were often glad to take the drug test, certain they would pass. They show poor judgment on the road, too. Typically they are wildly overconfident of their abilities, taking turns too fast or weaving through traffic.

``Diagonal driving,' Cook calls this. ``They are just as involved in changing lanes as in going forward.''

The effects of cocaine can last for days. Those withdrawing from the drug may drive worse than people who are still high.

Cook said drivers on marijuana can be inattentive and have poor

reflexes. In this way, they are similar to drunks, although their impairment is usually less extreme.

While the study was going on, Memphis police made 111 arrests for driving under the influence of drugs. During the same period in 1992, they made only six arrests, five of them after serious accidents.

Cook said Memphis police continue to use the drug van, and he urges other police departments to do the same.

APNP-08-24-94 1420EDT

Supreme Court Must Decide: Drug Tests for Junior High Athletes

WASHINGTON (AP) An Oregon school district and the Clinton administration urged the Supreme Court today to allow mandatory drug tests of all student athletes in schools where drug use is a problem.

But an Oregon teen-ager's lawyer said such drug-testing violates the privacy rights of public school students.

"This is being compelled by the government. They're watching you do it. They're taking your urine. They're testing it to see what secrets are therein," argued Portland lawyer Thomas Christ as his 15-year-old client, James Acton, watched from the courtroom audience.

Christ said the Vernonia, Ore., school district had tried to force anyone who wanted to participate in sports to undergo "an intrusive, degrading."

But Timothy Volpert, the school district's lawyer, said allowing drug tests of only those students actually suspected of using drugs would not have the same deterrent effect as random tests.

"If there's a reasonable belief of ... drug use in the schools, random drug-testing should be allowed," he said.

In Vernonia, Volpert said, it was suspected that junior high athletes were leaders in the drug culture.

Justice Department lawyer Richard Seamon said it is less intrusive to impose such a testing requirement for student athletes because of the "voluntary, extracurricular nature" of school sports.

All three lawyers were subjected to numerous interruptions from the bench. Of the court's nine members, only Justice Clarence Thomas asked no questions.

The discussion turned rather basic at times.

Chief Justice William H. Rehnquist talked about boys' locker rooms as not very private places because of "guys walking around naked."

Justice Stephen G. Breyer's pressing Christ to admit that urinating "isn't really a tremendously private thing" led the lawyer to say, "We all urinate. That has to be conceded."

When Christ added, "In fact, I may do so here," the courtroom the justices included erupted in laughter.

But the justices, most notably Justice Anthony M. Kennedy, clearly saw nothing funny about kids using drugs.

"I'm talking about solving the problems of drugs in the schools," Kennedy said at one point, referring to "a nationwide drug problem in the schools."

The justices are expected to decide by late June whether random testing is a constitutionally acceptable way to fight that problem.

James was a star seventh-grader at Washington Grade School in the small logging town of Vernonia in 1991 when he decided he wanted to play on his school's football team.

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National Institute of Justice

Research in Action

James K. Stewart, Director

October 1989

Mandatory and Random Drug Testing in the Honolulu Police Department

by Barbara Webster and
Jerrold G. Brown

After more than 2 years of planning and consultations, the Honolulu Police Department (HPD) began a comprehensive drug testing program in October 1986. Unlike most police drug testing programs, the HPD program is not limited to testing for drug use based on reasonable suspicion.¹ Instead, it provides for three drug-test urinalysis groups. Two groups of officers are subject to frequent or periodic mandatory testing. The third and largest group is composed of tenured officers who may be randomly tested.

In general, police unions have strongly supported goals to maintain a drug-free workforce, but have stopped short of endorsing programs that involve random testing. The HPD drug testing program, however, was developed in cooperation with the union. The program also differs in that, unlike most police departments, the HPD affords officers an opportunity for treatment after a first positive urine test. The

program also includes an unusual number of precautions to safeguard the chain of custody of urine samples and ensure accurate test results.

The HPD, with 1,800 sworn officers, received strong support for developing its program from the City of Honolulu. While the HPD program is not one that is easily replicated, other law enforcement agencies may be able to adapt some of Honolulu's procedures to meet their own needs.

Rationale for testing and using random selection

There are two main reasons why the HPD started a drug testing program. The first was related to public expectations about professionalism and integrity within the police department. Several drug-related incidents involving HPD officers occurred in 1984, including the arrests of several officers for off-duty possession and sale of controlled substances. As a result, there was a loss of public confidence in the department's ability to enforce drug laws. Drug testing was seen as one way to restore credibility.

The second was a concern about public safety, which might be jeopardized if the department did not do all it could to ensure that its members were fit to

perform their jobs. The department was aware of recent court decisions that held police departments responsible for ensuring that their officers were fit to carry weapons. In one case in New York City involving an officer who shot his wife and committed suicide, the court found the city liable because it "failed to address itself with due diligence to the problem of reasonably ensuring that police officers are fit to carry guns without endangering themselves or the public" (*Bonsignore v. City of New York*, 521 F. Supp. 397, 2d Cir. 1981).

At first, the HPD considered testing officers based on "reasonable suspicion" of drug use, rather than going the more controversial and expensive route of random testing. The courts had been allowing police to test tenured officers when a reasonable suspicion standard was applied.² This usually occurred in situations involving accidents, negligent acts, or observable signs of impaired work performance. But HPD administrators decided the reasonable suspicion standard left too much to human judgment and could be perceived as arbitrary.

The department opted, instead, for a program that was mathematically random and not subject to arbitrary manipulation or discrimination. The

Barbara Webster is a senior associate with the Institute for Law and Justice, Alexandria, Virginia. Major Jerrold G. Brown is commander of the Honolulu Police Department's Waikiki District. He was the department's personnel officer from 1987 to 1989, and assistant personnel officer from 1985 to 1987.