



Monograph

INTEGRATING DRUG TESTING

Into A Pretrial
Services System:
1999 Update

U.S. Department of Justice
Office of Justice Programs
810 Seventh Street NW.
Washington, DC 20531

Janet Reno
Attorney General

Raymond C. Fisher
Associate Attorney General

Laurie Robinson
Assistant Attorney General

Noël Brennan
Deputy Assistant Attorney General

Nancy E. Gist
Director, Bureau of Justice Assistance

Office of Justice Programs
World Wide Web Home Page
<http://www.ojp.usdoj.gov>

Bureau of Justice Assistance
World Wide Web Home Page
<http://www.ojp.usdoj.gov/BJA>

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1-800-421-6770

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**Integrating Drug Testing
Into a Pretrial Services System:
1999 Update**

Foreword

This document is an updated version of a 1992 monograph describing how to integrate drug testing into a jurisdiction's pretrial services system. The original document was prepared before the advance of several technological developments in drug testing, including the expansion of hand-held devices to test for drug use and the introduction of the sweat patch. These two new approaches to drug testing, plus other approaches that are on the horizon, are described in this monograph.

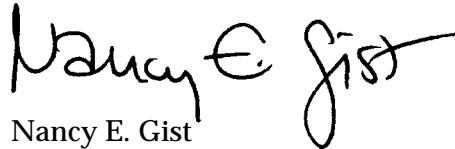
The original document was based on the pretrial drug testing experiences of six local jurisdictions that received federal funding to implement pretrial drug testing demonstration projects. The first of these testing programs, the District of Columbia Pretrial Services Agency, was funded by the National Institute of Justice in 1984 and continues its testing with local funding. The other programs—in Pima and Maricopa Counties, Arizona; Prince Georges County, Maryland; Multnomah County, Oregon; and Milwaukee County, Wisconsin—funded by the Bureau of Justice Assistance between 1987 and 1991, continue to test but in a much more limited manner. In the past 2 years, in response to an initiative by President Clinton to expand the use of pretrial drug testing, 24 federal district courts began testing defendants in a project called Operation Drug Test. The practices of these federal pretrial programs are examined in this document.

This report includes the latest information on two problems that are of great concern to programs that test urine for drug use—flushing the system through fluid loading and specimen adulteration. Both have the capacity to mask drug use, and sophisticated means to detect them have been developed. In addition, this document describes an innovative paperless chain of custody process that the District of Columbia Pretrial Services Agency has developed and installed. The process, which is fully automated, greatly minimizes the chances of a break in chain of custody caused by human error.

Since the 1992 document was published, the highest courts in both California and the District of Columbia have issued important rulings on pretrial drug testing, both of which uphold the constitutionality of imposing drug testing as a condition of pretrial release. These rulings are incorporated into the discussion of legal issues.

This document also includes a new chapter on the costs of pretrial drug testing. The chapter is an update of a separate monograph, published in 1989. Finally, the document contains an updated bibliography that has been annotated.

A major development in the criminal justice system's approach to addressing illegal drug use since the publication of the 1992 document has been the tremendous expansion of drug courts. An estimated 325 drug courts are operational or in the planning stages nationwide. Drug testing is a major component of the drug court program, and pretrial programs have played a major role in many of these jurisdictions by performing functions such as identifying eligible candidates and supervising them while they are in the program. This monograph should be of great use to pretrial agencies that are testing as part of a drug court program.



Nancy E. Gist
Director

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Executive Summary

The goal of a pretrial drug testing program is to reduce the risk of failure to appear and rearrests among drug-using pretrial defendants by identifying and monitoring drug use. The objectives of pretrial drug testing—the means of achieving this goal—are to maximize the number of identified drug users released to pretrial supervision by offering courts valid alternatives to detention or unsupervised release, to reduce the level of drug use by monitored defendants, and to separate defendants in need of drug treatment from those who can control drug use through monitoring alone.

Integrating Drug Testing Into the Court Process

Gaining Support From System Representatives

Successful pretrial drug testing programs need the support of the major agencies in the local criminal justice system. These agencies must agree with the goal of the drug testing program and acknowledge their duties within the program's framework. To gain system support, program administrators must identify the important system representatives and their duties regarding pretrial drug testing, address the concerns of these representatives, draft a Memorandum of Understanding (MOU) outlining the representatives' duties, and maintain strong support for pretrial drug testing among the representatives.

Integrating Drug Testing Into the Risk Assessment Process

Pretrial programs must assess the risk of defendants failing to appear in court or presenting a danger to the community if released. This assessment involves gathering information about each defendant and then extrapolating risk factors from that information.

Drug testing as a risk assessment tool has been applied at two different points, before the initial bond hearing and after the hearing. When applied before the initial hearing, specimens are collected from the defendant shortly after arrest but before the appearance in court, and the test results are incorporated into other information (such as criminal history, ties with the community, and other drug use information) in making a bond recommendation to the court. When applied after the bond hearing, specimens are collected again from the defendant (after release) by the court to determine whether testing and treatment should be part of the defendant's pretrial supervision. Together with other information about drug use obtained during the pretrial investigation, drug test results can be an effective tool in verifying a defendant's current level of drug use.

Integrating Drug Testing Into the Supervised Release Process

A pretrial supervised release program involves program staff monitoring defendants who have been released on the promise to abide by certain conditions. The conditions should be related to risks of failing to appear at scheduled court hearings or presenting a danger to the community. The supervision of those conditions should be geared toward minimizing those risks. These same goals of minimizing identified risks should apply when integrating drug testing into a supervised release program.

Drug testing as part of a supervised pretrial release program is frequently referred to as pretrial drug monitoring and typically involves requiring defendants to submit specimens on a periodic basis. Program staff note whether defendants report as scheduled and the test results. Staff members counsel defendants who test positive or who are otherwise not complying. They then impose or recommend sanctions. Sanctions may include an increase in supervision, referral to treatment, or notification to the court that the defendant has failed to comply with program requirements.

When testing urine for drug use, drug testing appointments can be set on a regular schedule, with defendants advised of the next appointment in advance, or scheduled irregularly, with defendants receiving very short notice to report for testing. Guidelines must be established and consistently followed for responding to violations of the testing condition.

In addition to testing urine specimens, technology is now available to test perspiration specimens, collected through the use of a sweat patch. The patch can detect drug use that has occurred during the time that the patch is applied, which usually lasts from 1 to 2 weeks. Program staff can apply and remove the patch, but it must be sent to the manufacturer for testing.

Operational Issues

Chain of Custody

Chain of custody refers to procedures that:

- Govern the collection, handling, storage, testing, and disposal of a urine specimen to ensure a correct match to the person providing it.
- Safeguard against tampering with or substitution of a specimen.
- Document that these steps have been carried out.

Chain of custody procedures should describe in detail the means of:

- ❑ Establishing the identity of the person being tested.
- ❑ Observing the voiding of the specimen.
- ❑ Labeling the specimen.
- ❑ Completing a collection witness log.
- ❑ Transporting the specimen to the testing facility.
- ❑ Testing and disposing of the specimen.

Testing of Specimens

Program administrators should have a basic knowledge of the technical aspects of testing specimens for drugs of abuse. Urine testing can be conducted either by using an analyzer-based technology, with testing done at an inhouse testing facility or private laboratory, or with disposable handheld testing devices. Inhouse testing, whether it uses an analyzer or handheld devices, offers the advantage of timelier processing and simplified chain of custody procedures by technicians who are trained and certified by the testing equipment manufacturer. Outside laboratories offer the advantage of trained, experienced technicians and a staff supervisor who is a toxicologist. Testing can also be conducted through the use of the sweat patch. The advantages and disadvantages to each approach should be weighed in light of the pretrial program's resources and needs.

Confidentiality

Maintaining confidentiality means limiting access to test results and other program information concerning the defendant. Confidentiality also requires limiting the use of such information to agencies and persons with accepted access for accepted purposes.

Under limited circumstances, programs can release information to other parties, but only to carry out a specific duty involving the defendant. Release of information to anyone other than the parties to the MOU requires the defendant's written consent and a legitimate reason for requesting the information. Programs should have written procedures for releasing information.

Drug testing programs that receive federal assistance, such as federal funding or exemptions from federal taxes, must conform to confidentiality guidelines outlined in 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records: Final Rule. All drug testing programs must conform to applicable state and local guidelines, which can be more restrictive than the federal rule.

Management Issues

Staffing

A pretrial drug testing program requires staff to collect specimens properly, observe chain of custody requirements, test specimens, process program information, and supervise defendants ordered into supervised testing.

Any staff who test specimens must receive proper training. Supervisors should train collection and data entry staff. When using analyzer-based instruments, testing technicians should be trained and certified by the testing equipment manufacturer.

Information System

Drug testing requires an information system for recording program information, reporting information to other parties, monitoring defendants in drug testing, and protecting the confidentiality of results. This information system should provide program administrators with the means to organize, research, and control the operations of the drug testing program.

Procedures Manual

A procedures manual describes the testing program's policies and procedures. It serves as a training guide for new employees and a reference source for current staff and persons outside the program. The manual should note which staff or unit is responsible for carrying out each function. It should be written so that it is easily understood by persons unfamiliar with the program. Sections should be brief, with technical terms explained, and should be organized according to the sequence of a defendant's progress through the program.

Sections of the manual should include the dates procedures went into effect. The manual should also accommodate changes in program procedures and should be updated whenever procedures change. Updates should note the staff affected by the change and any new forms or computer entries required.

Estimating Costs of Testing

Different cost factors come into play with each approach to testing (namely, testing inhouse with an analyzer-based facility, testing inhouse with hand-held devices, contracting with a private laboratory, or testing with the sweat patch).

The inhouse analyzer-based facility should be able to test a specimen for five drugs at an average cost of \$5. This figure does not include many one-time and ongoing costs, such as purchase or lease of the analyzer, maintenance contracts on the analyzer, facility renovation, staff time, specimen

collection supplies, or confirmation costs. The average cost per five-drug panel using hand-held devices inhouse should range between \$12 and \$20, depending on the device. This price does not include the costs for collection supplies, staff time to collect and test the specimens, or confirmation costs. Using a local certified private laboratory is the most expensive approach—an average of \$100 for a five-drug screen—but the price includes gas chromatography/mass spectrometry, the best method for confirmation testing. Sending specimens to a private laboratory costs an average of \$10 per five-drug screen, which does not include expenses for specimen collection, shipping, and confirmation. Testing with the sweat patch costs \$23 for five drugs, which includes the cost of the patch itself, plus shipping and testing expenses. Confirmation costs are not included.

Legal Issues

Drug testing has been found to constitute a search under the fourth amendment, and courts have ruled that drug testing complies with substantive due process when collection and testing procedures are reasonable. Courts have also ruled that drug testing can be imposed as a condition of release.

Before undertaking drug testing, program administrators are advised to consult their jurisdiction's attorney for an opinion.

Introduction

Historically, pretrial programs have obtained information about drug use during interviews of defendants, believing that such information is very useful to judicial officers in setting conditions of release. The introduction of onsite testing has provided the opportunity to supplement this interview information with an accurate and objective measure of recent drug use. The District of Columbia Pretrial Services Agency was the first to take advantage of this opportunity by implementing an onsite pretrial testing program in 1984 with initial funding from the National Institute of Justice (NIJ). The two main aspects of this program were:

- ❑ Testing defendants before their initial bail-setting appearance and incorporating the test results into the assessment of risk presented to the judicial officer at the bail hearing (preinitial appearance testing).
- ❑ Testing defendants identified as drug users on a regular basis during pretrial supervision (pretrial drug monitoring).

Two assumptions underlay this approach. First, knowledge of a defendant's drug use at the time of arrest—obtained through a drug test—would provide an important predictor of pretrial misconduct. Second, monitoring of use through testing during the pretrial period, coupled with sanctions, would be an effective means of reducing risks of pretrial misconduct.

Based on the success of the D.C. testing project, the Bureau of Justice Assistance (BJA) provided funding from 1987 to 1991 to five jurisdictions—Pima and Maricopa Counties, Arizona; Prince Georges County, Maryland; Multnomah County, Oregon; and Milwaukee County, Wisconsin—to establish pretrial drug testing demonstration projects. These projects were designed to replicate the D.C. testing model, incorporating both preinitial appearance testing and pretrial drug monitoring. Several of these jurisdictions set up their own onsite testing facilities, while others contracted with outside laboratories.

Under the Anti-Drug Abuse Act of 1988 (PL 100-690), Congress also mandated pretrial drug testing in eight selected federal court districts (Arkansas Eastern, Florida Middle, Michigan Eastern, Minnesota, Nevada, New York Southern, North Dakota, and Texas Western) as a 2-year demonstration project. In a subsequent report, the Administrative Office of the United States Courts advocated expanding pretrial drug testing to all federal court districts.¹

On December 18, 1995, President Bill Clinton directed Attorney General Janet Reno to develop and implement a universal policy providing for the drug testing of all federal arrestees before the decision is made to release them into the community pending trial. He also directed the Attorney General to take steps to encourage states to adopt and implement the policy.

The President’s rationale for developing a universal policy was that “[t]oo often, the same criminal drug users cycle through the court, corrections, and probation systems still hooked on drugs and still committing crimes to support their habit.” The criminal justice system should react, he said, “at the earliest possible stage in a person’s interaction with the criminal justice system—following arrest.”²

As a step toward activating the directive at the federal level, in 1996 the Attorney General reached agreement with the federal courts to implement pretrial drug testing in 24 of the 94 federal districts. This initiative was called Operation Drug Test. To begin the policy’s implementation at the state level, Congress increased funding for the Byrne Formula Grant program in FY 1997 by \$25 million specifically to encourage state and local jurisdictions to support effective drug testing initiatives at all stages of the criminal justice process, beginning with the pretrial stage.

The D.C. program defined pretrial drug testing as a combination of preinitial appearance screening and pretrial drug monitoring. Preinitial appearance testing occurs before the initial bond hearing, and a pretrial program uses test results to help formulate a recommendation for pretrial release or detention. Pretrial drug monitoring is drug testing ordered as a condition of pretrial release. The experiences of the replication programs show that preinitial appearance testing and pretrial drug monitoring are distinct and independent components, each tied to a basic role of a pretrial program:

- ❑ Identifying potential risks of pretrial failure (preinitial appearance testing).
- ❑ Controlling risk through conditional release (pretrial drug monitoring).

The most critical element of pretrial drug testing is the existence of a pretrial services program (or comparable agency or agencies to provide such services). The pretrial services program provides to the court, before the initial bond hearing, verified community ties and criminal history information on defendants; the program also supervises pretrial defendants. The agency responsible for the pretrial services program should identify drug-using defendants before the initial bond hearing, integrate drug testing into the current supervised pretrial release scheme, and oversee the drug testing and supervision functions.³

BJA has highlighted the importance of pretrial programs for effective pretrial drug monitoring:

Formal pretrial services agencies provide an extremely valuable service to prosecutors and the courts by conducting a thorough risk assessment, recommending pretrial disposition, and performing intensive monitoring of the arrestee. Such agencies are critical in effectively administering pretrial drug testing, meeting

special needs of the criminal justice system in response to drug abusing offenders[,] . . . and serving as coordinator between the system and various programs that fall in the category of intermediate sanctions.⁴

Program Goals and Objectives

The goals of a pretrial drug testing program should be grounded in the goals or mission statement of the pretrial services program and augment the services that the program furnishes to the criminal justice system, such as gathering information on the defendant, preparing a report assessing the likelihood of failure to appear or rearrest, recommending appropriate options for conditional release, and supervising conditions of pretrial release and reporting violations to the court.⁵

A pretrial drug testing program's objectives should be specific, measurable, and consistent with the following pretrial program objectives:

- ❑ Developing options that permit judicial officers to maximize the rate of nonfinancial release.
- ❑ Minimizing failures to appear in court and the potential danger to the community posed by the release of certain defendants.
- ❑ Reducing inequities in the pretrial services system.

This monograph suggests that the goal of pretrial drug testing is to reduce the risk of failure to appear and rearrests among drug-using pretrial defendants by identifying and monitoring drug use.

The objectives of pretrial drug testing are to maximize the number of identified drug users released on pretrial supervision by offering courts valid alternatives to detention or unsupervised release; reduce the level of drug use by monitored defendants; and separate defendants in need of drug treatment from those who can control drug use through monitoring.

This monograph seeks to provide criminal justice professionals—specifically pretrial services program administrators—with a reference document to assist them in implementing a pretrial drug testing program in their jurisdictions. As an update of a 1992 document, it reflects recent developments in drug testing technology as well as additional drug testing experience.

How This Monograph Is Organized

The information presented in this monograph is based on experiences of federal and local pilot and demonstration pretrial drug testing sites. Their experiences show that certain elements are critical for success. These elements fall under four major categories:

- ❑ Integrating drug testing into the court process.
- ❑ Operational issues.
- ❑ Management issues.
- ❑ Legal issues.

Chapters in the monograph are grouped under these categories and describe how pretrial agencies incorporating drug testing into their programs can deal with these issues. Each chapter ends with a summary of the key points covered.

Part One

Integrating Drug Testing Into the Court Process

Gaining Support From Criminal Justice Representatives

Successful pretrial drug testing programs require the support of major agencies in the local criminal justice system. These agencies must agree with the goals of the drug testing program and acknowledge and agree to perform their duties related to drug testing. Support must come externally (from other criminal justice agencies) and internally (from existing pretrial program staff). To gain system support, program administrators must:

- ❑ Identify the important system representatives and define their duties related to pretrial drug testing.
- ❑ Identify and address these representatives' concerns.
- ❑ Draft Memorandums of Understanding (MOUs) outlining the duties of the system representatives.
- ❑ Maintain strong support for pretrial drug testing among these representatives.

Identifying System Representatives

Major system representatives are the heads of criminal justice agencies that perform a function under drug testing or whose support is crucial to the drug testing program's success. These representatives usually come from several agencies, and each plays a distinct, specific role.

The local court orders defendants into the drug testing program. Judges should agree to follow program guidelines when ordering defendants into drug testing and to use program information only to set conditions of pretrial release and sanctions for violating pretrial release conditions. The local prosecutor should agree not to use program information to determine guilt in a pending case or to file new charges. The local public defender or defense bar may enter early agreements with the pretrial drug testing program to help preclude future challenges to the program. The sheriff or jail administrator must give specimen collectors access to arrestees. In addition, existing pretrial program staff must be kept informed and, when appropriate, involved in planning the new drug testing program.

Other representatives might include contracted laboratories, treatment facilities, funding sources and funding approval agencies, and other drug testing programs.

Contracted laboratories, if used, must agree to follow proper chain of custody procedures when collecting and testing specimens. They must also agree to test specimens using scientifically approved technology, deliver test results to the pretrial program promptly, and release test results information only to the pretrial program.

Programs may use treatment facilities to reserve beds for defendants requesting or ordered into drug treatment. Treatment facilities must agree to release defendant compliance information only to the pretrial program.

Programs may be dependent on funding sources and funding approval agencies. Programs need to identify the agencies that are funding pretrial drug testing and their attitudes about pretrial drug testing. Specifically, what does the funding agent hope to gain from drug testing? Does the agent want to determine the existence of a drug abuse problem in the arrest population or to allocate available treatment resources more efficiently?

Finally, other drug testing programs—such as a drug court in the jurisdiction—may feel encroached upon by a pretrial drug testing program. Pretrial program administrators should determine if other agencies are involved in similar testing efforts and explain the pretrial drug testing program to them.

Identifying and Addressing Representatives' Concerns

At the outset, pretrial program administrators should notify system representatives of the pretrial program's intent to explore the feasibility of pretrial drug testing. The notice should state why the program is considering drug testing (for instance, it was ordered by the chief judge or local executive or it is part of a state drug control strategy), how the program will be structured, and what duties system representatives may be asked to perform.

Program administrators should then address any concerns that arise. This may involve drafting policies for specific concerns. For example, the Prince Georges County program developed separate policies for defendants charged with violent offenses when setting up its testing program. Administrators took this step because the local prosecutor feared the program would supervise possibly dangerous felons. The Multnomah County program's policy included several penalties short of a request for revocation of release for defendants found violating the drug-free condition of their release; this helped allay the local sheriff's concern that all defendants violating the drug condition would have their bonds revoked, thus adding to jail overcrowding.

Certain agencies might be cautious of supporting drug testing if the local public defender opposes it and threatens legal action. In several federal Operation Drug Test districts, the public defender expressed concerns about testing all arrestees prior to the initial appearance, as was originally planned. As a result, 6 of the 24 districts opted to have the initial test take place immediately after the release of the arrestee.

Program administrators should be prepared to respond quickly to a public defender's questions about pretrial drug testing. Specifically, they should be prepared to address how the drug testing program respects defendants' privacy and due process rights and how it restricts the use of program information.

Once a groundwork of support has been laid, the agreements reached should be documented through the MOU.

Memorandum of Understanding: Purpose and Parties

The MOU is a formal agreement that defines the duties of each party involved in a drug testing program. Parties enter into the MOU before the drug testing program begins so that the duties of each party are clearly stated. In addition to the pretrial program staff, these parties include the local judiciary, prosecutor, public defender, contracted laboratory, and, if applicable, the sheriff or jail administrator and local law enforcement officials. Other departments, such as probation, should be involved if they perform a duty under drug testing or receive drug test information.

The MOU includes only the general duties of each party, not specific procedures that might change frequently. Examples of general duties are agreeing to collect specimens from arrestees, reporting test results information to the court and other parties, and monitoring defendants placed into drug testing programs.

The MOU also should describe the pretrial program's general policy on the release of information and the limits on parties' use of program information. Usually, the local court agrees to use drug testing information only to set bond or in hearings on condition violation, and the local prosecutor agrees not to consider test information in regard to the question of guilt. If the program is of limited duration, the MOU's foreword includes the time that it is in effect.

All parties, except the public defender, should sign the MOU to demonstrate their agreement to the duties assigned to them and to the pretrial drug testing program's general operations.

Memorandum Agreements Regarding Duties of the Parties

The following examples illustrate MOU provisions.

The pretrial drug testing program agrees to:

- ❑ Target defendants for preinitial appearance testing and recommend defendants for pretrial drug monitoring. If the pretrial program does preinitial appearance testing, it decides which defendants are asked to submit a specimen. If the program does not perform preinitial appearance testing, it describes the method used to recommend testing as a release condition (see chapter 2, Integrating Drug Testing Into the Risk Assessment Process).
- ❑ Monitor defendants who the court orders into pretrial drug monitoring and notify the court of test results. The MOU should give a general description of the frequency of testing and should identify sanctions available for violations of the testing condition. These measures should start with internal penalties (within program) for initial violations and increase to formal sanctions for repeated or serious violations. The most severe should be a request for bond revocation (see chapter 3, Integrating Drug Testing Into the Supervised Release Process).
- ❑ Refer defendants to treatment programs. Programs should assess the treatment needs of defendants placed in pretrial drug monitoring and offer treatment as an option for supervised defendants.

The pretrial program or the outside laboratory used for testing agrees to:

- ❑ Follow proper chain of custody requirements when collecting and testing specimens. The program or laboratory should follow approved guidelines for collecting, transporting, and testing specimens (see chapter 4, Chain of Custody).
- ❑ Follow proper protocol when conducting tests. If testing is done on instrument-based analyzers, the program or laboratory should follow the analyzer manufacturer's protocol for calibrating, operating, and maintaining the testing equipment. If testing is done with hand-held devices, testers must follow every instruction specified by the manufacturer (see chapter 5, Testing of Specimens).
- ❑ Provide test results to the pretrial program in a timely manner and release test information only to the pretrial program. Contracted laboratories should deliver preinitial appearance test results to the pretrial program in time for initial court appearance and supervised testing results within 24 hours. With the exception of research studies, contracted laboratories should never release test information to parties other than the pretrial program (see chapter 6, Confidentiality).⁶

- ❑ Retest or confirm initial positive results before reporting them and confirm disputed specimens. The pretrial program or laboratory should, at minimum, retest initial positive specimens using the same technology. The program or laboratory should also confirm, using an alternative technology, any specimens disputed by a defendant or used in a condition violation hearing (see chapter 5, Testing of Specimens).

The prosecutor agrees not to use test results to determine guilt in the pending case or to file new charges. This conforms to federal rules on the confidentiality of drug test information forbidding agencies from using such information in drug programs and state bail statutes prohibiting the use of pretrial program information on the question of guilt, such as the bail statute for Washington, D.C. (see chapter 6, Confidentiality).⁷

The court agrees to use test results to determine pretrial release, to decide sanctions for violation of pretrial release, and to modify bond. Courts should also consider a defendant's compliance to the drug testing condition at sentencing.

The sheriff or head of the local jail agrees to give specimen collectors access to incarcerated defendants.

The public defender (or local defense bar), if included in the MOU, agrees to the general goals of the drug testing program and the stipulations for access to program information. The public defender (or local defense bar) usually does not play a role in pretrial drug testing, but programs may include this system representative in the MOU.

Probation departments agree to use drug test information only for presentence investigations and to fashion appropriate drug monitoring or treatment supervision.⁸

Treatment facilities agree to inform the pretrial program of the defendant's compliance and to give the program access to the defendant's treatment records for the pending case. Treatment facilities that perform drug testing may also agree to test defendants regularly and submit the results to the pretrial program.

Memorandum Agreements on Release of Information

The MOU should include a general outline of the pretrial drug testing program's policy on release of information, which describes when and to whom the program will release information without a consent form signed by the defendant. Generally, programs should:

- ❑ Give test results to the court, prosecutor, and defense attorney at initial appearance and when asking for bond modification. Programs also may give these parties results at each scheduled court appearance.

- ❑ Give a defendant's attorney open access to test information, with the understanding that the attorney will only use it in the pending case. Programs also should send defense attorneys copies of violation requests and dates for violation hearings whenever programs send copies to the court and prosecutor.
- ❑ Give test information to prosecutors after each positive test, provided that the prosecutor agrees to use the information only to request changes in bond.
- ❑ Give information to probation departments only for presentence investigations.
- ❑ Release information to other agencies or in other circumstances only with a consent form signed by the defendant.

Maintaining Support and Updating the Memorandum of Understanding

A program should update its MOU whenever the duties of a party change or when another party is added. For minor revisions (changing or adding to the duties of one party, for example), programs can draft an addendum to all parties explaining the change or addition. When adding a party to the MOU, the addendum should include the duties of the party, an indication of when the new party will receive test information, and a space for the new party's signature. An enclosed letter could explain the change or addition and the reasons for it and advise parties to contact the pretrial program if they do not approve of the change. Programs making major changes to the MOU (such as changing basic policies or the duties of more than one party) should rewrite the document and circulate it for signatures.

Summary of Major Points

- ❑ Successful pretrial drug testing programs must have the support of major agencies in the local criminal justice system, including local court representatives, the local prosecutor, the public defender or local defense bar, and the sheriff or jail administrator. Other important representatives include the laboratory used to test specimens, local treatment facilities, funding sources, and programs with similar testing grants.
- ❑ Program administrators should notify system representatives of the pretrial program's intent to explore pretrial drug testing. The notice should state generally why the program is considering drug testing, how testing will be structured, and what duties system representatives may be asked to perform. The notice also should solicit general opinions on pretrial drug testing.

- ❑ Program administrators should address concerns that arise and consider drafting policies addressing specific concerns or forming advisory boards to discuss program procedures and any implementation problems that occur.
- ❑ The MOU is a formal agreement among the parties involved in pretrial drug testing. It outlines the duties of each party and describes the pretrial drug testing program's general policy on release of information, including the boundaries for each party's use of test information.
- ❑ Parties to an MOU are the pretrial program, the contracted laboratory (if used), the local judiciary, the prosecutor, the public defender, and the sheriff or jail administrator. Probation and other departments are parties to the MOU if they perform a drug testing function or receive program information.
- ❑ Under the MOU, the pretrial program agrees to target defendants for testing and to submit results to court for bond hearings or bond review hearings. The program or its contracted laboratory agrees to perform specimen collection and testing under acceptable protocol. The court and prosecutor agree not to use test results on the question of guilt or to file new charges. The sheriff or jail administrator agrees to allow the pretrial program or laboratory access to defendants for testing.
- ❑ Generally, programs give test results to the court, prosecutor, and defense attorney at initial appearance and when asking for bond modification. A program may inform the prosecutor that a defendant tested positive on certain dates, provided that the prosecutor agrees to use the information only to move for bond modification.
- ❑ Release of information not described in the MOU or to parties not mentioned in the MOU requires a consent form signed by the defendant.