

Crime -
Drug Testing

The Clinton Administration's Strategy for Breaking the Cycle of Crime and Drugs September 11, 1996

Background:

- Over the last four years, the Clinton Administration has instituted effective policies and programs that are helping to break the cycle of crime and drugs -- tougher penalties for drug kingpins and peddlers, drug testing for Federal arrestees, and drug courts.
- In his 1996 State of the Union, President Clinton challenged every state to implement truth-in-sentencing laws and require violent criminals to serve their full sentence. His 1994 Crime Bill provides states \$7.9 billion over six years to build new prisons and improve existing ones to provide up to 100,000 new prison beds, keep our streets safe from violent criminals and insure that offenders serve time that truly reflects their sentence.
- We need to break the cycle of crime and drugs. More than half the criminals who come into state criminal justice systems have a history of substance abuse, but drug testing, supervision, and intervention in state prisons is sporadic at best. Studies show that up to 75% of parolees with drug histories released without treatment go back on drugs within three months of release and get back into criminal activity.
- President Clinton believes prisoners should not be released back onto our streets unless they're off drugs, and those who go back on drugs after release should go back to prison.

The Clinton Administration Plan:

- 1) \$27 million in Prison Drug Testing and Treatment Grants. Funded by the 1994 Clinton Crime Bill, this program will provide states which drug test and provide post-release services with resources to implement drug testing and treatment programs at state and local correctional facilities.
- 2) Criminal Drug Testing Legislation. President Clinton is proposing legislation which will ensure that States receiving future Federal prison grants adopt comprehensive drug testing, intervention, and sanctions for prisoners and parolees with substance abuse problems.

Reducing Recidivism:

- Recent research and evaluations show consistent reductions in recidivism rates for offenders completing drug testing and intervention programs. As just one example, of the offenders in a Delaware program who completed the in-prison treatment and the after-prison work release programs, 75% were drug free and 70% were arrest-free after 18 months. Compared to these startling figures, only 17% of a control group who did not receive services, were drug-free and only 36% were arrest-free.

**The Clinton Administration Strategy
to Break the Cycle of Crime and Drugs
Pueblo, Colorado
September 11, 1996**

Questions and Answers

Q. What are you announcing today?

President Clinton is announcing new prison drug testing and treatment grants and legislation that he is sending to the Congress that will both help break the cycle of crime and drugs:

- 1) \$27 million in Prison Drug Testing and Treatment Grants. Funded by the 1994 Clinton Crime Bill, this program will provides States -- which drug test and post-release services -- with resources to implement drug testing and treatment programs for state and local correctional facilities.
- 2) Criminal Drug Testing Legislation. President Clinton is proposing legislation which will ensure that States receiving future Federal prison grants adopt comprehensive drug testing, intervention, and sanctions for prisoners and parolees with substance abuse problems.

Q. Why are you announcing this now? Is this just a political announcement in response to Bob Dole's attacks on your anti-drug record?

No. First of all, the Clinton Administration has a long record in working to break the cycle of crime and drugs. Indeed, the underlying grant program in today's announcement was created in the 1994 Clinton Crime Bill.

The appropriation for this particular grant program was not enacted until April 1996. The Justice Department published the Program Guidance and Application Kit in May 1996 and applications had to be submitted by July 1, 1996. The Justice Department recently concluded their review of the applications and just forward this information to the White House for this announcement.

Q. Why are you concerned about drug treating prisoners? Isn't the problem adolescent drug use?

Because the link between drug use and crime is undeniable, this initiative will not only reduce drug use but crime. Two out of every 3 adults arrested for felonies, on average, test positive for drugs and drug-using felons constitute a disproportionate share of repeat offenders. Up to 75% of untreated parolees who have histories of heroin or cocaine use return to using drugs within three months of release and return to crime.

Q. How do you know this program will reduce recidivism?

Recent research and evaluations show consistent reductions in recidivism rates for offenders completing drug testing and intervention programs.

Offenders in a Delaware program, who completed the in-prison treatment and the after-prison work release programs, 75% were drug free and 70% were arrest-free after 18 months. Compared to these startling figures, only 17% of a control group, who did not receive services, were drug-free and only 36% were arrest-free.

In 1992, Texas initiated its In-Prison Therapeutic Community program for inmates with substance abuse problems. Texas recently evaluated its program, and found that only 7% of the inmates who completed the program were incarcerated after their release compared to 19% of the inmates who dropped out of the program.

A study initiated in 1984 of the Stay'n Out drug treatment program in New York tracked hard-core felons, who committed an average of 321 offenses. 70% had committed at least one violent crime. At the end of one year of parole, almost two-thirds (63%) of a control group that received no treatment was reincarcerated. Fewer than one-half (43%) of the ex-offenders who received in-prison drug treatment were reincarcerated. But when drug treatment was combined with aftercare, only 26% were reincarcerated.

Q. How many states currently have drug testing and treatment programs in prisons?

Most states conduct some drug testing of their inmate populations, but the majority of prison drug testing programs are not comprehensive and lack uniformity. Almost 90% of all prison inmates in the United States receive no treatment whatsoever.

Through this Clinton Crime Bill grant program, prisons will be provided with resources and technical assistance to implement cost-effective, advanced technologies to enhance drug testing and intervention programs that can significantly reduce recidivism.

Q. What States will receive funding under this program?

Every State but Wyoming, which did not apply, will receive some funding under this grant program.

Q. Why do you need legislation if this the grants are going to the states to implement drug testing and drug treatment programs?

The grant program is important but is not enough. The proposed legislation would fill a gap in existing law and make more resources available for post-conviction, including post-release, drug testing and intervention.

Q. How will the legislation work?

Under the proposed legislation, states receiving federal prison funds will be required to have their drug testing and intervention programs in place by September 1998 and may use the prison construction grants funds to do so.

The Justice Department will develop guidelines defining more specific compliance standards for "appropriate categories of offenders" and what would amount to a sufficient program.

Crime - Drug Testing
UCLA

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SANTA BARBARA · SANTA CRUZ

September 11, 1996

The President
The White House
Washington, DC

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Dear Mr. President:

Your announcement today marks a major milestone in the history of American drug policy.

The key to shrinking the drug problem is reducing demand. While most drug users are employed, 80% of the volume of hard drugs goes to a relatively small number of very heavy users. Three-quarters of these users fall under the jurisdiction of the criminal justice system.

The combination of these two facts means that about 60% of all the heroin and cocaine is sold to people who are on bail, probation, or parole. Drug-involved offenders are most of the drug traffickers' best customers, and many of their low-level employees as well. Unless we can induce them to stop buying drugs, the markets will continue to flourish, continue to destroy neighborhoods, and continue to divert all too many adolescents from school or work into the fast life and quick death of the drug markets.

Legally, bail, probation, and parole authorities are in a position to insist that those under their supervision desist from illegal drug use. But the practical application of that legal authority has been sadly deficient. A program of testing, sanctions, and treatment focused on drug-involved offenders has the capacity to reduce the total national volume of cocaine and heroin sold, and thus the total revenues of the dealers, by one-third or more: far more than could be achieved by any other feasible policy or combination of policies.

My experience in drug policy goes back as far as 1979. At any time in that period, had I been asked to predict whether the drug problem would be better or worse in five years' time, I would have said "worse" (and been justified in saying so). None of the new laws, new policies, and new initiatives announced over that entire span seemed likely to turn things around.

But your administration's commitment to this initiative is real reason for optimism. If it is fully carried out, there is good reason to hope that we will have a smaller drug problem in 2001 than we have in 1996. That is reason for celebration.

Very truly yours,

Mark A.R. Kleiman
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RECENT STUDIES ON THE EFFECTIVENESS OF RESIDENTIAL SUBSTANCE ABUSE TREATMENT PROGRAMS

The Amity Program in San Diego, California

- Five years ago, the California Department of Corrections began referring parolees to the program. As of February 1996, 188 offenders have participated in both the in-prison and residential components of the program.
- Of the 188 participants, 132 have been on parole 12 months or more and have completed the residential program. Fifty-six did not complete the residential program. Seventeen percent of those that completed the community service returned to custody within 12 months, compared to 42.9% of the community program dropouts.
- Of the 188 participants, 126 had been on parole 24 months or more. Twenty-seven percent of these individuals were returned to custody as opposed to 61.5% of the dropouts.
- In a separate study of the same program conducted during the same time period, it was determined that 63% of those individuals receiving no treatment at all returned to custody within 12 months.

(Richard Frantz, 916/323-2063)

Delaware Therapeutic Continuum Program

- This program studied four groups of offenders: those that received no therapeutic community drug treatment and no after-prison care; those that received therapeutic community drug treatment only; those that received only after-prison work release; and those that received both therapeutic community drug treatment and after-prison work release. Data collection started in 1992.
- Eighteen months after release, over 80% of the individuals that received no treatment or post-release assistance returned to using drugs and more than 2 out of 3 were rearrested. Of those individuals that received both therapeutic community drug treatment and after-prison work release assistance, however, only 24% returned to drugs and only 29% were rearrested.

(James Inciardi, 302/831-6107)

The Texas In-Prison Therapeutic Community Initiative

- In 1992, Texas initiated its In-Prison Therapeutic Community program for inmates with substance abuse problems. Texas recently evaluated its program, and found that only 7% of the inmates who completed the program were incarcerated after their release compared to 19% of the inmates who dropped out of the program.
- Twelve months after program participants were released, 81% of the offenders who completed the program had wages reported through the Texas Employment Commission's Wage Record data base. Only 57% of the offenders who were released that dropped out of the program had any reported wages.
- Due to the reduction in recidivism of program participants compared to the rate of the general population that receives no treatment, the state estimates it will receive a return of \$1.18 in reduced reincarceration costs for every one dollar invested in treatment.

(Tony Fabelo, Criminal Justice Policy Council, 512/463-1810)

The Stay'n Out program in New York

- A study initiated in 1984 of the Stay'n Out drug treatment program in New York tracked hard-core felons, 70% of whom had committed at least one violent crime.
- At the end of one year of parole, almost two-thirds (63%) of a control group that received no treatment was reincarcerated. Fewer than one-half (43%) of the ex-offenders who received in-prison drug treatment were reincarcerated. But when drug treatment was combined with aftercare, only 26% were reincarcerated.

(Douglas Lipton, 212/845-4400, Extension 4547)



U.S. Department of Justice
Office of Justice Programs
Corrections Program Office

Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants *Fact Sheet*



Introduction

The Violent Offender Incarceration and Truth-in-Sentencing Incentive Grant Program, created under Title II, Subtitle A of the Violent Crime Control and Law Enforcement Act of 1994, as amended, provides much-needed funding to States *as formula grants* to build or expand correctional facilities and jails to increase secure confinement space for adult and juvenile violent offenders. Almost \$10 billion is authorized for the program through FY 2000. Approximately \$391 million is available for the formula grant program in FY 1996. Half of the funds are available for Violent Offender Incarceration grants and half for Truth-in-Sentencing Incentive grants. States may apply for both grant categories. This program is administered by the Corrections Program Office (CPO), Office of Justice Programs (OJP), U.S. Department of Justice.

Program Purposes

States and States organized as regional compacts are eligible to apply for formula grant funds. States may make subawards to State agencies and units of local government to:

- Build or expand correctional facilities to increase the bed capacity for the confinement of persons convicted of a Part 1 violent crime or adjudicated delinquents for an act which if committed by an adult, would be a Part 1 violent crime;
- Build or expand temporary or permanent correctional facilities, including facilities on military bases, prison barges, and boot camps, for the confinement of convicted nonviolent offenders and criminal aliens, for the purpose of freeing suitable existing prison space for the confinement of persons convicted of a Part 1 violent crime; and
- Build or expand jails.

Violent Offender Incarceration Grants

The Violent Offender incarceration grant funds are allocated to States using a three-tiered formula — 35 percent for the first two tiers and 15 percent for the third. Each tier has different criteria for eligibility. Eligible States may receive funding under *all three tiers*, but no State may receive more than 9 percent of the total funds available.

TIER 1

A State must assure that it has implemented, or will implement, correctional policies and programs including truth-in-sentencing laws that ensure that violent offenders serve a substantial portion of the sentences imposed; are designed to provide sufficiently severe punishment for violent offenders, including violent juvenile offenders; *and* ensure that the prison time served is appropriately related to the determination that the inmate is a violent offender and for a period of time deemed necessary to protect the public.

Each eligible State will receive a base allocation of 0.75 percent of the total funds available for Tiers 1 and 2, except the Virgin Islands and the Pacific Territories, which will receive a base allocation of 0.05 percent. The balance of the funds are distributed under Tier 2.

TIER 2

A State that receives a grant under Tier 1 is eligible to receive additional funds if it demonstrates that *since 1993* it has increased:

- the percentage of persons arrested for a Part 1 violent crime sentenced to prison; *or*
- the average prison time actually served; *or*
- the average percent of sentence served by persons convicted of a Part 1 violent crime

Tier 2 funds are allocated to an eligible State in the ratio its Part 1 violent crimes, as reported to the FBI during the preceding 3 years, bears to the average annual number of Part 1 violent crimes for all eligible States.

TIER 3

A State that receives a grant under Tier 1 (and Tier 2, if applicable) is eligible for additional funds if it can demonstrate that it has:

- since 1993 increased the percentage of persons arrested for a Part 1 violent crime sentenced to prison, *and* has increased the average percent of sentence served by persons convicted of a Part 1 violent crime; *or*
- increased by 10 percent or more over the most recent 3-year period the number of new court commitments to prison of persons convicted of Part 1 violent crimes.

Each eligible State will receive a base allocation of 3 percent, except the Virgin Islands and the Pacific Territories, which will receive a base allocation of .03 percent. The balance is allocated to each eligible State on the basis of its share of the average annual number of Part 1 violent crimes for the preceding 3 years.

Truth-in-Sentencing Incentive Grants

An applicant State must demonstrate any *one* of the following:

- The State has implemented Truth-in-Sentencing laws that require persons convicted of a Part 1 violent crime to serve not less than 85 percent of the sentence imposed; *or*
- The State has implemented Truth-in-Sentencing laws that result in persons convicted of a Part 1 violent crime serving *on average* not less than 85 percent of the sentence imposed; *or*
- The State has enacted, but not yet implemented, Truth-in-Sentencing laws that require it not later than 3 years after it submits its application for funds to provide that persons convicted of a Part 1 violent crime serve not less than 85 percent of the sentence imposed; *or*
- For indeterminate sentencing States, persons convicted of a Part 1 violent crime *on average* serve not less than 85 percent of the prison term established under the State's sentencing and release guide-lines—which by law are utilized both by courts for guidance in imposing a sentence and by release authorities for guidance in establishing release dates; *or*
- For indeterminate sentencing States, persons convicted of any Part 1 violent crime *on average* serve not less than 85 percent of the *maximum* prison term allowed under the sentence imposed by the court.

Truth-in-Sentencing grant funds will be allocated to each eligible State on the basis of its share of the average annual number of Part 1 violent crimes for the preceding 3 years, as reported to and published by the FBI for all eligible States. No State may receive more than 25 percent of the total amount available for Truth-in-Sentencing grants.

General Provisions

- Applicants must demonstrate an ability to fully support, operate, and maintain correctional facilities constructed with grant funds.
- Applicants must assure that they have implemented or will implement policies to provide for the rights and needs of crime victims.
- Each State should reserve up to 15 percent of its award for local governments to construct, develop, expand, modify, or improve jails and other correctional facilities. In determining the amount of funds to be reserved, a State should consider the burden placed on a local government in housing State prisoners due to the State's efforts to incarcerate violent offenders and/or implement truth-in-sentencing.
- Grant funds may be used to build or expand correctional facilities to increase bed capacity for violent juvenile offenders and, under exigent circumstances, may be used to increase capacity for the confinement, including detention, of nonviolent juvenile offenders.
- States may use grant funds for the privatization of facilities to carry out the purposes of this program.
- The Federal share of a grant-funded project may not exceed 90 percent of the total costs of the project.

Technical Assistance and Evaluation

OJP will make technical assistance and training available to aid States with program implementation and correctional and sentencing issues related to violent offenders. Assistance will be provided through national and regional workshops as well as on-site technical assistance to address specific needs. The National Institute of Justice will evaluate the program.

For More Information

Call: Corrections Technical Assistance Line:
(800) 848-6325 or (202) 305-4866 (local)

Write to: Corrections Program Office
Office of Justice Programs
633 Indiana Avenue, NW
Washington, D.C. 20531

Internet address: <http://www.ojp.usdoj.gov/cpo>

■ **RESIDENTIAL SUBSTANCE ABUSE TREATMENT FOR STATE PRISONERS**
1994 Crime Act Section 32101

FY 1996 APPROPRIATION:	\$27 MILLION
FY 1997 (PRESIDENT'S REQUEST):	\$36 MILLION

GRANT PROGRAM INFORMATION

\$27 million is appropriated for FY 1996.

A total of \$270 million has been authorized for FYs 1996-2000. The distribution of funds is based on the following formula:

- Each participating state will receive 0.4% of the funds;
- Of the total remaining amount, each participating state will receive a percentage of the funds based on its prison population, as compared to the prison population of all participating states.



To receive funding, states must agree to require drug testing of individuals enrolled in the treatment program and provide aftercare services when the individuals leave the correctional facility.

ELIGIBILITY

States may apply for funding. State means a state of the United States, and Guam, American Samoa, Northern Marianas Islands, U.S. Virgin Islands, Puerto Rico, and the District of Columbia.

GUIDELINES/REGULATIONS/REPORTS

The OJP Corrections Program Office(CPO)published the Program Guidance and Application Kit in May 1996. Applications must be submitted to CPO no later than July 1, 1996.

U.S. Department of Justice
Office of Justice Programs

Corrections Program Office

Laurie Robinson
Assistant Attorney General

Larry Meachum
Director

Residential Substance Abuse Treatment for State Prisoners



Fact Sheet

Studies and statistics indicate that the fastest and most cost-effective way to reduce the demand for illicit drugs is to treat chronic, hardcore drug users. They consume the most drugs, commit the most crimes, and burden the health care system to the greatest extent. Without treatment, chronic hardcore users continue to use drugs and engage in criminal activity, and when arrested, they too frequently continue their addiction upon release. The cycle of dependency must be broken and the revolving door of criminal justice brought to a halt.¹

The most recent Drug Use Forecasting system data show that an average of 66 percent of adult male arrestees test positive for drugs.² The proportion of drug-using offenders among the 1.4 million inmates in State prisons and local jails is even higher. Yet only about 11 percent of prison inmates participate in drug treatment programs. When released back into the community, most drug-using offenders have not been treated and are likely to return to drug use and criminal activity.³

Recent research and evaluations show consistent reductions in recidivism rates for offenders completing

treatment programs. Successful outcomes are tied to length of time in treatment (at least 6 months) and provision of continued treatment in the community after release. Programs that address the myriad problems associated with the lifestyle of substance use and addiction are the most effective. For example, of the offenders in the Delaware Therapeutic Continuum Program who completed the in-prison therapeutic community treatment and the after-prison work release programs, 75 percent were drug free and 70 percent were arrest free after 18 months compared to 17 percent drug free and 36 percent arrest free among the control group.⁴

The Residential Substance Abuse Treatment for State Prisoners Formula Grant Program, created by Title III, Subtitle U of the Violent Crime Control and Law Enforcement Act of 1994 (the Act), provides funding for the development of substance abuse treatment programs in State and local correctional facilities. The program encourages States to adopt comprehensive approaches to treatment for offenders, including relapse prevention and aftercare services. Prisoners in these facilities must be incarcerated for a period of time sufficient to permit substance abuse treatment.

The Residential Substance Abuse Treatment Program is administered by the Office of Justice Programs (OJP), U.S. Department of Justice. The Fiscal Year 1996 appropriation for this program is \$27 million.

Eligibility

The States, including the District of Columbia and the territories of the United States, may apply for a formula grant award. The award will be made to the

¹National Drug Control Strategy, Office of National Drug Control Policy, February 1995.

²Drug Use Forecasting, 1994 Annual Report on Adult and Juvenile Arrestees, National Institute of Justice.

³Effectiveness of Treatment for Drug Abusers Under Criminal Justice Supervision, Douglas S. Lipton, Ph.D., for the

⁴Ibid.

State office designated by its Governor pursuant to Section 507 of the Omnibus Crime Control and Safe Streets Act to administer the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program.

Each eligible State will receive a base amount plus an allocation from the remaining funds equal to its proportional share of total prison population in all participating States. States may make subawards to State agencies and units of local government.

States must agree to implement or continue to require urinalysis and/or other proven reliable forms of drug and alcohol testing of individuals assigned to residential substance abuse treatment programs in correctional facilities. Such testing shall include individuals released from residential substance abuse treatment programs who remain in the custody of the State.

Program Design and Implementation

The formula grant funds may be used to implement residential substance abuse programs that provide individual and group treatment activities for State prison and local jail inmates and contain the following elements:

- p last between 6 and 12 months;
- p are provided in residential treatment facilities set apart from the general correctional population;
- p are directed at the substance abuse problems of the inmate; and
- p are intended to develop the prisoner's cognitive, behavioral, social, vocational, and other skills to solve the inmate's substance abuse and related problems.

States are required to give preference to subgrant applicants who will provide aftercare services to individuals who participate in the program. These services must involve coordination between the correctional treatment program and other human service and rehabilitation programs that may aid in the

rehabilitation of individuals while in the residential substance abuse treatment program.

In designing and implementing the Residential Substance Abuse Treatment Formula Grant Program, States are required to ensure coordination between correctional representatives and alcohol and drug abuse agencies at the State and, if appropriate, local levels.

Technical Assistance and Evaluation

To assist with the implementation of this program, OJP will make available to the States technical assistance and training on effective substance abuse treatment strategies and programs. Assistance will be provided through national and regional workshops, as well as on-site technical assistance to address specific needs.

Matching Requirement

The Federal share of a grant-funded project may not exceed 75 percent of the total costs of the project. The 25 percent matching funds must be in the form of cash match.

Application Due Date

An Application Kit was sent to each designated State office following the enactment of the FY 1996 appropriation. Applications must be postmarked by July 1, 1996.

Contact for Further Information

Corrections Program Office
Office of Justice Programs
U.S. Department of Justice
633 Indiana Avenue, NW
Washington, D.C. 20531
(800) 848-6325, or (202) 505-4866 (local)
Internet Address: <http://www.ojp.usdoj.gov/cpo>

U.S. Department of Justice Response Center
(800) 421-6770

**Office of Justice Programs ~ Corrections Program Office
Residential Substance Abuse Treatment Program: FY 96
(RSAT)**

COLORADO

Award To: Colorado Department of Public Safety

Amount: \$306,044

PURPOSE:

The Colorado Department of Public Safety, Division of Criminal Justice will initiate a competitive grant awards process to distribute these funds to support residential substance abuse treatment initiatives for offenders. The programs will include a 6-12 month therapeutic community model, incorporate the state's standardized drug assessment process, demonstrate a drug testing capability, and include relapse prevention and aftercare services. Emphasis will be placed on funding projects compatible with the state's legislatively prescribed standardized strategy for assessment and treatment of substance abusing offenders. State and local correctional facilities serving adults or juveniles and Community Corrections programs will be invited to submit funding requests for this program. Grant awards are expected to be announced in November 1996.

Local Contact: Mary McGhee
Colorado Department of Public Safety
700 Kipling, Suite 1000
Lakewood, CO 80215-0000

(303) 239-4456

Office of Justice Programs Contact:

Doug Johnson or James Phillips
202/307-0703

9/11/96



U.S. Department of Justice

Office of Policy Development

September 6, 1996

TO: Dennis Burke

FROM: Peter Brien

SUBJECT: Present status of Colorado's eligibility for Violent Offender Incarceration and Truth in Sentencing grants

(1) Colorado will be eligible for a minimum award under Violent Offender Incarceration grants under section 20103(a). OJP is interpreting the minimum grant conditions leniently, so that all jurisdictions may qualify.

(2) I cannot conclusively determine whether Colorado will qualify for the higher tiers of Violent Offender Incarceration grants under section 20103(b) and (c). Based on 1994 data, Colorado should qualify under 20104(b)(1) and 20104 (c)(2), but new data may alter this.

(3) Colorado will not be eligible for Truth in Sentencing grants under section 20104. The eligibility requirement which might apply, in section 20104(a)(3)(B), requires that violent offenders serve not less than 85% of the maximum sentence. The Colorado statute only requires that violent recidivists serve 75% of the sentence imposed less any good time credits. §17-22.5-303.3. Other offenders are required to serve 50% of their sentences. §17-22.5-403.

Please contact me at 305-0643 if you have any questions.

PLRA

- The Prison Litigation Reform Act (PLRA or the Act) was signed into law as part of the FY 1996 appropriations legislation for the Commerce, Justice, and State Departments. With a few reservations, the Justice Department supported the PLRA.
- In pertinent part, the PLRA establishes standards governing the initial entry, and subsequent continuation over time, of court orders and court-approved consent decrees in litigation challenging conditions in prisons and jails. The standards governing the continuation of orders and decrees apply to relief that was entered by courts prior to the passage of the PLRA. Under those standards, courts must terminate pre-PLRA orders and decrees, unless "the court makes written findings based on the record that prospective relief remains necessary to correct a current or ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation." The purpose of the relevant provisions was to ensure that courts in prison litigation cases only redress violations of the constitutional or statutory rights of prisoners, and that any relief in such cases is truly necessary to remedy those violations.
- In a series of briefs filed in various jurisdictions throughout the nation, the Justice Department is defending the constitutionality of the termination standards of the PLRA against challenges brought by prisoner rights groups.
- Seizing upon one phrase in the Department's initial PLRA filings in cases in Michigan, Iowa, and New York City, some litigants and observers have argued that the Department is taking the position that the term "current or ongoing violation of the Federal right" in the PLRA encompasses the failure by prison officials to comply with a previous order or decree that itself is not based on a finding that the officials violated the constitutional or statutory rights of prisoners. At least one federal court -- in a California PLRA case -- has adopted that view.
- That is not the Department's position, however. In supplemental filings in the Michigan, Iowa, and New York City cases, as well as in briefs filed subsequently in other cases, the Department has made its view clear: under the PLRA, any evidence of noncompliance with an order or decree must always be coupled with reference to a past violation of the Constitution or a statute. In short, the Department has stated flat out that a violation of a court order or decree cannot alone represent a "current or ongoing violation of the Federal right" for purposes of the PLRA. Only when a court has found the existence of a past constitutional or statutory violation and held certain action to be necessary to remedy the violation can noncompliance with a previous order or decree conceivably constitute a "current or ongoing violation of the Federal right" (because in such circumstances, noncompliance may represent a failure to remedy a constitutional or statutory violation).



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- The Justice Department strongly rejects the notion that a court can maintain relief under the PLRA simply because prison officials may have happened to use a particular brand of floor soap in violation of a prior order or decree that required officials to use another brand of soap. Again, in the Department's view, absent reference to an underlying prior constitutional or statutory violation, and a determination on the necessity for the relief, such an order or decree must be terminated under the PLRA -- even if was violated.

*Craig -
Drug Testing*

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The Stay'n Out program in New York

- A study initiated in 1984 of the Stay'n Out drug treatment program in New York tracked hard-core felons, 70% of whom had committed at least one violent crime.
- At the end of one year of parole, almost two-thirds (63%) of a control group that received no treatment was reincarcerated. Fewer than one-half (43%) of the ex-offenders who received in-prison drug treatment were reincarcerated. But when drug treatment was combined with aftercare, only 26% were reincarcerated.

(Douglas Lipton, 212/845-4400, Extension 4547)

DRAFT
3/25/96
8:30 p.m.

Crime -
Drug Testing

**REDUCING CRIME BY REDUCING DRUG USE AMONG
CRIMINAL DEFENDANTS: A REPORT TO THE PRESIDENT**

**I. INTRODUCTION: THE RATIONALE FOR CRIMINAL JUSTICE
INTERVENTION**

On December 18, 1995, President Clinton signed a memorandum directing the Attorney General to develop a plan for reducing illegal drug use among individuals under criminal justice supervision. Noting that "too often, the same criminal drug users cycle through the court, correction and probation systems still hooked on drugs and still committing crimes to support their habit," President Clinton called on the "agencies of our criminal justice system [to] do their part, giving criminal drug users powerful incentives to stay off drugs by putting a high price on continued drug use."

Specifically, the President directed the Attorney General to develop a universal policy of drug testing federal arrestees before their first court appearance and guidance to federal prosecutors in seeking appropriate measures for arrestees who fail pretrial drug tests. He also directed the Attorney General to "take all appropriate steps to encourage states to adopt and implement the same policies that we are initiating at the federal level."

With this memorandum, President Clinton challenged the criminal justice systems -- federal, state and local -- to accept

greater responsibility for ameliorating the devastating impact of illegal drugs on our society.

This report sets forth a roadmap for accomplishing the President's vision. It describes steps the Attorney General has taken to implement the President's directive and presents a plan of action -- both short-term and long -- for achieving the broader policy objectives set forth in his memorandum.

The need to reduce drug abuse is clear and compelling. Illegal drugs drain our nation's resources, financial and human. Americans annually spend an estimated \$49 billion on illegal drugs: \$31 billion on cocaine, \$7 billion on heroin, \$9 billion on marijuana, and \$2 billion on other illegal drugs. Each month an average 12.6 million Americans use illegal drugs: 10.1 million use marijuana, 1.4 million use cocaine. Every year more than half a million emergency room visits, and 25,000 deaths in the United States are drug-related, and more than one million persons are arrested on drug-related charges. Drug use takes its toll in the workplace, leading to lost productivity and high employee turnover. Its effects on families are staggering. In New York City, for example, crack is blamed for the threefold increase in the numbers of child abuse and neglect cases in the 1980s.

The initiative proposed in this report holds great promise for systemically reducing drug abuse and the associated criminal activity. It rests on three key building blocks:

A nexus exists between drugs and crime: if drug abuse abates, so too will crime.

- Seventy-eight percent of jail inmates, 79 percent of

state prisoners, and 60 percent of federal prisoners admit using drugs at some time in their lives.

- Between one-half and three-quarters of arrestees in cities participating in the Drug Use Forecasting program test positive for drugs at the time of their arrest.
- Nearly 60 percent of the cocaine consumed in the United States in any given year is used by people who have been arrested that year.

Defendants who abuse drugs can be identified reliably and inexpensively by drug testing and other means.

- In the federal and state criminal justice systems there is significant experience with using drug-testing technologies to identify drug-using and often drug-addicted defendants. Test results are widely accepted by courts and have survived legal challenges.
- Costs of drug testing are relatively modest -- particularly when compared to costs of supervision or imprisonment.

A variety of interventions including testing, graduated sanctions, and treatment have been found to reduce drug abuse and crime, particularly when those interventions are supervised by the courts and other agencies of the criminal justice system.

- Research from drug court evaluations shows that drug-court defendants have lower rates of committing subsequent offenses than similar defendants.
- A review of research findings of treatment programs provided in prisons shows that offenders who completed in-custody treatment have lower rates of recidivism, after release. These positive findings were even stronger when the offender's release back into the community included a supervised transition component.
- A review of drug treatment in jail facilities found that in-custody substance abuse programs reduced post-release recidivism and the length of time in treatment predicted successful outcomes.

If the criminal justice system takes the problem of drug abuse seriously; it will identify drug users as soon as they enter the criminal justice system and supervise appropriate

interventions and treatment for those individuals as they move through pretrial release or detention, prison, and probation or supervised release.

The challenge, then, is to design a system that integrates early identification of drug users with interventions to deter their drug use. This report takes the first step by proposing a plan that would identify drug-using federal defendants as soon as they enter the criminal justice system. Accordingly, Section II of the report describes the Department of Justice's proposal to develop a system of pretrial drug testing for the federal criminal justice system, and accompanying sanctions and treatment. It also describes the treatment available to drug-using defendants as they continue through the federal criminal justice system.

Section III of the report describes existing programs of drug testing and treatment in the state and local criminal justice systems and recognizes the valuable innovations that have been developed by those criminal justice agencies. It proposes various initiatives to encourage the expansion of state and local testing and drug intervention efforts. Section IV of the report describes an evaluation plan. Finally Section V sets forth a plan of action that establishes a federal leadership role in developing and implementing fully integrated systems of testing, sanctions, and interventions, through legislation, technical assistance and grant support at the federal, state and local levels. Finally, the appendices include budgetary information,

address emerging drug-testing technologies, and list organizations that the Department consulted before writing this report.¹

¹ This report is the result of interagency collaboration led by the Department of Justice (the Department). Subcommittees were established to review existing practices and research and to recommend steps necessary to implement the model proposed here. These subcommittees included ones on federal testing procedures and prosecutorial policies, testing technology, research and evaluation, in-custody treatment and testing, and support for new drug testing policies in state and local systems. Representatives from the Department of Health and Human Services (HHS), the Office of National Drug Control Policy (ONDCP), the Administrative Office of the United States Courts (AOUSC), and the D.C. Pretrial Services Agency, as well as various components of the Department actively participated in these subgroups. In addition, the AOUSC provided extensive information about the practices of pretrial services in the federal system and assisted in surveying federal districts to obtain current data. On the state and local side, we also consulted with a wide range of interested state and local organizations and representatives. See Appendix for a list of these organizations. We also convened a two-day focus group of practitioners, scientists and researchers to discuss the future of drug-testing technologies.

II. PRETRIAL DRUG TESTING AND TREATMENT IN THE FEDERAL SYSTEM

The Presidential memorandum calls first for establishing a plan to implement drug testing of federal arrestees as they enter the criminal justice system. This section sets forth that plan. First, it summarizes the results of the Congressionally mandated demonstration program of pre-first appearance testing conducted by the courts through Pretrial Services, the agency charged with providing information to the court to assist in its determinations about pretrial detention or release. The section then describes the steps taken to develop the plan, including surveying Pretrial Services offices in all districts to learn the extent of existing pretrial drug testing, and submitting a proposal to the Judicial Conference of the United States Courts to implement the plan. Then, the section describes the plan itself, consisting of two models of drug testing and describes how sites and technology will be selected. It then outlines proposed guidelines to prosecutors concerning appropriate action to take when defendants fail pretrial drug tests. Recognizing that testing, to be effective, must be connected to treatment and other interventions, the final part of this section describes treatments available to defendants through system-wide testing.

A. Pretrial Drug Testing

Drug testing of federal arrestees has proven to be a valuable tool. As the following testimonials show, those who already have experience with such testing have praised its usefulness and called for its expansion:

- "Congress should authorize the expansion of pretrial services urinalysis tests for inclusion of the results in the pretrial services report submitted to a judicial officer. . . . Implementation of pretrial services drug testing would enhance the ability of judicial officers to assess the dangerousness posed by defendants who appear before them."

Final Report of the Director of the Administrative Office of the United States Courts on the Demonstration Program of Mandatory Drug Testing of Criminal Defendants, dated March 29, 1991.

- "Your order today, if diligently implemented at the federal level, copied by state and local systems, and carried through to the post-conviction population, will constitute a powerful blow against drug abuse."

Letter to the President from Mark Kleiman, Associate Professor of Public Policy, Harvard University, dated December 18, 1995.

- "With great interest I have read the President's memorandum dated December 18, 1995, regarding the development of drug testing policy. We in U.S. Pretrial Services . . . do on-site drug testing of individuals initially arrested and while on bond supervision. . . . A policy that includes the expansion of this type program could only improve the program that we have already started. Our long range plan is to implement a drug treatment program that would be operated by an in-house counselor. This program would be continued while the defendant was on bond, in the Bureau of Prisons or on supervised release."

Letter to the Attorney General from a Chief U.S. Pretrial Services Officer, dated January 19, 1996.

- "One jurisdiction -- the District of Columbia -- is already following the President's suggested approach with considerable success. For many years, the District has drug tested virtually all arrestees -- adult and juvenile -- and made the results available to the judicial officer at the defendant's first appearance. For the past several years, the D.C. Pretrial Services Agency and the Superior Court of the District of Columbia have been operating a drug court demonstration project. . . . All of the strategies use elements of the President's directive, including frequent urine testing, sanctions and incentives."

John A. Carver, Director, D.C. Pretrial Services

Agency, Pretrial Urine Testing: Implications for Drug Courts from a Decade's Positive Experience, On Balance, A Newsletter of the Criminal Justice Policy Foundation, Spring 1996.

1. The AOUSC Demonstration Program

The idea of implementing drug testing in the federal system is not a new one. In 1989, Congress required the Administrative Office of the United States Courts (AOUSC) to establish a demonstration program of testing criminal defendants on consent prior to their first appearance before a judicial officer in eight federal districts. Section 7304 of the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-692. In his report to the Congress in 1991, at the conclusion of the program, the Director of the AOUSC recommended that pre-first appearance drug testing be expanded. See March 29, 1991, Final Report of the Director of the Administrative Office of the United States Courts on the Demonstration Program of Mandatory Drug Testing of Criminal Defendants.

The AOUSC Report provided the following data in support of its recommendation for expansion of pre-first appearance drug testing.

- The average percentage of defendants submitting to urinalysis and testing positive was 31 percent. Of those defendants who denied substance abuse, 16 percent tested positive. Of defendants who did not comment about substance abuse, 26 percent tested positive.
- For defendants charged with drug offenses, 39 percent tested positive; for those defendants charged with nondrug offenses, 21 percent tested positive.
- Criminal defendants overwhelmingly cooperated with court officials in providing samples; of those from whom a sample was requested only 19 percent refused to

provide one.

- Judges and magistrate judges overwhelmingly believed that pretrial drug testing is a valuable tool in implementing the provisions of the 1984 Bail Reform Act.

Despite the AOUSC Report's recommendation, the demonstration program has never been expanded nationwide.

2. Current Drug Testing Practices²

Pretrial Services officers throughout the federal system currently conduct some drug testing. For the most part, however, federal defendants are not routinely tested before their first appearance. Rather, drug testing usually occurs if a judge has learned through a pretrial services report of a defendant's drug problem and orders such testing as a condition of release. Such information about a defendant's drug history or drug use usually comes to light through his or her own self-report, a review of criminal history records or interviews with relatives.

Data from the AOUSC demonstration program and related research, however, reveal that such methods significantly underestimate the numbers of defendants using drugs. We have calculated, based on data from the AOUSC demonstration program, that drug testing in combination with information from defendants' self-reports of drug use increased by 18 percent the number of defendants identified through self-report alone. Based

² The Department, in collaboration with the AOUSC, surveyed the 94 federal districts to determine their current drug testing policies and practices. We also interviewed chiefs of Pretrial Services offices to determine the feasibility of implementing pre-first appearance drug testing.

on fiscal year 1995 numbers, this means the identification of an additional 10,800 defendants.

In nine districts, many of which participated in the AOUSC demonstration program, pretrial services does conduct some form of pre-first appearance testing. Our interviews with chiefs of Pretrial Services reveal the following:

- In the Southern District of New York, which ranks 8th in the nation in the number of Pretrial Services cases activated, almost all defendants consent to pre-first appearance drug testing. Approximately one-fifth of all defendants test positive. Following the conclusion of the demonstration program, the Board of Judges approved the continuation of drug testing because of its usefulness in providing information to the court in setting bail.
- In the Middle District of Florida, almost all defendants submit samples for pre-first appearance drug tests. Thirty percent of defendants test positive on the initial test. Drug testing is now conducted pursuant to a local court rule.
- In the District of Minnesota, where consent is virtually universal, approximately 35 percent of all defendants test positive in pre-first appearance tests. The Pretrial Services office periodically hosts meetings with newly assigned agents, members of the United States Attorney's Office, the Federal Defenders, and the magistrate judges to explain the program and to ensure that all parties understand the benefits of and need for coordination among the parties.
- Before the demonstration program began, the District of Maryland initiated on its own the implementation of a program of pre-first appearance testing using an on-site laboratory. The program continues today.
- In the District of Alaska, universal drug testing began about two years ago when the magistrate judge required that the information be included in the Pretrial Services report. In Anchorage, 43.5 percent of defendants test positive.

3. The Plan for Implementation

The Department considered two means of implementing pre-first appearance drug testing: (1) adoption and approval by the judiciary of consensual testing of defendants by Pretrial Services offices; and (2) testing by the United States Marshals Service. We believe that drug testing of defendants by Pretrial Services makes most sense. Pretrial Services officers are required by statute to provide information to the court about the defendant's background, including drug history, to inform the court's decision about release. 18 U.S.C. § 3154(1). Pretrial Services officers are familiar with issues concerning collection of urine samples for testing, chain of custody, and confirmation procedures. Also, because the Pretrial Services agency is an arm of the court, a Pretrial Services officer's recommendation has enhanced credibility. The officer is a neutral party, allied neither with the prosecution nor the defense. Because testing will be done upon consent, the independence and credibility of the test taker is especially important.

We disfavor an approach to drug testing that relies on testing by the United States Marshals Service. The Marshals Service has virtually no experience in drug testing and is unlikely to be viewed by the defendant, and perhaps by the court, as neutral and independent. In addition, we have estimated that testing by the Marshals Service would cost significantly more than testing by Pretrial Services and would in many cases present near insurmountable logistical obstacles.

Legislation that would mandate federal pretrial drug testing

by Pretrial Services may also be necessary. For example, we may seek enactment of such legislation should the judiciary decide not to expand pretrial testing absent Congressional authorization.

Because we propose to rely on the judiciary to ultimately conduct the testing and to supervise defendants on pretrial release, we have been working with the AOUSC, the Judicial Conference of the United States, its Executive Committee, and its Committee on Criminal Law. On March 12, 1996, in response to the Department's proposal regarding universal pretrial drug testing in 25 districts, the Judicial Conference voted to refer the matter to the Committee on Criminal Law for expeditious consideration and report to the Executive Committee. The Executive Committee, in turn, is authorized to act on the matter on behalf of the Judicial Conference. We are optimistic that the Executive Committee will authorize our proposal.

Drug testing of all defendants prior to their first appearance in court will constitute a significant change in practice for most Pretrial Services offices. For that reason, we have attempted during this planning phase to identify the concerns of those who will ultimately be responsible for conducting the drug testing. Pretrial Services officers have identified the following:

- need for resources, including those for testing equipment, treatment and personnel
- unavailability of facilities for obtaining urine samples

- unavailability of same-sex officers for monitoring the collection process
- security issues in testing jailed defendants
- difficulties in obtaining test results in time for court appearance
- opposition by defense counsel

In order to develop a universal policy of drug testing that takes into account variations in practices across the districts, we plan to implement the policy initially in 25 federal districts in addition to those already conducting pre-first appearance drug testing. Thus the first stage of the plan will include about one-third of all districts, and their experiences will form the basis for refining the policy and implementing it in the remaining districts.

We have taken into account the concerns of Pretrial Services by planning the implementation of two models of pretrial drug testing. In the first, drug testing would take place, upon the defendant's consent, prior to the defendant's first appearance before a judicial officer. The Pretrial Services officer would include the results of the initial drug test in the Pretrial Services report submitted to the court pursuant to 18 U.S.C. § 3154. The court could then use this information to determine whether the defendant should be released, and if so, the appropriate conditions.

In districts where testing occurs before the defendant's first appearance, coordination among the various law enforcement agencies is necessary. For example, the Marshals Service in many

instances will have to provide facilities for drug testing and will be called upon to ensure the safety of the Pretrial Services officer conducting the test within the Marshals' cellblock.

Similarly, agents of the various law enforcement agencies, who may have custody of defendants prior to their first appearance, may have to efficiently transport defendants as they proceed through the various stages of the arrest and booking processes. The Department will take steps to ensure that the appropriate coordination among the relevant federal agencies takes place.

The second model follows the practices of a handful of districts.

- In the Western District of Wisconsin, pursuant to the district's "zero tolerance policy" for drug use by defendants, all defendants released on supervision must take a drug test.
- In Greenville, South Carolina, the magistrate judge orders drug testing for all defendants released on supervision. Forty-eight percent of all defendants test positive.
- In the Southern District of Florida, drug testing is one of several conditions ordered for all defendants who are released. Pretrial Services conducts random testing for a period of approximately thirty days, and, if no positive tests result, Pretrial Services petitions the court to delete the testing condition. If a defendant tests positive during the random testing, he or she is usually ordered to appear before the court to determine whether revocation of release or treatment is appropriate.

In this second model, defendants, immediately upon their release, would report to the Pretrial Services office to provide, on consent, a urine sample. Because almost all Pretrial Services offices currently do some drug testing and have facilities for taking samples, implementation of this model could be

incorporated into their existing testing procedures. Although the court will not have the results of the drug test before it orders either pretrial detention or release, the information will be available to the court to immediately fashion or modify conditions of release to address a defendant's drug use.

The drug test, however, would have to be administered immediately following a defendant's appearance in court. A long delay between arrest and administering the drug test would lessen the likelihood that a defendant who had recently used drugs would, in fact, test positive, because of the relatively short time period in which urinalysis can detect drug use.

Also, if a defendant tested positive for drugs, the defendant may need to return to court to afford the magistrate judge an opportunity to amend the release conditions. In those districts where the Pretrial Services officer has the discretion to include conditions without a judge's authorization, a defendant's immediate return to court would be unnecessary.

The advantages of this model are its relative ease in implementation. Thus, this model eliminates many of the logistical difficulties that are highlighted above, such as the difficulties in testing jailed defendants and in obtaining test results before the court appearance.

Under this model, however, Pretrial Services officers would not test detained defendants. In districts that adopt this model, officials who have custody of the defendant would have to test detained defendants to identify those defendants with a drug

problem and provide whatever treatment may be appropriate. This could take place in the local jail or federal facility in which the defendants are housed.

4. The Selection of Sites

Our goal in initial site selection is to ensure that the group of sites with pre-first appearance or post-first appearance drug testing includes urban, suburban, and rural districts with a substantial number of arrestees. We will also include districts that vary in the ease with which the drug-testing procedures could be implemented to provide models for future implementation in the remaining districts. These variables include the location in which testing takes place, the location of Pretrial Services offices, the use of public vs. dedicated bathrooms, the time of day the court schedules first appearances, which personnel do testing, and the type of technology used for testing.

5. Selection of Technology

The ability of Pretrial Services to conduct on-site testing is essential for either model of drug testing. In districts testing defendants before their first appearance, the short time frame between arrest and the first appearance of the defendant before the magistrate judge requires immediate results. Even in districts that will test only defendants to be released, on-site testing is necessary to provide immediate results to magistrate judges who may then order additional conditions of release if a

defendant tests positive. The immediate results are also important in providing instant feedback to a defendant. Pretrial Services officers have noted that such feedback is critical in influencing a defendant's drug conduct.

Two categories of on-site technology are presently being used in the districts, and the type of technology chosen to conduct the drug testing will depend on the characteristics of the individual districts. One type of technology, the on-site laboratory, was used during the demonstration program and is currently in use in 20 districts. This kind of technology will be cost-effective in the larger districts.

The on-site laboratories use an enzyme multiplied immunoassay technique instrument (called an "EMIT lab"). The EMIT lab has the capability of testing for the major categories of drugs, and can be programmed to test for a single drug or set of drugs. The price of the test varies, depending on the volume of tests per year and assuming a base volume. One of the districts presently using the EMIT lab estimates the cost to be approximately \$5.00 to test a specimen for a panel of six drugs. Included in the price is the use of the equipment, training of personnel, a data retrieval system, and chemicals for the tests. Studies of the EMIT labs have found them to be highly reliable.

The other category of technology now being used by Pretrial Services and probation is hand-held testing devices, most of which have been developed recently. In the smaller districts, hand-held tests are most likely to be cost-effective. Presently,

more than a dozen districts use one or more of several devices manufactured by different companies. Each device is a self-contained test with results available in 2 to 10 minutes. Devices test for different panels of drugs, depending on the device chosen. Pretrial Services offices using the hand-held devices report that the costs range from approximately \$5.25 to test a specimen for 3 drugs, to approximately \$18 to test for a panel of 7 drugs, depending on the device chosen.

The five major categories of drugs most routinely tested for include amphetamines (amphetamine, methamphetamine), cocaine metabolite (benzoylecgonine), marijuana (cannabinoids/THC metabolite), opiates (morphine, codeine, hydromorphone), and phencyclidine (PCP). However, because the prevalence of specific narcotics varies across the country, the decision about which drugs to test for -- and thus which device to use -- will take into account that variation.

During the demonstration program, each positive drug test was confirmed by sending the sample to a national laboratory for testing using a second, different testing methodology. Since the conclusion of the demonstration program, most of the districts that continued testing discontinued routine confirmation of every positive test and now confirm only contested results. Some districts send the contested sample to a national laboratory; some send the results to a local laboratory. Our program will follow this more recent procedure of confirming only contested results.

6. Task Force

The success of this project depends on the cooperation of and coordination with the courts. To this end, and at the suggestion of the Executive Committee of the Judicial Conference, we have explored the notion of establishing a task force of representatives of the courts and of the Department to oversee the implementation of the policy. Specifically, the members would be selected by the Chair of the Executive Committee of the Judicial Conference of the United States, or his designee, and the Attorney General, or her designee. The task force would assist in site selection, periodically review the progress in implementation of the policy, and review the evaluation of the drug-testing policy. The task force would make recommendations to the Executive Committee and to the Department about the further implementation of the policy in the remaining districts.

B. Guidance to Prosecutors

The President has directed the Attorney General to develop guidelines for Assistant United States Attorneys concerning appropriate action to request of the court when defendants fail pre-first appearance drug testing and drug testing imposed as a condition of release. The guidelines will incorporate the following principles.

- *Prosecutors shall ask the court to consider a positive drug test as one factor among several. A positive drug test, by itself, is not a basis for detention.*

The Bail Reform Act, Title 18, United States Code, Section 3141 et seq., mandates that release be ordered unless the

judicial officer finds that there are no conditions or combination of conditions that will reasonably assure the appearance of the defendant and the safety of the community, and sets forth the factors a judicial officer shall consider in making that determination. 18 U.S.C. § 3142. The Act clearly provides that one such factor the judicial officer shall consider is a defendant's prior drug use. A positive drug test, as a factor standing alone, is not a basis for detention.

Where detention is otherwise appropriate, based on either the statutory presumption that no combination of conditions will assure the defendant's appearance or the safety of the community, 18 U.S.C. § 3142(e), or the factors listed in section 3142(g) of the Act, prosecutors shall advise the judge of the positive drug test, and use it, as appropriate, as a single factor among several in making an argument for detention. Those factors which the Act directs a judicial officer to consider include, among others, the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug, and a defendant's prior drug use.

- ***If a defendant refuses to submit to a first appearance drug test, and prosecutors have a reasonable basis to suspect that the defendant is a drug user, prosecutors shall request the court to order a drug test.***

If a defendant refuses to submit to a first appearance drug test, and prosecutors have a reasonable basis to suspect that the defendant is a potential drug user, prosecutors shall request the court to order an immediate drug test. Individualized suspicion may be based on evidence of prior drug use, such as drug-related

convictions, or self-reported drug use. The refusal to voluntarily submit to a test, however, is not by itself, a basis for detention.

- *Where release is otherwise appropriate, but a defendant has tested positive for drugs, prosecutors shall request conditions of release that include continued drug testing, refraining from drug use, pretrial supervision, and detoxification and/or treatment as necessary.*

Where release is otherwise appropriate, but a defendant has tested positive for drugs, that information is legitimate and useful in determining conditions of release. In those cases, prosecutors shall request the court to impose conditions of release which include continued drug testing, refraining from drug use, pretrial supervision, and detoxification and/or treatment as necessary.

- *Prosecutors shall monitor compliance with conditions of release.*

Prosecutors shall monitor the continued testing results of defendants through the reports that Pretrial Services officers are already required to provide to the court and to the government when a defendant violates a condition of release. 18 U.S.C. § 3154(5). It is incumbent upon the prosecutor to follow the defendant's test results by inquiring of Pretrial Services and ensuring that the court is made aware of failed drug tests.

- *If a defendant violates conditions of release by continuing to fail drug tests while under pretrial supervision, prosecutors shall ask the court to impose additional, more restrictive conditions.*

Should the defendant violate conditions of release by failing drug tests while under pretrial supervision, their

violations must be followed swiftly by sanctions and/or treatment. In some districts, Pretrial Services officers have the discretion to modify certain conditions of release without returning to court. In those instances, prosecutors shall stay informed of these changed conditions of release, and shall request additional ones, if necessary.

In districts where Pretrial Services officers do not have such discretion, or do not exercise it, prosecutors should request the court to order additional conditions when they are advised of a defendant's positive drug test. Such additional conditions of release may include increased testing, increased reporting, complying with curfews, remaining in the custody of a designated person, undergoing outpatient or residential treatment, electronic monitoring, and other conditions specified in 18 U.S.C. § 3142(c).

- ***If a defendant continuously and flagrantly violates conditions of release, prosecutors shall request the court to revoke bail pursuant to section 3148(b)(2)(B).***

If a defendant continuously and flagrantly violates conditions of release, prosecutors shall request the court to revoke bail pursuant to section 3148(b)(2)(B), on a finding that the defendant "is unlikely to abide by any condition or combination of conditions of release." If a court has modified a bail order to impose additional restrictive release conditions, and the defendant continues to violate the conditions, including continuously failing court-ordered drug testing, there may be no conditions with which the defendant will comply to assure his or

her appearance and the safety of the community. In such a case, prosecutors shall request revocation of bail and a finding that the defendant is unlikely to abide by any condition or combination of conditions of release. Additionally, prosecutors may initiate a separate prosecution for contempt should a defendant violate a court-ordered condition of release. 18 U.S.C. § 3148(c).

C. Treatment and Other Interventions for Federal Defendants

Implementation of our drug testing proposal will undoubtedly identify additional defendants who are drug users and increase the numbers of defendants who will be referred to treatment. To ensure a reduction of drug use among this population, there must be adequate interventions at all stages of the criminal justice system.

This section examines the kinds of treatments available for all defendants within the criminal justice system who are identified as drug users. First, it briefly sets forth the kinds of treatments available to defendants on pretrial release. It then describes the treatment now in place for defendants who are detained pending trial or sentence, and that available for incarcerated, sentenced defendants. Finally, it addresses the need to expand treatment options.

1. Treatment for Defendants on Pretrial Release

Pretrial Services offices throughout the country provide treatment for those defendants on release who are identified as

drug users through their existing testing and screening procedures. Treatment is provided by outside vendors and includes services for evaluations, detoxification, short term residential treatment, outpatient treatment, counseling, and vocational training and placement.

According to AOUSC data, in fiscal year 1995, courts imposed at least one condition of release related to a substance abuse problem on approximately 14,000 defendants. Those conditions of release included either testing, treatment, or a combination of testing and treatment. Of those 14,000 defendants, 46 percent received substance abuse treatment of some kind.

2. Testing and Treatment for Defendants in Pretrial Detention

For federal defendants who are incarcerated, treatment is provided, if at all, by the Marshals Service (for pretrial and pre-sentenced detainees) or the Bureau of Prisons (BOP) (for sentenced defendants and some pretrial detainees). In 1995, approximately _____ defendants were detained and in Marshals Service custody. One difficulty in assessing the extent of testing and treatment available to this federal population is that the majority of pretrial and pre-sentenced federal defendants are confined in local facilities. The Marshals Service has nearly 700 contracts that use over 1000 local jail facilities. These federal defendants are subject to the same testing regimes and have available to them the same treatment resources as do the other inmates. For this reason, testing and treatment programs for this population vary greatly from

jurisdiction to jurisdiction.

About 40 percent of federal detainees are housed in BOP facilities. These federal detainees may volunteer to participate in drug education and may elect to pursue whatever nonresidential drug treatment the institution offers to its sentenced defendants. These detainees are not eligible, however, to participate in BOP residential treatment programs.

Detainees in BOP facilities are tested following the same protocols as are sentenced defendants. Five percent of BOP inmate populations, selected randomly, are tested monthly for drug use. Those inmates suspected of using drugs, either because of a positive drug test or other information, are tested more frequently.

3. Testing and Treatment for Sentenced Defendants

Once federal defendants are sentenced, they are in the custody of the BOP. Within the BOP, they have available to them various levels of substance-abuse treatment. Under current law, 18 U.S.C. § 3621, the BOP is required by the end of fiscal year 1997 to make available appropriate substance abuse treatment for each prisoner determined to have a treatable drug addiction or substance abuse problem.

Inmates with a drug-related conviction, a history of drug abuse or a judicial recommendation to participate in drug abuse programs are required to complete a 40-hour Drug Abuse Education Course that is available at every BOP facility. In addition, nonresidential drug treatment is available for inmates who are

unable or unwilling to participate in a residential program.

The BOP residential treatment program, available in 35 BOP facilities, houses inmates in a special living unit, and provides extensive group and individual counseling. When a residential program graduate is transferred from a BOP institution to a halfway house, the inmate is required to continue drug abuse treatment in the community. A summary of the inmate's treatment information is forwarded to the community treatment staff while the inmate is still in BOP custody, and to the Probation officer when the inmate is transferred from BOP custody. As part of the BOP's "zero tolerance" policy, all inmates in the community who subsequently test positive are returned to custody.

4. Testing and Treatment of Offenders on Post Conviction Release

The 1994 Crime Act amended Title 18 to require that subject to the availability of appropriations, "[t]he Director of the Administrative Office of the United States Courts, in consultation with the Attorney General and the Secretary of Health and Human Services, shall, subject to the availability of appropriations, establish a program of drug testing of Federal offenders on post-conviction release." 18 U.S.C. § 3608.

The provision requires drug testing within 15 days of release with at least two periodic tests thereafter as a mandatory condition of probation, parole and supervised release. The program is to be carried out by probation officers and positive tests may result in revocation of probation, parole or supervised release. The court shall consider whether the

availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception to mandatory revocation of release, parole or probation in accordance with United States Sentencing Commission guidelines, when considering any action against an offender who fails a drug test.

According to the Judiciary's 1996 fiscal year budget request for such post-conviction testing and treatment appropriations, the federal probation system previously conducted drug testing and provided treatment to approximately 25 percent of the post-sentence offender population. The offenders were targeted for testing because they had documented substance abuse problems. By 1997 fiscal year, assuming availability of appropriations, the AOUSC estimated that they would test approximately 75 percent of federal offenders on post-conviction release.

As result of this new provision, the AOUSC estimates that the number of post-conviction drug tests would increase by 15,600 and the number of treatment cases by 1,600 annually.

Gathering more specific information regarding the AOUSC and individual district's implementation of this provision and working to assure the best coordination among disparate supervision and treatment resources at both the federal and community level are among our priorities for the next stage of this project.

5. Implementation Task

An integrated system of testing, sanctions, and treatment is

critical to the ultimate success of reducing crime by reducing drug use among the criminal justice population. In preparing this report, we have taken only the first step by focusing on the President's call to develop a plan for universal first appearance testing in the federal system, develop guidelines for prosecutors, and encourage states to adopt and implement the policies. We have not yet done the important work of mapping out what expanded treatments and resources are available within the federal system, linking them to testing results, and designing a mechanism that will ensure that defendants' testing and treatment history follows them through the system from first appearance through post-conviction supervision. These critical steps will be the tasks of the implementation stage of this proposal. During implementation, we will determine what additional money and resources are available, what additional treatments and related interventions are necessary, and how both new resources and treatment can be most effectively used to expand our present system and achieve our goal of a system-wide approach to reducing drug use.

III. DRUG TESTING AND TREATMENT IN THE STATE AND LOCAL SYSTEMS

The Presidential memorandum directs the Attorney General to encourage states "to adopt and implement the same [comprehensive drug testing and treatment] policies that we are adopting at the federal level." It is important, however, to recognize that many state and local criminal justice agencies already understand the importance of drug testing and treatment interventions in breaking the cycle of drugs and crime. This section describes their efforts, acknowledging the leadership that has been provided by state and local criminal justice agencies. Recognizing that work remains to be done, this section also discusses how the Department plans to work together with state and local criminal justice policymakers and practitioners to expand on these efforts.

A. CURRENT STATE OF PRACTICE

1. Identifying Drug Use Through Testing and Other Means

Agencies within every state use drug testing at some point in the state's criminal justice system -- for risk assessment or supervision during pretrial release, as a condition of probation or parole, or as a monitoring tool in a prison or jail context. In all of these settings, testing may be conducted mandatorily, randomly, or upon suspicion of drug use. In addition to testing, criminal justice agencies make drug use determinations through some combination of self-report, examination of arrest charges or criminal histories, or contact with the arrestee's family or

friends.

According to the National Association of Pretrial Service Agencies, approximately 90 percent of local pretrial service agencies make some identification of drug involvement prior to an arrestee's first appearance. Testing and other drug identification strategies are also widely employed at the probation or parole stages. According to *The Corrections Yearbook* (1995), 47 states use urine tests during the probationary period to determine if certain probationers are using drugs and 48 states test parole populations. The average number of tests conducted by probation agencies jumped from 40,438 in 1993 to 70,702 in 1994. In the parole setting, the average number of tests jumped from 57,247 in 1993 to 87,856 in 1994.

Similarly, most correctional facilities test some inmates for illegal drug use. State minimum security and community-based facilities are more likely to administer drug tests than maximum security facilities. Bureau of Justice Statistics data from 1990 show that 76 percent of state institutions tested for drugs when there was suspected drug use. Forty-two percent of institutions tested both suspected inmates and random groups, and an additional 14 percent tested all inmates at some point during their incarceration.

Once drug use is identified, state courts and criminal justice agencies respond in a variety of ways, including establishing a written record of drug usage; ordering more

frequent testing; revoking pretrial release, probation or parole; requiring more intensive supervision; or referring defendants and offenders to drug treatment or detoxification, substance abuse counseling, or self-help groups such as Alcoholics Anonymous or Narcotics Anonymous. These responses to drug use are often used in combination.

2. State and Local Substance Abuse Treatment Services

There is a wide variety of substance abuse treatment services at the state and local level. In 1994, approximately 60 percent of state probation agencies and 69 percent of state parole agencies offered some form of substance abuse treatment, including detoxification, education, individual and group counseling, and residential treatment.

Moreover, as of January 1, 1995, 41 states reported that 130,560 adult inmates were in correctional drug treatment programs, with the majority in group counseling. Others participated in separate residential addiction units or counseling. Almost half of state inmates with substance abuse problems receive some type of drug counseling or treatment while in prison. In 1991, 48 percent of state prisoners reported that they had been in a drug program since admission to prison. Group counseling, conducted by a professional in a self-help program, was the most frequent type of out-patient treatment.

Treatment services in jails are more limited. A 1992 survey reveals that only 28 percent of the nation's jails offer drug abuse treatment. Only 6.7 percent of the nation's jail

population is enrolled in treatment.

3. The Drug Court Movement

Since the creation of the Miami Drug Court in 1989, the drug court movement has flourished at the state and local level throughout the nation. There are currently approximately 80 drug courts in operation.

The focus of drug courts is on reducing recidivism and substance abuse. These courts generally serve only non-violent offenders and are sometimes limited to first time offenders. The judge plays an integral role in the treatment process, working together with the prosecutor, defense attorney and treatment provider in a courtroom setting to encourage rehabilitation. Other essential elements of drug courts include mandatory periodic drug testing and the use of graduated sanctions.

4. Breaking the Cycle Demonstration: A Federal/Local Initiative

Recognizing that there is no coordinated drug testing and treatment program in any criminal justice system in the nation, ONDCP, in collaboration with other federal agencies from the Department and HHS, is developing a demonstration project called "Breaking the Cycle," to be implemented in one or more local jurisdictions. The demonstration sites will provide a comprehensive, system-wide approach to drug abuse by identifying all defendants with histories of drug abuse and providing appropriate interventions to encourage abstinence (including

testing, treatment, and sanctions) while they are in prison, on pretrial release or on probation or parole.

B. Expanding Drug Interventions at the State and Local Level

In order to further encourage the adoption, expansion, and coordination of state and local drug intervention efforts and to encourage movement toward broad-based, system-wide programs, the Department proposes a variety of initiatives, including education and information sharing, technical assistance, and resource building. This partnership approach is particularly important in light of efforts of prior Administrations to impose drug testing mandates as conditions of receiving funds under federal crime control programs.

1. Supplement State and Local Resources

As part of this initiative, the Department will seek to provide federal support to assist states in developing comprehensive, system-wide drug testing and treatment programs throughout their criminal justice systems, including in jails and prisons. This support will include funding for "building block" grants that will enable state and local agencies that have not previously had the readiness or resources to establish drug testing and treatment interventions to put them into place at various points in their system, to develop information management systems, or to undertake similar initiatives, with the ultimate aim of establishing a coordinated, system-wide program.

Second, we plan to sponsor one or more demonstration

projects seeking to implement and evaluate a structured community-based aftercare program for inmates who have successfully completed a drug treatment program their during incarceration. Research has shown that continued supervision and structured programming after an offender's return to the community will greatly enhance the possibility that the offender will successfully stay off drugs and not recidivate. This demonstration effort will include a system for transferring information from the institution to the community supervision and treatment providers; continued assessment; regular and random drug testing; swift and certain sanctions for criminal or drug activity; and regular communication between these in charge of treatment and the criminal justice supervision authority.

Third, we will sponsor a pilot project in two to five local jurisdictions to increase our understanding of how jails, which are often the logistical center for managing federal, state, and local arrestees and short-term offenders, can be used to help coordinate a program of drug treatment and coerced abstinence. While the structure of jails presents certain challenges, as they handle large numbers of arrestees and offenders and experience large population turnover, there is nevertheless great potential for these institutions to serve as a central focus for identifying drug users and linking them to treatment, both during their incarceration and after release into the community. Sites will be selected for this demonstration and research program that have the potential for creative jail-based treatment approaches.

that affect both federal and state detainees.

Finally, we also plan to work with states and localities to better understand the recent rise in methamphetamine use in certain areas. Through a program of research and demonstration, we hope to learn more about the prevalence of this drug within specific offender populations, how best to intervene, types of treatments and their effectiveness, and whether graduated sanctions will work with this population. Obtaining timely information about treatment and related interventions is vital to controlling methamphetamine use before it reaches epidemic proportions.

The President's 1997 fiscal year budget has allotted \$30 million for augmenting state and local drug intervention resources. ONDCP has committed approximately \$10 million to support the jail and methamphetamine demonstration projects. Finally, the Department will continue to work with other federal agencies, including HHS, to seek additional resources, and to coordinate federal funding streams that currently support drug testing and treatment efforts.

2. Improve the Juvenile Justice System Response to Drug Abuse and Crime

Although casual drug use has declined significantly from its peak in 1979, juveniles' use of illegal drugs, particularly marijuana, has started to increase. Between 1992 and 1994, the use of marijuana by youth aged 12 to 17 rose from 4 percent to 7.3 percent. To address the problem of juvenile drug use from

within the criminal justice system, our efforts will be focused on better understanding the relationship between juvenile drug use and the rise in violent crime (often gang-related), and improving the juvenile justice system's ability to respond to these trends. As part of this initiative, we will seek to expand the juvenile justice system's ability to provide treatment for drug-involved youth through technical assistance, training, and demonstration efforts. We also plan to develop an intensive community-based juvenile aftercare model to reduce the incidence of crime committed by serious, violent, and chronic juvenile offenders who are released from secure confinement.

The planned demonstration project will be supported, at least in part, through ONDCP funding. In order to fully explore the linkage between drug use and violence and develop effective treatment responses, we will select sites that have high numbers of both juvenile drug and youth violence problems and that appear to provide maximum potential for a comprehensive approach. As part of the demonstration, efforts will be made to improve coordination around the wide variety of groups and institutions that deal with juveniles, including schools, families, peers, child welfare agencies, treatment providers and the juvenile justice system.

3. Support Legislation to Encourage Drug Interventions

The Department plans to propose legislation to encourage statewide planning to integrate drug testing, treatment, and

sanction efforts. One important part of this strategy will be to seek the amendment of the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program to require states to include a plan (in their state strategic plans) to encourage the implementation of comprehensive state and local pretrial and post-conviction drug testing programs and to permit the use of Byrne funds for drug testing and treatment.

Also on the legislative front, the Department will continue to encourage states to enact the Model Criminal Justice Treatment Act, one of 42 model state drug laws drafted developed by the President's Commission on Model State Drug Laws in an effort to promote the adoption of system-wide drug testing and treatment programs.

4. Provide Technical Assistance and Training

We will provide technical assistance and training to state and local agencies to encourage the adoption and expansion of drug testing and treatment strategies. Educating state court judges and administrators and correctional administrators regarding the benefits of comprehensive drug testing and treatment programs, and working directly with pretrial practitioners and other criminal justice policy makers to adopt comprehensive guidelines for pretrial and post-conviction drug testing programs are particularly important. Moreover, we plan to widely disseminate information on "best practices" and highly innovative program models already operating on the state and local level, including drug courts and juvenile-focused programs.

We also will establish a Drug Testing in State Courts Working Group to develop and provide technical assistance for sites that choose to implement or expand drug testing and treatment programs.

IV. RESEARCH AND EVALUATION TO MEASURE EFFECTIVENESS

The evaluation of the pretrial drug-testing program in the 25 districts will be critical in refining policies and procedures for expansion into the remaining districts. Further, it is important that we take advantage of this national initiative as well as simultaneous efforts at the state and local level to expand our knowledge about which criminal justice interventions are most effective in encouraging abstinence from drug use.

The Department has established a Research and Evaluation Subgroup to design and oversee a comprehensive strategy for monitoring and evaluating the federal drug-testing policy and related demonstration projects at the state and local level.

Before the new drug-testing policies are effected in the 25 districts, certain baseline data will be collected. These include the number of arrestees currently identified as using drugs or having a drug-use history; characteristics of the arrestees (e.g., demographic information, drug history, criminal history, current criminal charges), the district's current drug-testing practices, current sanctions for positive drug test results, and availability of treatment resources. Changes in these data will be measured during implementation of the federal initiative. Moreover, efforts will be made to assist participating jurisdictions in the development of central information management systems to ensure improved tracking of defendants and linking of drug testing, sanction and treatment efforts.

Following the implementation of the new testing procedures, the impact of the initiative will be measured in two ways. First, the Evaluation Subgroup, through grants competitively awarded, will examine how the program affects the criminal justice system itself. In addition to the types of baseline information described above, these data will include the following.

- When in the process -- and how soon after arrest -- were defendants tested?
- What consequences, if any, followed defendants' refusal to consent to a drug test?
- What effects, if any, did positive drug tests have on release decisions?
- What sanctions, if any, were imposed on defendants who tested positive while on release?
- What treatments or other interventions did defendants who failed pretrial drug tests receive?
- Did defendants' pretrial drug testing and treatment records affect post-sentence conditions of release or correctional placements?

Second, the evaluation will monitor changes in defendants' behavior, including the extent to which rearrest, drug use, and recidivism decline. Of particular interest will be how various combinations of testing, sanctions, and treatment alter these outcomes.

The Evaluation Subgroup also plans to examine these questions in the context of state and local drug testing and treatment efforts. In addition to the implementation and impact analysis, the group will distill the collective management experiences of state and local participants into model programs

for other jurisdictions, and track the spread of drug testing over time by non-demonstration jurisdictions as a result of the federal initiative.

V. PLAN OF ACTION

To achieve the vision of the President's December 18, 1996 memorandum of a fully integrated, system-wide response to the problem of illegal drug use will require sustained effort over several years. As was set forth in this initial report, no criminal justice system at the federal, state or local level currently meets this standard. In some jurisdictions, pre-first appearance testing is well accepted. In others, in-custody treatment programs are fully operational. In still others, programs of treatment referrals and graduated sanctions are well underway.

The strategy for achieving the President's objective follows four related tracks. First, there is a strong need to work with jurisdictions to construct the building blocks of a fully integrated system, starting with the establishment of universal pretrial testing in the federal system. Second, there is a strong need to develop drug abuse reduction strategies at the federal, state and local levels, building upon best practices around the country and learning from innovative practitioners. Third, because this approach to illegal drug use is so comprehensive, we should undertake targeted demonstration projects to advance our understanding in areas where the need is particularly compelling. Finally, we must establish a process for evaluating the results of these innovations, and investing in new drug testing technologies that will make this approach even more effective in years to come. The plan of action set forth

below reflects these four principles. Short term (i.e., 90 day) and long term objectives are established for each component of the plan of action.

1. Establish Pretrial Drug Testing in the Federal System

This is the first priority of the Presidential Directive, and now awaits a response from the Executive Committee of the Judicial Conference to the Attorney General's proposal.

90 Day Goal: Upon approval of the Department proposal, we will establish the Task Force recommended by the Executive Committee and begin to identify the federal districts for implementation of the program in 25 districts. Once the districts are selected, a final budget will be developed for the testing portion of the initiative, including personnel and equipment costs.

Long Term Goal: After testing has been implemented in the 25 districts, we will propose full expansion to the federal system.

2. Implement Guidance to Federal Prosecutors

The testing initiative must be viewed in connection with the development of guidelines for federal prosecutors. Simultaneous with the implementation of the first appearance testing policy, the Department will finalize these guidelines, reflecting the principles set forth in this report.

90 Day Goal: Finalize guidelines after consultation with the Attorney General's Advisory Committee.

Long Term Goal: Evaluate the effectiveness of these guidelines, with particular attention to the relationship between continued positive tests, enhanced treatment requirements and graduated sanctions.

3. Establish Linkages between Testing and Community-based Treatment

Testing for drug abuse, in conjunction with other forms of screening, should assist in the referral of the drug abuser to an appropriate treatment intervention, ranging from inexpensive group counselling to expensive in-patient treatment. We must gain a better understanding of how these linkages are currently carried out, and develop a proposal for improving on the current system. This will require close collaboration between the Department and the Pretrial Services offices.

90 Day Goal: Develop a survey to determine current linkages between testing and treatments; convene focus groups of practitioners and treatment providers to develop recommendations for improvement.

Long Term Goal: Establish policies and information systems supporting cost-effective systems of linking released defendants with treatment interventions, which will in turn be linked with the monitoring of conditions of pretrial release.

4. Establish Linkages between Testing and In-custody Treatment

One of the clear deficiencies in the current federal system

is the provision of drug treatment and drug treatment referrals during the period of pre-trial detention.

90 Day Goal: To work with the Marshals Service to develop an inventory of drug treatment programs and other interventions for the pretrial detention population; to develop a protocol for referrals to community-based treatment in the 25 districts when offenders are released; to reexamine policies regarding eligibility for in-custody treatment services in the federal system.

Long Term Goal: To make cost-effective use of existing treatment resources, and to implement an information system that provides relevant information from correctional institutions to other relevant agencies of the federal system, including the judiciary, pretrial services, and probation.

5. Develop Concept of "Building Block" Grants to State and Local Criminal Justice Systems

The President's fiscal year 1997 budget allocates \$30 million to support development of the President's directive at the state and local level. We recommend that the Department award "building block" grants to jurisdictions to develop the systematic approach to drug abuse envisioned here. In turn, this will require a sophisticated analysis of the needs of jurisdictions throughout the country, and the availability of funds being provided by other federal agencies, as well as other levels of government and private sources.

90 Day Goal: Convene meeting of representatives of federal, state, local and other practitioners to develop funding strategy for fiscal year 1997.

Long Term Goal: Make effective expenditures of federal resources that will advance the President's objectives within state and local criminal justice systems.

6. Develop Demonstration Projects in Areas of Special Urgency

In the course of preparing this report, the Department recognized a need for projects in areas of special urgency. These include: developing a comprehensive criminal justice response to methamphetamine; developing effective responses to the rise in juvenile drug abuse; developing a more effective role for jails in providing drug abuse interventions and linking offenders to drug treatment in the community. We recommend establishing demonstration projects in these areas, with an emphasis on evaluation and research. Funding for these demonstration projects is expected to be made available by ONDCP.

90 Day Goal: Develop demonstration programs, begin site selection, design evaluation strategy in each of these areas.

Long Term Goal: To take lessons learned from these demonstration projects in selected jurisdictions and translate those lessons into policies in other jurisdictions.

7. Develop Training and Technical Assistance Efforts

Recognizing that most support for public safety and criminal justice innovations is found at the local level, this report has recommended that the federal government can be most effective at supporting effective policies by sharing lessons learned from one jurisdiction to another.

90 Day Goal: Working with appropriate practitioner organizations, develop strategy for training and technical assistance.

Long Term Goal: Develop a federal mechanism for sustaining ongoing network and dialogue between practitioners at the local level.

8. Develop Legislation to Support Presidential Initiative.

There is a need for legislation to encourage a systematic, criminal justice response to the problem of illegal drug abuse. Specifically, the Department will propose legislation that will require, as part of the Byrne Program, statewide planning to integrate drug testing, treatment and graduated sanctions, and will encourage states to enact model legislation that will promote system-wide drug testing and treatment programs.

90 Day Goal: To meet with legislative staff and representatives of interested organizations to implement this strategy.

Long Term Goal: To support planning at the state and local level.

9. Create a Forum to Support Effective Drug Testing Technologies.

As part of preparation of this report, the Department convened a two-day focus group of practitioners, researchers and scientists involved in the development and implementation of drug testing technologies. A clear recommendation from that group is that the federal government take a leadership role in (a) supporting investments in new technologies, (b) providing standards for introduction of new technologies into the criminal justice system, and (c) encouraging feedback from practitioners about their needs for technologies.

90 Day Goal: To create a Drug Testing Advisory Board consisting of representatives of federal, state and local criminal justice agencies, researchers, and interested parties.

Long Term Goal: To develop a strategy for federal investment and involvement in the issue of drug testing so that new technologies that are even more cost-effective can be developed quickly, tested and introduced into practice.

10. Evaluate the Impact of These Initiatives.

The President's directive challenged the criminal justice systems at all levels of government to take greater responsibility for the illegal drug use of criminal defendants. To determine the impact of these initiatives on drug abuse, criminal behavior, and the workings of the criminal justice system, independent evaluations will be conducted.

90 Day Goal: To develop evaluative research strategies for

each initiative in the plan of action, including plans to capture baseline data, award research grants based on competitive solicitations and perform some research tasks inhouse.

Long Term Goal: To provide the President, the Attorney General, other federal officials and the public with timely information about the effectiveness of this initiative.

APPENDIX A: BUDGET CONSIDERATIONSFederal Pretrial Services

In 1995 the AOUSC had \$30,834,000 available for drug dependent offenders, and requested an increase of \$5.795 million above its fiscal year 1996 adjustments to base to cope with increasing substance abuse caseloads and restore the option of in-patient treatment and detoxification for an estimated 5 percent of drug abusing federal offenders who do not respond to other pretrial interventions. It projected that a total of 28,700 offenders would require treatment intervention of some sort in FY 1995 and another five percent increase to 30,300 in FY 1996. Assuming national implementation of the drug testing policy, we have projected a possible annual increase of approximately 10,800 additional defendants identified as drug abusers. Our proposal, however, also provides for the use of potentially more cost-effective procedures and technology for drug testing and abuse deterrence. Until the 25 districts are selected, it is difficult to project the actual overall cost increases for implementing the federal pretrial element of the proposal.

Federal Residential Substance Abuse

The BOP will continue to support activities related to drug testing and other interventions for federal inmates and detainees under its jurisdiction from within its current and anticipated

appropriations.

Federal Probation

The AOUSC FY 1996 budget request also included a \$3.18 million increase to implement drug testing as a mandatory condition of probation, parole or supervised release for all federal defendants as required by the 1994 Crime Act. The AOUSC estimated that in FY 1996 15,600 additional drug tests will be conducted. The number of defendants requiring treatment will also increase by 1,600. It is assumed, subject to the availability of requested appropriations, that the AOUSC will continue to fully fund associated post-conviction drug testing and treatment activities.

The Department and ONDCP, through a combination of targeting and reprogramming available resources as necessary, will supplement the funds already available to the judiciary to support our proposal in FY 1996. The President's FY 1997 Budget proposes that \$42 million of the State Prison Grant program be used to implement pretrial and post conviction drug testing and intervention to help federal, state and local jurisdictions fully employ the powers of criminal justice system supervision to reduce drug abuse and related criminality. Of the FY 1997 Department request, approximately \$7 million will be devoted to conducting and expanding the federal testing and intervention efforts, \$30 million will be devoted to encouraging state and local implementation of effective drug testing and related cost-effective drug abuse deterrence initiatives, and \$5 million to

research, evaluation, and technology related to both the federal and state initiatives. Additionally, we are involved in ongoing efforts with HHS and ONDCP to identify all appropriate treatment resources. Beyond FY 1997, it is hoped that once the cost-effective nature of this initiative has been demonstrated, funds to continue the federal effort will be included in each respective agency's appropriation.

APPENDIX B: THE FUTURE IN DRUG TESTING TECHNOLOGY

In the past several years, experts in the basic sciences and technology fields, working side by side with federal drug control and research agencies including the Departments of Defense, Justice, and Health and Human Services, have broadened our understanding of the biological and behavioral indicators that signal illicit drug use. They are developing and testing a number of ways of testing for drugs, including through urine, blood, eye movements, hair, and saliva.

Further work needs to be done, however. Any technology used in a criminal justice context must be extremely accurate and reliable. Moreover, cost considerations as well as ease of administration, duration of time between testing and results, and chain of custody considerations are vitally important. This Appendix sets forth a basic outline of technologies under development and explains the Department's plan for expanding our knowledge in this area.

Overview of Technologies In Use or Under Development

For the most part, the only technology widely used in the criminal justice context is urinalysis. Drug testing through urinalysis generally involves a two-step process. An initial test, based on immunoassay technology, screens defendants or offenders for drug use. Screening can be done through on-site laboratories or through newly developed hand-held technologies. A second urine test, based on chromatology technology, confirms

positive results with more rigorous forms of analysis to ensure they are not false positives. Confirmation is a much lengthier process, equipment is expensive, and highly trained operators are required. Confirmation testing occurs off-site in a special laboratory. In some instances, such as where a defendant or offender does not contest the positive test result, confirmation may not be necessary.

Although urinalysis is widely accepted, new, promising technologies are under development and are being tested in certain jurisdictions:

- **Hair Analysis.** Results of field studies show that hair analysis has many advantages for use in the criminal justice system primarily because of the length of time in which it can detect drugs (approximately 3 months for most drugs) and evasion-proof application. As a result of more than a decade of research and field testing, hair analysis is now used in several real-world applications in the criminal justice system.
- **Eye Scanning.** Eye tracking technologies may be the least invasive of all new drug testing methods. Using a baseline and comparison system, this method records eye movement, pupil constriction, and dilation. These tests are good methods for initial screening of whether a subject has used a drug, but they are not drug identifiers since they detect only impairment and not the specific origin of the impairment. The eye tracking system has been tested in a law enforcement environment and is being introduced gradually into the probation market. The current cost of this method of drug testing is \$18,000 for equipment.
- **Sweat Bracelets/Patches.** Skin bracelets and patches measure the presence of drug metabolites in perspiration. After placement, the patch is checked periodically by staff to determine drug use. A tamper-proof measure prevents subjects from removing and then reapplying the patch. This drug-detection method is effective in screening for cocaine, opiate, and amphetamine use and, like hair testing, can detect chronic drug use. The cost is approximately \$20 per

test. Each patch can be worn for up to 1 week.

- **Non-invasive Blood Sensors.** New technology in this area includes a portable monitor that, using infra-red (IR) sensing, can detect blood alcohol and drug levels without drawing blood.
- **Microassay Cards.** This emerging technology is a microassay-on-a-card (MAC) sensor capable of identifying small quantities of illegal drugs in solid materials in less than 1 minute. The disposable MAC devices will be about the size of a credit card. A drop applied to the test well on the card will cause a definite color change if an illegal drug is present.

Federal Role

In advancing drug-testing research and technological development, the Department, in coordination with other federal agencies, can play a key role in providing leadership, encouraging investment, and ensuring the best science is used and broad scientific consensus is reached on drug test accuracy, reliability, and interpretation of results. A simple expansion of current technology will not be enough; technologies must be uncovered or refined to require little training of administrators, make documenting results simple, be safe for subjects and test givers, and use testing mediums that can be safely and easily disposed of.

The federal government can also stimulate development and widespread use of universally acceptable standards and protocols for conducting drug tests among offender populations -- standards that ensure both protection of defendants' constitutional rights and, when necessary, strong linkages in the evidence chain of custody. And through training and technical assistance to state and local criminal justice and law enforcement agencies, the

federal Government can accelerate technology transfer and ease the adoption of comprehensive drug-testing and treatment practices throughout the criminal justice system.

Federal leadership is equally critical to the development of information technologies that will expedite communication of drug testing results to Pretrial Services and the courts. Eventually, electronic information systems should be designed and in place at every site. Electronic systems can help coordinate the exchange of information within the criminal justice system and between agencies as well as reduce the costs of drug testing by protecting the integrity of tests results and making them immediately available.

In light of these considerations, the Department, through the National Institute of Justice, plans to undertake the following strategy for developing rapid, inexpensive drug tests for use in the criminal justice context:

- Create a Drug Testing Board (DTB) comprised of representatives from federal, state, and local courts, government agencies that test employees, and agencies that regulate drug testing in private industry to set goals for method development and to develop a uniform set of methods and performance standards acceptable to the criminal justice community.
- Establish a National Advisory Board representing the DTB, manufacturers, vendors, and regulatory and standards agencies.
- Establish a technology development and distribution group to produce methods that address the requirements established by both boards.
- Conduct testing and evaluation of candidate methods in a laboratory environment using test and evaluation metrics approved by the National Advisory Board.

- Subject to FDA testing for approval candidate methods that pass National Advisory Board metrics.
- Field test FDA-approved methods.
- Publish federal guidelines for acceptable test performance.

In summary, we will work with criminal justice practitioners to identify their drug testing needs in various contexts and with experts to develop and test new technologies to meet these needs. Not only do we plan to develop easy to use, cheaper, faster technologies, but we hope to create a federal standard by which all future drug testing technologies can be measured.