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Opportunities and Barriers in Probation Reform: A Case Study of Drug Testing and Sanctions

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DETAILED RESEARCH FINDINGS

Opportunities and Barriers in Probation Reform: A Case Study of Drug Testing and Sanctions

*Mark A.R. Kleiman, Thomas H. Tran, Paul Fishbein,
Maria-Teresa Magula, Warren Allen, and Gareth Lacy*

Policy Research Program



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UNIVERSITY OF CALIFORNIA

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The views and recommendations in this report are those of the authors and do not necessarily represent those of the CPRC or the Regents of the University of California.

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EXECUTIVE SUMMARY

Drug use by California's 600,000 probationers is a mainstay of the markets for cocaine, heroin, and methamphetamine. Heavy drug use also contributes to reoffending. (About 40% of new crimes leading to state prison terms are committed by probationers.)

Continued illicit drug use is a violation of the conditions of probation. Unlike most forms of misconduct, it leaves a chemical trace that can be detected reliably by relatively inexpensive tests. A form of conduct that is so important and so observable ought to be a focus of probation-supervision efforts. Probationers, like other people, respond more powerfully to swift and consistent sanctions than to sporadic and delayed ones.

There is considerable theory and evidence supporting the idea that a properly focused program of frequent drug testing and swift, consistent, but not severe, sanctions for violations, along with formal drug treatment for those who need it or want it, could substantially shrink the volume of drug use and the recidivism rate among probationers, and reduce the aggregate amount of time drug-using offenders spend behind bars.

Coerced Abstinence

The combination of testing and sanctions, sometimes called "coerced abstinence," has important advantages over the currently more fashionable approach of coerced treatment. Testing-and-sanctions programs are much cheaper than treatment, and using them as the first-tier response avoids running into the capacity limitations of the treatment system.

They also open treatment slots for those, including nonoffenders, who want help for their drug problems rather than having help forced upon them. An offender who seeks treatment under the pressure of a testing-and-sanctions regime will be more strongly motivated to benefit from it than one who attends only under compulsion.

Coerced abstinence avoids the problem of managing treatment compliance. A large proportion of those assigned to coerced treatment under drug-diversion programs (including Proposition 36) either never show up for treatment or drop out. In addition, most diversion programs—drug courts being a notable exception—fail to enforce the bargain by which treatment was offered as an alternative to prison.

Coerced abstinence also avoids the problem of imposing drug treatment on offenders who do not meet the clinical criteria defining drug abuse or dependence. In some diversion programs, as many as 40% of clients are in that category.

There is strong reason, then, to think that a consistent program of testing and sanctions for illicit drug use should be a centerpiece of probation supervision for drug-involved offenders.

Case-Study Results

In three case studies of California probation departments before the advent of Proposition 36—in Los Angeles, San Diego, and Santa Cruz counties—we found that none had a satisfactory program to address the problem of illicit drug use among its clients.

San Diego and Los Angeles have fairly elaborate testing programs, but neither tests more than a small proportion of its drug-using clients. Santa Cruz's program is broader, but less systematic. In all three counties, of those ordered to report for testing on any given day, three in ten or more either fail to appear at all or are found to have been using one or more illicit drugs.

These high rates of noncompliance are both a result and one of the causes of inconsistencies and delays in the sanctions process. Violations are so common that sanctioning every one of them would strain the resources of the probation departments as well as the courts. Yet the policy of ignoring many of the positive test results and, even more, ignoring the failures to appear for testing, results in a loss of credibility for the testing program among those subject to it.

Frequent testing is essential to reducing the rate of drug consumption. Once-a-week testing produces about a 35% chance of detecting any given incident of drug use; twice a week pushes that figure above 80%. By contrast, a probationer tested once a month—a far more typical pattern in the three departments studied—has less than one chance in ten of being detected for any given incident of use.

The clear policy implications of this finding are that the probation departments in question need to tighten their monitoring and sanctioning of probationers' drug use, and that resources spent on these tasks would have benefits to the public well in excess of their costs. This is probably true of other departments as well; there is no reason to think that the three departments we examined were less effective than average.

Conceptually, the problem is simple; the hard part is the implementation. As always, resources are a constraint; probation departments, like other public agencies, cannot make bricks without straw.

California is now getting the probation supervision it pays for, at the rate of less than \$3 per probationer per day, compared to more than \$60 per day for state prison inmates. Drug testing itself is cheap—between \$5 and \$10 per test. But probation officers, and computer support so they can get their work done, cost money.

So does the capacity to administer sanctions. Carried out swiftly and consistently, sanctions—“day reporting” (under which probationers are required to remain at a probation facility for the duration of the working day for some number of days, but sleep at home), “halfway-back houses” or “probation-violations centers” (essentially forms of incarceration, but specialized to hold probation violators for short terms and not demanding high security), and “community service” (unpaid labor)—can be effective reminders to probationers that the conditions of their release must be adhered to or consequences will follow.

California, like most states, is woefully short of the means of punishing probation violations other than sending the offenders to expensive and crowded jails or prisons, and underfunded probation departments lack the means to create more capacity for punishments short of incarceration.

Day reporting requires day-reporting centers and workers to staff them. Halfway-back houses, too, must be built and staffed, on a 24/7 basis. Community-service requirements are mere suggestions unless someone in the probation department monitors whether probationers show up as required and actually do the work.

The whole intermediate-sanctions process will collapse of its own weight unless those who fail to appear for sanctions are aggressively sought out for arrest, which means that probation departments will require the cooperation of police or sheriffs' departments. Current budgets simply do not provide for anything approaching adequate levels of any of these resources.

But simply adding more resources to the current probation system will not do the job. In none of the departments we studied did the managers identify adding sanctions capacity as a high priority. If more money were added to their budgets, in all probability little or none of it would be used for that purpose.

Moreover, adding sanctions capacity creates value only if it is used; using it would require either creating administrative procedures within the departments or persuading judges that imposing sanctions short of jail is the right way to treat most "technical" probation violations.

We found not merely a shortage of resources, but a shortage of expectations. None of the three departments we studied has established as an immediate, high-priority organizational goal the enforcement of consistent compliance with the rules governing probationers, and in particular the rules against continuing to use illicit drugs. None, for example, calculates total noncompliance rates as a managerial tool or holds individual probation officers or their supervisors accountable for reducing noncompliance rates.

Even within existing resource limits, consistent monitoring and sanctioning could be applied to some small minority of the caseload if the organizational culture supported it. But that was not what we saw.

Predictable Sanctioning

Drug-testing an offender twice a week leaves almost no opportunity for undetected drug use. Combining that with consistent, even if not severe, sanctions for every failure to appear and every instance of detected drug use should be adequate to lower the rate of noncompliance among whatever part of the caseload could be made subject to that system. Falling noncompliance rates, in turn, would shrink the resources required to process violations, which are the bulk of the costs involved.

Establishing credibility for a drug-testing program, even for a small number of probationers, and then expanding the number of people assigned to that program as noncompliance rates fell, almost certainly would be a better use of resources than are expended now.

Predictable sanctioning requires consistency by both probation departments and the courts. There is a tension between the desire of probation officers and judges to apply what they think of as “clinical judgment” about what each probationer needs, and the advantages to be obtained when probationers know that each violation has its assigned sanction—and therefore what happens to them depends on their own behavior rather than on the whims of others.

The first step toward swift sanctioning is quick-turnaround test results. All three counties still send specimens to contract laboratories, which builds in days of delay before obtaining test results. Alternatively, they could purchase any of the commercially available on-the-spot testing kits, consisting of specimen cups or “dip sticks” with built-in reagents, which cut that delay from days to seconds. Those products are now competitively priced with contract testing.

Swift sanctioning also depends on the courts’ willingness to act promptly on reported violations, or to support a process of administrative discipline to be handled by the probation departments, which could impose sanctions not including jail time. The latter option, in turn, would depend on creating the capacity to administer such sanctions—day reporting, community service, specialized low-security confinement facilities for probation (and perhaps parole) violations. This capacity is now largely absent.

A major barrier to consistency is the (quite rational) distinction made between cannabis and other drugs. Cannabis, with its long chemical “detection window” and widespread use, tends to make up a large proportion of positive test results. Yet its links to recidivism and to violent drug dealing are far weaker than is the case for the harder drugs, and probationers are a much smaller factor in demand for marijuana than they are in the other drug markets.

In a world where the problem is not detecting more violations but handling the violations already detected, a strong case can be made for following the lead of Los Angeles County and simply not testing for cannabis at all, except in special circumstances.

One likely side-effect of tightening supervision in this way would be increasing the rate at which probationers abscond from supervision. Currently, when a probationer simply “drops out” of supervision, a bench warrant is issued and filed, to be activated the next time that person is arrested. In contrast, an effective supervision process would devote police or sheriff’s department resources to tracking down absconders.

Recommendations

1. Add the resources and create the processes needed to create an effective program of frequent drug testing and consistent sanctioning for drug-using offenders on probation. This recommendation would entail:
 - ▶ Probation staffing
 - ▶ Computer support
 - ▶ Sanctioning by formula
 - ▶ Swift, consistent judicial processing or authority for administrative sanctions

- ▶ Creating sanctions capacity other than jail (community service, day reporting, specialized low-security confinement facilities)
 - ▶ Warrant-service capacity
- 2. Concentrate existing resources as needed to create a credible program, even if only for a small part of the caseload, rather than spreading resources so thinly as to lose credibility.
- 3. Economize on the time of deputy probation officers in administering drug tests, entering data, and writing reports by having other, lower-salaried, employees perform these tasks.
- 4. Automate the process of reporting drug-test violations to the court.
- 5. Commit to imposing some nontrivial sanction (community-service hours, day reporting, or very brief confinement) for every failure to appear or instance of detected drug use.
- 6. Create data systems that enable probation supervisors to verify that tests are ordered as planned and that violations are handled according to policy.
- 7. Reduce turnaround time for test results by converting from contract laboratories to on-the-spot testing.
- 8. Consider dropping cannabis from the list of drugs for which probationers are routinely tested.

INTRODUCTION

Managing Drug-Involved Offenders: The Challenge for Community Corrections

California has been the nation's leader in building and filling prisons, as the number of inmates nationwide has soared over the past two decades.¹ The surge in prison-building has continued even as the crime rate has fallen. (Violent crime in California is down one-third since 1991.²) In California as elsewhere, between one-fifth and one-quarter of those inmates are incarcerated for drug dealing or possession.

As large as the prison population is, an even larger number of offenders remains under noncustodial supervision (probation, parole, or pretrial release) by the criminal justice system. California has 160,000 state prison inmates, compared with 343,000 probationers. A key to reducing the burdens of imprisonment is increasing the quality of community supervision. The more effective probation is at controlling drug use by offenders assigned to it, the more acceptable it will be as an alternative to incarceration. Funding for probation, however, fails to reflect its importance.

A typical probation department spends about \$1,000 per offender per year on supervision services, compared to incarceration costs of about \$25,000 per year. The cost savings from reduced incarceration from even a small reduction in recidivism would easily cover the costs of even comparatively expensive probation supervision.³ But merely adding resources to the current probation system, in the form of "intensively supervised" probation, has not proven especially effective.⁴

Drug testing of probationers has profound potential as a tool for better management of drug-involved offenders. In practice, however, a combination of resource scarcity, procedural hurdles, and lack of managerial focus tends to limit its value. In this study we examined the use of drug testing in three California counties and explored both opportunities for and barriers to improving the effectiveness of that process.

The Importance and Difficulty of Controlling Probationers' Illicit Drug Use

A great many probationers abuse or are dependent on illicit drugs. Because continued use of expensive illicit drugs is strongly correlated with other criminal activity, and probationers commit

¹ U.S. Department of Justice – Bureau of Justice Statistics, Prisoners in 2000, Office of Justice Programs, August 2001 (NCJ 188207).

² Bureau of Justice Statistics: National Crime Victimization Survey (NCVS) "State and national level crime trend estimates, 2000" <<http://149.101.22.40/dataonline/Search/Crime/State/StateCrime.cfm/>>.

³ See Steven M. Teles and Mark A.R. Kleiman, "Escape from America's Prison Policy," *The American Prospect*, Vol. 11, No. 20, September 11, 2000; Kleiman, "Community Corrections as the Front Line in Crime Control," *UCLA Law Review*, Vol. 46, No. 6, August 1999.

⁴ Joan Petersilia and Susan Turner, "Intensive Probation and Parole," in *Crime and Justice: An Annual Review of Research* (Michael Tonry, ed.), University of Chicago Press, 1993.

about 40% of the new criminal offenses leading to prison terms,⁵ controlling drug use in this population is essential to reducing recidivism⁶ and is a key element of any effort to further reduce crime rates.

Conversely, the probation population accounts for a significant share of the total drugs consumed and of the revenue stream that supports the illicit drug markets. Dealing, in turn, damages neighborhoods, entraps juveniles with easy money, and generates the need for drug-law enforcement and imprisonment of drug dealers. Therefore, controlling drug use in this population is essential to shrinking the drug markets and reducing the damage they create.⁷

One approach to reducing drug use among probationers is offering drug treatment to drug-involved offenders. There is widespread agreement that increasing the availability of such treatment is a highly cost-effective means of crime control.⁸ However, building the appropriate treatment capacity and persuading offenders to enter and remain in treatment has proven a difficult challenge.

Not all drug-using probationers need treatment; many do not meet the clinical criteria for a diagnosis of drug abuse or dependency. Moreover, treatment is not the same thing as cure. Most treatment programs suffer from high relapse rates among their graduates, which has led to the widespread (though not entirely accurate) belief that all substance-abuse disorders are chronic, relapsing conditions.⁹

The approach embraced by “diversion” programs and treatment-oriented drug courts, which forms the core of Proposition 36,¹⁰ is to require treatment as an alternative to incarceration. Compelling treatment is not as easy as it might sound, however. In some diversion programs, as few as half of those ordered to seek treatment actually appear for a single session. Moreover, drug courts are resource-intensive, are usually limited to relatively nonserious offenders (some of whom lack a clinically diagnosable substance-abuse disorder), and are constrained by the limited supply of judges with the skill and interest to handle the multiple functions of a drug-court judge, filling a role very different from that of a judge in an ordinary courtroom.

5 Joan Petersilia, “Parole and Prisoner Reentry in the United States,” in *Prisons* (Michael Tonry and Joan Petersilia, eds.), Vol. 26 of *Crime and Justice: A Review of Research*, University of Chicago Press, 1999; Kleiman, “Controlling Drug Use and Crime Among Drug-Involved Offenders.”

6 Mark A.R. Kleiman, “Controlling Drug Use and Crime Among Drug-Involved Offenders: Testing, Sanctions, and Treatment,” in *Drug Addiction and Drug Policy* (Philip H. Heymann and William N. Brownsberger, eds.), Harvard University Press, 2001.

⁷ Ibid.

8 C. Peter Rydell and Susan S. Everingham, *Controlling Cocaine: Supply vs. Demand Programs*, RAND (1994); Dean Gerstein et al., *Evaluating Recovery Services: The California Drug and Alcohol Treatment Assessment (CALDATA) General Report*. Sacramento: California Department of Alcohol and Drug Programs, April 1994.

9 But see Gene M. Heyman, “Is Addiction a Chronic, Relapsing Disease?” in *Drug Addiction and Drug Policy* (Phillip H. Heymann and William N. Brownsberger, eds.), Harvard University Press, 2001.

10 On November 7, 2000, California voters approved Proposition 36—“The Substance Abuse and Crime Prevention Act of 2000”—which amended state law to require probation and drug treatment instead of jail or prison time for first- and second-time nonviolent drug offenders (including those who commit drug-related technical violations of probation or parole). The law also provides state funding for counties to administer the program and pay for drug treatment, but none of those funds may be spent on drug testing.

Nationally, drug courts currently serve tens of thousands of clients, out of a total population of drug-involved offenders numbered in the millions. Both diversion programs and drug courts are voluntary, in the sense that any offender may choose to reject them and accept routine sentencing instead. If the threatened jail term is short enough, some offenders choose jail over treatment.

Thus, while mandatory treatment is useful handling the problems of some drug-involved offenders, it does not address the need to reduce drug use among offenders who are not eligible or do not volunteer for diversion programs, drug courts, or the kind of disposition offered by Proposition 36. That need points toward the program that embraces the largest number of offenders: probation.

Drug Testing as Part of Probation Supervision

Probation status is one kind of conditional liberty. An offender on probation is not incarcerated, but is instead required to comply with a variety of rules (including the laws generally binding on everyone). The probationer is subject both to special scrutiny about that compliance and to incarceration or reincarceration after a judicial hearing (rather than a full criminal trial) if those rules are broken.

Abstaining from the use of illicit drugs is thus automatically a condition of probation. Many probationers are also subject to specific judicial orders making them liable to drug testing.¹¹

This requirement makes it possible to use drug testing, and sanctions for continued drug use, as a means of reducing illicit drug use in the probation population. In general, swiftness and certainty of punishment have been shown to be more effective in changing behavior than severity of punishment. Thus, if the testing were sufficiently frequent, and the sanctions swift and predictable, it might be possible to curtail drug use significantly without the use of severe sanctions.

Using this approach, treatment would be available for those who need and want it—with the threat of sanctions perhaps increasing some offenders' willingness to enter treatment, remain in it, and comply with the counseling they receive. Nonetheless, the mandate would be to stop using illicit drugs, rather than to attend treatment sessions.

The elements of an ideal program would include:

- ▶ Frequent testing
- ▶ Swift and automatic sanctions, which would in turn require:
 - ▶ speedy test results
 - ▶ either quick judicial hearings with prearranged sanctions, or the authority for probation departments to impose sanctions without a judicial hearing
 - ▶ sanctions capacity, which might include:
 - ▶ capacity to supervise community service
 - ▶ a day-reporting center
 - ▶ confinement capacity, perhaps in a halfway house or community-corrections sanctions center rather than a jail

¹¹ Adele Harrell and Mark A.R. Kleiman, "Drug Testing in Criminal Justice Settings," *Clinical and Policy Responses to Drug Offenders* (C. Leukefeld and F. Tims, eds.), Springer Publishing Co. (forthcoming).

- ▶ speedy issuance and execution of bench warrants for those who fail to appear for hearings or refuse to comply with sanctions
- ▶ Treatment capacity for those who want and need it (with repeated missed or “dirty” tests constituting evidence of need, and the sanctions possibly contributing to willingness)

There is nothing new in principle about any of this. The list above merely specifies what would be required to effectively implement the nominal rule that probationers must abstain from using illicit drugs.

The potential benefits of doing this job right are very large; the costs are large compared to routine probation supervision but modest compared to incarceration, and the cost savings from reduced imprisonment alone might more than cover those costs.¹² There is evidence that even imperfect implementations of testing and sanctions can have large impacts on offender drug use.¹³

Study Goals and Methods

By studying how probation departments in Los Angeles, San Diego, and Santa Cruz counties use drug testing and sanctions to enforce court orders and address substance abuse among probationers, we sought to identify both opportunities for and barriers to probation reform.

Proposition 36 (the Substance Abuse and Crime Prevention Act, or SACPA) was enacted as we began the active phase of the research. Because we had not anticipated its passage when the project was proposed, we chose to study the period prior to its implementation to avoid taking a snapshot of a moving object. The present tense used in this report refers to the months before April 1, 2001. Thus, this report creates a baseline that will help others gauge the impact of the proposition’s implementation.

The three counties selected have diverse populations, drug problems, and probation-department management styles. A team of five researchers interviewed deputy probation officers, who monitor probationers, as well as their supervisors, senior managers, judges, prosecutors, and defense attorneys. The voices of the probationers themselves remain unheard.

We were unable to negotiate the human-subjects review process in a way that would have allowed us to interview probationers. As human-subjects concerns also compelled us to promise anonymity to all of our interviewees, the report is deliberately imprecise in places about the sources of various quotations and factual assertions.

¹² Mark Kleiman, “Controlling Drug Use and Crime Among California’s Drug-Involved Offenders: Testing, Sanctions, and Treatment,” *California Policy Options*, 1998.

¹³ Harrell and Kleiman, “Drug Testing in the Criminal Justice System.” J.J. Gallegher, “Project Sentry Final Program Report” (Lansing, Mich.: Project Sentry, 1996); “Project Sentry Quarterly Program Report” (Lansing: Project Sentry, 1997); Adele Harrell and Shannon Cavanagh, *Preliminary Results from the Evaluation of the D.C. Superior Drug Intervention Program for Drug Felony Defendants* (Washington, D.C.: The Urban Institute, 1997); BOTEC Analysis Corporation, “Program Evaluation, Santa Cruz Regional Street Drug Reduction Program” (Cambridge, Mass.: BOTEC Analysis Corporation, 1990).

In addition to these interviews, we examined two kinds of official data: summary statistics on test results as reported by the contract laboratories, and probation-department case files.

Senior managers of the three departments reviewed draft chapters to identify any inaccuracies. Their willingness to do so was a continuation of their openness and cooperation at every stage of the research. The conclusions of this report are those of the researchers, and should not be attributed to the three probation departments.

LOS ANGELES COUNTY

Background

The Los Angeles County Probation Department manages about 64,000 adult probationers (16% misdemeanor, 84% felony) at any one time. This figure does not count the roughly 19,000 who no longer are part of the active caseload because they have absconded from probation supervision, and for whom bench warrants have been issued. Nor does it include the large number of misdemeanor cases assigned to “summary” (unsupervised) probation.

Of the 64,000 active adult probationers, about 20%—roughly 13,000 cases—are under judicial orders to submit to drug testing. The vast majority of those cases are assigned to a specialized group of deputy probation officers assigned to the Narcotics Testing Office. Only 110 deputy probation officers handle those 13,000 cases, and of that group only 88 have caseloads; the rest are supervisors or specialists. Narcotics-testing probation officers are placed in 12 of the department’s 18 field offices.

Each office has a senior deputy probation officer for narcotics testing, who supervises the officers assigned to drug testing. That person reports to the director of the Narcotics Testing Office rather than to the manager of the field office. While this arrangement centralizes control over drug testing, it also removes accountability for narcotics-testing outcomes from the field-office managers.

The 20% rate of drug-testing orders in Los Angeles County is much lower than the rates in the other counties we examined. It is also much lower than the rate of drug use among probationers: a national study of metropolitan-area felony arrestees found that two-thirds tested positive for one or more illicit drugs.¹⁴

Probation department officials attribute the low rate of testing orders to the unwillingness of judges to order testing in cases that don’t involve drug-law violations. We did not have an opportunity to examine the presentence investigation process to verify the extent to which the department is recommending drug-testing conditions that judges are then rejecting.

¹⁴ Data from the Arrestee Drug Abuse Monitoring program. No figure is available for Los Angeles specifically, but of the 27 cities included in the ADAM program none has a rate of positive drug tests below 50%; nationally, the median is 65%, with larger cities tending to report higher levels. It seems very unlikely that the figure for Los Angeles would be less than 60%.

Whatever the cause, requiring drug testing for only 20% of Los Angeles County adult probationers creates a significant barrier to the probation department's efforts to reduce illicit drug use among its clients. Even if these probationers were closely monitored, predictably sanctioned, and appropriately referred to treatment, a substantial group of probationers who use illicit drugs would remain free of scrutiny.

A possible benefit of this low testing rate is the concentration of the department's drug-monitoring resources on a finite group of probationers. In the six months from November 2000 to April 2001, the LA County Probation Department administered 53,788 drug tests, or just about 9,000 per month (approximately 107,000 tests on an annual basis).¹⁵ If those tests were spread evenly across all adult felony probationers, each could be tested only about 1.5 times per year.

Since most of the drugs tested for, including cocaine, heroin, and methamphetamine, are detectable in urine for only two to three days, an offender tested so infrequently would face less than one chance in 50 of being detected for any incident of drug use—far too low a risk to be an effective deterrent for most offenders.

Spreading those same tests evenly over the 13,000 probationers with testing orders would provide between seven and eight tests per probationer per year. This would raise the risk of detection for a given incident of drug use to one in 15—a big improvement compared to one in 100, but still far from ideal. Probationers who are also users of illicit drugs are unlikely to be highly cautious about relatively small-probability risks.

Tiers of Supervision

The probation department attempts to concentrate its testing resources further using a system of classification into four tiers of supervision (three active, one inactive). As one moves down the tiers, the target testing frequencies decrease and the caseloads per probation officer grow. (See Table 1.)

Table 1
Tier Structure of Los Angeles Narcotics-Testing Operations

	Case Targets per Deputy PO	Target Frequency of Testing	Number of Probationers	Deputy POs Assigned	Actual Average Caseload
Tier 1	54	4 times/month	588	6	98
Tier 2	130	2 times/month	11,365	70	160
Tier 3	250	1 time/3 months	1,776	12	148

Note: Deputy POs can increase testing frequency above probation department guidelines if they suspect drug use by a particular probationer.

Initial assignments are based on the presentence investigation, and supervision levels can be modified based on the probationer's record of compliance or noncompliance. The weekly testing intended for Tier-1 probationers would, if actually carried out, make the risk of detection for any given incident of drug use a very respectable 35%.

¹⁵ About 1,000 of these tests, and some undetermined proportion of the positive results reported later in this paper, involved juveniles rather than adults.

However, actual Tier-1 and 2 caseloads are larger than those intended, reducing the capacity of deputy probation officers to carry out the program as designed. The deputies we interviewed complained bitterly on this point, reporting that newly assigned officers in particular often face very heavy caseloads. As they described it, the sheer volume of paperwork (in what has been effectively a nonautomated setting) makes it impossible to meet program goals or provide effective supervision. One deputy probation officer (DPO) said, “If the paperwork gets unmanageable, something has to give; reports will be late, tests will be late . . . you only have so many hours in a day.”

The concentration of probationers at Tier 2 is also striking; 81% of probationers are at this level, compared with only 6% at Tier 1. Twice-a-month testing, per Tier-2 guidelines, would create a detection risk for an incident of drug use of about one in five, which would likely create a substantial deterrent to drug use for some probationers, especially if any detected drug use were very likely to lead to some actual sanction.

Plan Versus Practice: The Missing Tests

The detection probabilities calculated above assume that tests are administered per department guidelines. Practice is different. Multiplying caseloads at each supervision level by the target testing frequency at that level shows that almost 26,000 tests per month should be administered to adult probationers.

In practice, the contract laboratory that analyzes the specimens shows about 9,000 tests administered per month—just under 54,000 tests in a six-month period—approximately 1,000 of which are from juveniles. Thus, only about 8,000 adult tests are run each month, just under one-third of the nominal target. The difference must represent some mix of tests not ordered and tests not administered because of probationers’ failure to appear.

About 5,200 probationers with drug-testing orders—nearly 40% of the total—are either in jail or in residential treatment at any one time, and therefore are not being tested by the probation department. Removing that group from the calculation shrinks the monthly target number of tests to about 15,000, which is still a far cry from the actual figure of 8,000.

The remaining difference is attributable largely to workload. The department allows deputy POs with Tier-2 caseloads that are higher than the 130-per-month target to administer one test per probationer per month rather than two. Because the actual average caseload is 160, this applies to most officers.

As a result, the vast majority of Los Angeles probationers with drug-testing orders face only one test per month, which means that the chances of detecting a given incident of drug use are only about one in ten. This may explain the difference between the nominal target testing rate and the actual number of tests administered.

As far as we can determine, probation-department managers do not measure either the number of tests ordered per month or the failure-to-appear rate. Such information appears only in individual case files, which both our interviews with deputy POs and file reviews indicated are imperfect reflections of reality.

Movement from Tier to Tier

As noted, probationers are supposed to be moved to different tiers of supervision based on their compliance with drug-testing. (The only positive incentive the department offers for compliance is the prospect of reduced testing frequency.) The concentration of probationers at Tier 2 casts doubt on how much movement takes place in practice.

We were told that some probationers actually resist being moved to different tiers of supervision, fearing that the relaxation of testing will lead them to relapse, but there are no provisions allowing probationers voluntarily to remain at higher levels. One department official characterized some probationers as being “dependent on the test” to maintain recovery, and we were told of cases where a probationer repeatedly “bounced” from Tier 2 to Tier 3 and back, as Tier-2 supervision forced desistance from drug use, and the lower testing frequency at Tier 3 led to relapse, detection, and return to Tier 2. Some field deputies complained that they were under pressure to move probationers to lower supervision levels, regardless of their judgment of what would be appropriate in individual cases. As one put it, “The department encourages us to move cases along; it’s all about numbers and cents.”

On the one hand, the phenomenon of bouncing is discouraging, suggesting that for these probationers the benefits of testing do not tend to extend much beyond the testing period. On the other, it suggests that the testing process as now administered, despite the problems documented in this report, does have a significant impact on drug use, at least for part of the population.

This phenomenon calls into question a seemingly common-sense notion (shared by the managers we talked to in all three counties, and explicitly asserted by one in San Diego): that increasing test frequency increases the rate of detected violations, and thus the workload impact of those detected violations on the probation departments and the courts.

If more frequent testing is sufficient to reduce the rate of actual drug use, then the rate of detected drug use might actually fall, or not rise, as the rate of testing rises. Doubling the number of tests would not be expected to double the number of detected violations, especially if the sanctions process produces swift and predictable consequences for noncompliance.

The movement of probationers from level to level is clearly of potential interest to program managers. However, here too, deficiencies in both data entry and its central data system limit the LA County Probation Department’s ability to effectively track the pattern of probationers’ movement among tiers, or allow managers of the narcotics testing program to monitor whether cases are being moved up and down supervision levels appropriately.

Drugs Tested

Urine testing in Los Angeles County routinely screens for amphetamines, barbiturates, benzodiazepines (such as Valium), cocaine, methadone, opiates, phencyclidine (PCP), and propoxyphene (Darvon), but not cannabis, the most widely used illicit drug. This routine panel of drugs costs the probation department \$8.27 per test, including confirmation tests in cases where the test is positive (dirty). All specimens are sent for analysis to a private, offsite facility run by PharmChem Laboratories. PharmChem is contracted to provide test results within five days, plus an additional five days for confirming positive tests.

The decision not to test for cannabis is an important one. Because of its widespread use and the fact that cannabis metabolites remain detectable in urine for periods of up to a month (as opposed to 48–72 hours for most other illicit drugs), cannabis always represents a large proportion of positive results in any program that tests for it.

Neither logic nor evidence links cannabis use to recidivism as clearly as the use of cocaine, heroin, and methamphetamine. The drug is cheaper, and its users are less likely to be addicted. However, because there is some evidence that cannabis use tends to increase the use of other drugs, it is possible that eliminating penalties for it might increase probationers' rate of other drug violations.

By contrast, propoxyphene and the barbiturates are no longer significant drugs of abuse. This is reflected both in national statistics and in their extremely low detection in Los Angeles urine specimens. The cost saving from not screening for drugs so rarely used could be spent on increasing testing frequency or testing for drugs that are not being screened.

One approach would be to test a sample of specimens for a long list of drugs and then use the results to decide what to test for routinely. Candidates among drugs not now analyzed include codeine derivatives (such as hydrocodone, the active ingredient in Vicodin, and oxycodone, the active agent in Percodan and OxyContin) and MDMA (“ecstasy”). The pattern of drugs tested for could be varied by office if the sample results showed great geographic differences, and probationers known to have been users of one or more of the rare drugs could be tested for them.

Mechanics of Testing

When a new probationer reports to the probation office, the narcotics testing officer gives a brief orientation and assigns the probationer a testing identification code based on one of several systems (color, cartoon character, sports team, etc.). Each day between 7 p.m. and 7 a.m. the probationer is required to call a specified telephone number to hear a recorded announcement listing a group of codes. A probationer whose code appears on that list must report for urine testing the following day.

Upon reporting for testing, the probationer fills out a one-page questionnaire about any recent drug use. (This somewhat unusual procedure might well be worth imitating elsewhere.) Then an officer reviews the response, asks the probationer to sign it, and escorts him or her to a restroom facility where the specimen is collected under observation.

This kind of scrutiny is required to mitigate attempts to “beat” the test by adulterating urine with other fluids, substituting the urine of another person, or introducing chemicals designed to cause a false negative result. Observation would not detect another method—“flushing” the body with large amounts of water to dilute the sample. Thus, in addition to the observed specimen collection, the contractor conducts some anti-cheating surveillance. About 3% of all samples are rejected—a figure that includes both those rejected as adulterated and those rejected for paperwork errors. We were told that paperwork errors constituted the large bulk of such cases, which suggests either that cheating is not very widespread or that the cheating-detection mechanisms in place are ineffective, or both.

Because officers observe probationers during sample collection, department policy mandates that the test administrator and the probationer be of the same gender. Gender presents an obstacle when an officer has a mixed-gender caseload, and some officers complained that the search for an appropriate colleague to conduct tests was a significant problem. Some probation offices avoid this problem by assigning officers to manage only probationers of the same sex. Although this strategy solves the gender problem, it forces officers to monitor probationers at three different levels of supervision. Narcotics-testing office managers and deputy POs view this situation differently: while the former don't describe it as being difficult, some of the latter regard it as a significant complication of their work lives.

Test Results and Noncompliance Rates

Managers of the narcotics testing program expressed satisfaction with its operations, pointing to a positive test rate of less than 10%. In fact, for the six-month period we examined, the actual rate of positive tests was 13.8%.¹⁶ (See Table 2.) When one considers the omission of cannabis, this is not a very low rate. (Figure 1 shows the breakdown by drug of positive test results.)

More troubling, deputy POs indicated that the rate of failure to appear for testing was two or three times as high as the rate of positive test results. (Again, the department's data systems do not allow a direct measurement of failures to appear.) If that estimate is interpreted literally, it would mean that in addition to roughly 1,100 positive tests per month, there were an additional 2,200 to 3,300 failures to appear.

If that were the case, the actual number of tests ordered per month would be about 10,700 (8,000 actually administered plus about 2,700 no-shows). Of those 10,700, 1,100 (about 10%) would be positive (dirty) results, and another 2,700 (roughly 25%) would be no-shows. Thus, using these assumptions, the total rate of noncompliance (missed plus dirty tests) would be 35%. (See Table 2.)

As this percentage is per test, not per probationer, and cannabis is excluded, it can hardly be said to reflect successful deterrence of illicit drug use. From their behavior, it seems that even the minority of Los Angeles County's drug-using probationers who are subject to drug testing think that they can get away with continuing to use illegal drugs.

Computers, Software, and Training

The LA County Probation Department has an elaborate system of computers and software called APS (Adult Probation System), which is designed to produce a variety of statistical reports for the entire office. If used properly, APS would automate much of the process of probation supervision, and allow managers to monitor compliance both by probationers (with the conditions of their probation) and the department's own staff (with published rules and policies).

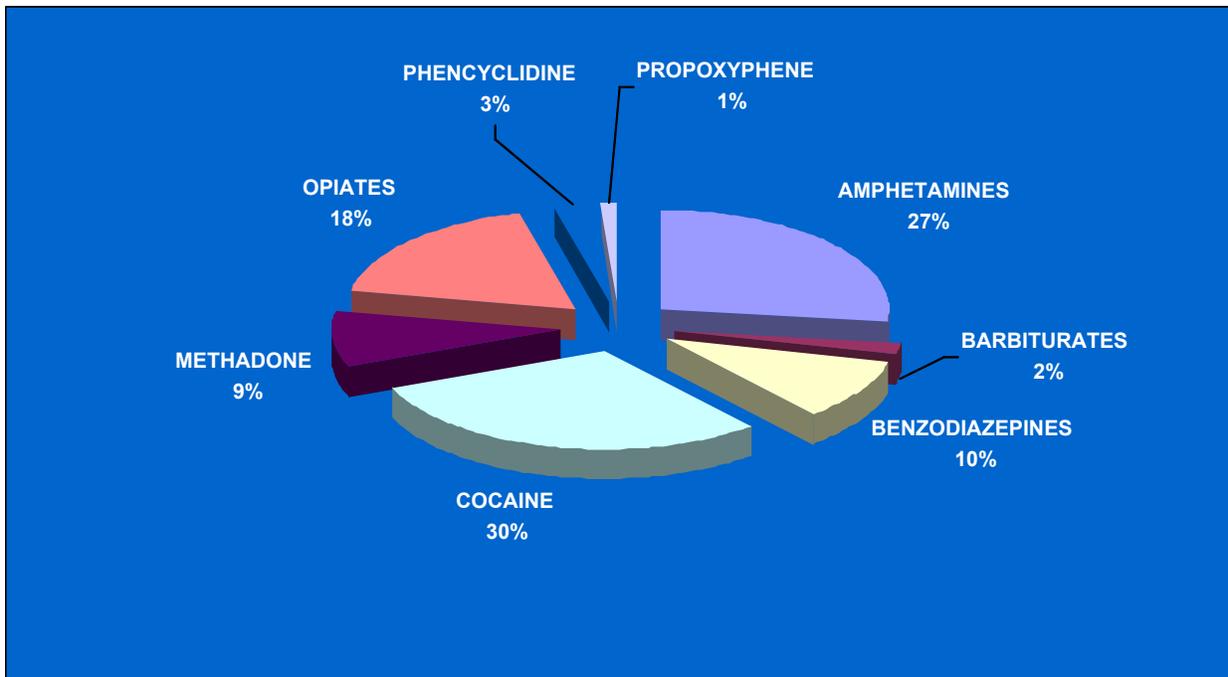
¹⁶ This reflects 7,174 positive tests out of 51,970 specimens analyzed; the difference between specimens analyzed and tests administered is accounted for by specimens not analyzed due to paperwork errors or apparent cheating.

Table 2
Probation Drug Tests in Los Angeles County

	Estimated Number of Tests Ordered	Tests Administered	Positive Tests	Estimated Number of Missed Tests (Positives x 2.5)	Total Estimated Noncompliance (Missed + Positive Tests)
Number	71,723	53,788	7,174	17,935	25,109
Percent	100	75	10	25	35

Note: Estimates are based on data from November 2000–April 2001.

Figure 1
Drug Types and Percents in Positive Tests in Los Angeles County



In practice, however, deputy POs, especially those assigned to the drug-testing unit, are so inconsistent about data entry that the system cannot be used to answer basic questions about drug testing, manage the testing, or analyze it statistically. Use of the computers is spotty and, except for data relating to financial matters, is not itself the subject of managerial monitoring.

Some deputies complained that the probation department fails to provide effective computer training for new employees. As one officer described his orientation on his first day on the job: “The department assigned me a cubicle and a computer and said ‘good luck.’” Other officers described learning either from colleagues or from their own experimentation, which can be a time-consuming process. One reported that it took him a year to become proficient with the software.

Most officers we interviewed, even those familiar with the computerized system, prefer to keep test data on paper because they find the software inconvenient. Officers report that glancing through paper records allows them to quickly and easily check for missing tests; the software requires them to scroll through several screens and individually check each case. (This is one point on which senior managers disagree with the views of many of the line employees we interviewed.)

Even if APS were used as designed, it does not automate such basic tasks as recording drug-test results or producing reports of violations for consideration by the court, because it lacks PC capabilities such as word processing. Thus, deputy POs must type or prepare handwritten reports to send out for transcription.¹⁷

Clearly, the perceived difficulty of operating APS and its limitations in automating day-to-day tasks have reduced the incentive of deputy POs to learn to use it to keep their case files accurate and up-to-date. In addition, the department's managers have not insisted on or routinely checked the deputies' use of the system for tracking drug testing, unlike some other data-entry fields—such as those relating to financial matters.

Senior managers tend to regard failure to use the computer system as a reflection of a broader pattern of tensions within the office, and dismiss complaints about inadequate training and the difficulty of entering and finding data in the drug-testing screens as being simply false. In their view, many long-serving DPOs are resistant to the new policy direction of the office, in which management shifted the drug testing operation from its pure focus on test results and sanctions to a more “holistic” approach that looks beyond abstinence to such issues as employment, family stability, and the fulfillment of financial obligations. Managers think deputies are resisting computer use to avoid being subject to what they see as supervisory micromanagement.

Perhaps surprisingly, none of the field staff—either supervisors or deputy POs—ever mentioned this holistic approach or any conflict about it. Most of them described a department that rarely provides probationers with job training or employment, and ascribed any assistance it does provide to their own initiative rather than department policy. In the view of line staff, they are neither mandated to take the initiative to provide services other than testing and sanctions nor rewarded if they do so. While it is easy to see how use of the data system might improve the testing-and-sanctions function, its relationship to a holistic approach is much less clear.

The failure to effectively implement computerized management of drug-testing, whatever its causes, remains a major problem for management and a barrier to evaluation, as reflected by the extent to which this report uses estimates and projections of numbers that should, in principle, be available as simple counts.

Inadequate or lagging intra-office communication, again relating to computerization, has other impacts as well. Deputy POs told us that although the courts instruct new probationers to report to an assigned probation office within 48 hours of release, most fail to do so until one to four

¹⁷ There has been some progress in automation since the period covered by this report, but the changes have not been dramatic.

weeks after release. Officers rarely sanction probationers for this first violation of probation terms.

Allowing probationers to begin with an unpunished violation of a clear directive may reduce the department's credibility in enforcing other terms of probation, including the requirements to abstain from drug use and to appear for testing when ordered. However, we have no direct evidence of the magnitude of any such effect. The deputies we interviewed said that because the assignment process is only partially computerized, they find it difficult to track paperwork for new assignments within the 48-hour period. Sometimes, they claimed, when a new probationer reports late, the narcotics-testing office has not yet received the file, which makes it hard to impose any sanction.

In contrast, senior managers said that while paper files tended to lag, information about new cases was almost always available in timely fashion through the computer. There is no conceptual reason why the assignment process could not be fully automated from the point of the disposition in court, but actually making such a process work would require a careful redesign of both the work process and the associated data processing. (Since we conducted the study, some field offices have begun automating file transfers from the courts.)

Sanctions for Noncompliance

Failing (without a valid excuse) to appear for testing when ordered to do so, admitting to drug use in advance of the test, and denying drug use but then testing positive, all constitute violations of the conditions of probation.

The department's stated policy requires deputies to report each violation to the court; the policy gives officers no discretion in this. The report includes basic information about the offending probationer, circumstances of the current violation, a formal request that the probationer receive a hearing, and a recommendation about what sanction to impose.

Sanctions can include mandatory attendance at outpatient and residential rehabilitation programs, community service, additional time on probation, jail time, and prison (revocation of probation). Recommended sanctions are left up to individual officers; the department has no rules or guidelines for this, and does not impose any administrative sanctions other than movement among levels of supervision..

When the court receives the violation report, it schedules a hearing and sends a notice of the hearing date to both the officer and the probationer. Officers told us that the court usually takes 3–4 weeks before hearing a violation case. During this period they continue testing the probationer, and send notice to the court of additional missed or dirty tests as an addendum to the report.

Although the delay between filing a report and a hearing does allow additional data to be collected, it also reduces the deterrent value of the process. Science and day-to-day experience agree in finding that the impact of a sanction on behavior is a rapidly declining function of the time delay between the behavior and the sanction.

To the time-lag between the report and the hearing must be added the time-lag between the violation and the report. Although the contract between the Los Angeles County Probation Department and PharmChem calls for a five-day turnaround on reports, deputy POs assert that the actual lag tends to be 10–20 days. Some of this reflects the time needed to run confirmation tests, and some of it may reflect delays in relaying to the case deputies reports the department receives.¹⁸

All of these delays could be greatly shortened if the department either ran its own analyses (vendors of reagents provide testing machines gratis to high-volume customers) or employed on-the-spot screening tests (such as specimen cups with built-in reagents) and sent specimens out only for confirmation testing when the test came back positive but the probationer continued to deny drug use.

By contrast to the situation we found in San Diego, judges in Los Angeles are disinclined to accept probation-office recommendations for sanctioning, and are more inclined to reduce proposed sanctions than to enhance them. Most officers we interviewed said that the courts accepted their recommended sanctions against probationers less than 50% of the time. Officers expressed frustration with the courts' leniency. The inability of DPOS to get their recommendations accepted, which must become known to probationers over time, surely reduces the capacity of deputy probation officers to manage offender behavior.

Although much of the information in a report is simply the recitation of facts from the file, and although the violations themselves and the possible sanctions are highly stereotyped, report production is not automated. Each document must be prepared afresh, which puts a substantial burden on the officer involved and creates a disincentive for reporting.¹⁹

Officers we interviewed said that they seldom report missed tests to the courts, and usually do so long after the fact, as part of their reports on subsequent positive tests. Even dirty tests are reported only occasionally. All of the DPOs we interviewed were familiar with the office's stated policy, but none claimed to follow it. Instead, they prefer to hold the missed test in abeyance and schedule another test. If the probationer tests clean, the missed test is forgotten; if he or she tests dirty, then the missed test can be reported along with the dirty test. According to senior managers, the department had permitted this approach in the past, but when the judges insisted on requiring a report of every violation, the department required it.

Some deputies consider the practice of "holding" missed or dirty tests to be a valuable clinical management tool. In their view, a successful result has been achieved when a client who has missed a test or two receives a stern warning from the PO and then begins to come in and submit clean (i.e., negative) tests. When the pattern of misconduct continues, the deputies believe, and try to convince probationers, that the file becomes stronger and stronger as a basis on which to support the eventual recommendation for a sanction.

¹⁹ This too may be changing as the office converts from terminals to personal computers.

Holding test results was also described frankly as a way of saving paperwork, and the practice was reinforced by the belief (reportedly based on experience) that judges would not impose sanctions on a probationer who had “merely” failed to appear for testing.

Because records are still being kept on paper and not electronically, it is not possible for us or for probation department managers to compute the probability that any given missed or dirty test will be reported. However, some violations can be computed on the basis of the contractor’s report, which shows 1,100 positive tests per month. If these were spread evenly among the 88 narcotics testing officers and if every one led to a report, they would generate more than 12 violation reports per officer per month. If missed tests generated two to three times that many, the total would be 36–48 per officer per month, roughly two per working day.

None of the POs we interviewed reported processing anything like that figure. They said that they process about 12–15 violation reports every month—not all of them for missed or dirty drug tests—suggesting that although all violations are supposed to be reported to the court, only 25% to 40% actually are reported.

To some extent, this reflects workload issues. Here again, there was a strong difference of opinion between the field staff and senior management. DPOS described, and showed us samples of, reports 3–5 pages long, the first two of which consisted largely of filling in blanks and checking boxes, but the remainder required prose. All DPOs we interviewed thought this report required a significant time commitment.

By contrast, one senior manager described the typical report as consisting almost entirely of filling in the blanks, and said that a report more than three pages long was virtually unheard-of. That manager regarded the production of two reports per working day as perfectly feasible, which it might be if DPOs took full advantage of the computer system and if the prose were to consist largely of stock paragraphs. However, none of the people actually writing the reports shared this optimistic view.

Even if the workload issues related to report production were resolved, processing every violation seems infeasible for the Narcotics Testing Office. Nor are the courts ready to handle all of the reports they insist on receiving. An alternative would be to create a system of administrative sanctions (excluding prison or jail time, but perhaps including increased supervision, community service, or day reporting) and allow probationers caught in noncompliance to choose between a fixed administrative sanction, set by policy, and a court hearing that might lead to more severe sanctions. Such a system would require sufficient staffing and organization for the probation department to be able to deliver the sanctions, and would require that judges actually impose the recommended sanctions on probationers who demanded hearings and were found to be in violation.

(Proposition 36 would complicate the operation of such a system, but would not make it unworkable. For example, signing a false statement to a probation officer about drug use might not count as a drug violation eligible for SACPA sentencing.)

The frustration some judges express with the current situation suggests that they might consider trying that sort of system. Clearly, it would be better to have a policy of reporting some violations and actually abide by that policy than to have a policy of reporting all violations and largely ignore it.

Several of the judges we interviewed attributed their frequent refusal to impose the sanctions proposed by the probation department partly to his frustration about the practice of DPOs withholding reports of missed tests. In their view, this practice usurps the power of the judiciary to decide whether a particular violation warrants a sanction. Imposing the recommended sanction for a subsequent violation would validate this practice.

The POs' discretion about what sanctions to recommend (officially) and about whether and when to report noncompliance (unofficially) generates considerable variation in the treatment of otherwise similar behaviors, depending on which deputy is handling the case. Whether the resulting disparities are justified by better results due to skillful case management is an open question. (In addition, the failure of judges to impose sanctions when POs do recommend them surely reduces whatever influence the deputies would have, and thus the potential benefits of such skillful case management.)

Discretion has another result as well. It creates great uncertainty for any given probationer about the likely results of violating the terms of his probation. One consistent finding from the literature on contingency management is the importance of predictability. Predictability is not merely beneficial as a way to maintain incentives in an economic sense: it also helps give the person being sanctioned a useful element of structure in what may otherwise be a disordered life, and avoids the sense of having been singled out that accompanies discretionary sanctions.

If each violation consistently leads to a sanction, then the cause of the sanction is the violation, and the subject is encouraged to look within himself for the source of the problem. If only some violations are sanctioned, however, then the immediate cause of the sanction is someone else's decision, and the problem is put in an interpersonal context: "Why is he picking on me all the time?" or "Why was she in such a bad mood today?"

By policy, missed tests are all treated as violations without a valid excuse; in practice, they are dealt with as less serious violations than dirty tests. This practice has a number of undesirable consequences.

First, it may be inaccurate in terms of judging which of the non-compliant probationers pose the most serious threats to public safety. There is no published study comparing the drug use or criminal activity of probationers who miss tests with those who test dirty. But other kinds of noncompliance within the criminal justice system — such as failure to appear at trial, or absconding on probation — are associated with very high rates of recidivism. While a dirty test might reflect only a moment of weakness, failing to show up for a test when ordered might easily reflect a contempt for the process.

More troubling, making missed tests in effect less-serious violations than positive tests encourages probationers to game the system. Someone who has been using when his code comes up can

simply miss the test, stop using until the makeup test, give a clean specimen, and hope that the PO will treat the clean specimen as wiping out the missed test. Both managers and deputy POs expressed strong suspicions that such gaming was very common. The high no-show rate seems to support that view.

SAN DIEGO COUNTY

Background

San Diego County has about 20,000 adult probationers at any given time. Of those, 80% (16,000) have court orders to submit to drug testing. All probationers with drug-testing conditions have been required as a condition of probation to waive their Fourth Amendment rights to be free of unreasonable search and seizure; this enables probation and police officers to search probationers anywhere and at any time without a warrant.

The frequency of testing orders and the waiver policy reflect the aggressive approach of the San Diego County Probation Department in making presentence recommendations and the willingness of the county's judges to accept the department's recommendations.

However, the county's probation department lacks the resources to take full advantage of the judges' willingness to impose testing conditions. Like probation departments around the state, it faces workloads that make it impossible to fully enforce all probation conditions on all probationers.

The department has chosen an unusual strategy to deal with this problem: Instead of spreading its resources thinly by assigning each probationer to a deputy PO, San Diego has chosen to concentrate resources on a minority of its clients while putting the rest, about 85% of the total, in a "bank" of virtually unsupervised cases. (Misdemeanor probation cases, for example, are automatically banked.) Cases in the bank are not assigned to individual caseloads; rather, a group of six to seven officers manages the paperwork flow for 3,000–4,000 probationers. For the vast majority of those in the bank, probation is more a legal status than an active program.

Probationers with drug-testing orders who have been assigned to the bank are tested once, at intake. If that test is negative, no further testing is done. A banked probationer who passes the initial screen and then chooses to use illegal drugs, despite the law and a specific judicial order, faces no risk of detection or sanction by the probation department. (A fresh arrest on drug charges could lead to probation-revocation proceedings.)

Thus the programs described below apply only to about 15% of San Diego County adult felony probationers subject to drug-testing orders. However effective those programs are in addressing drug use and other problems among these clients, they leave untouched the large majority of drug-involved offenders in the county—limiting their impact on the total size of the county's drug markets, and on the overall recidivism rate among probationers.

This does not imply that the county's choice in this regard is unwise. Handling relatively few clients thoroughly may do more good than handling a larger number superficially. It suggests,

however, that starving the probation department of the resources that would be needed to administer a more-comprehensive testing program has real costs.

One senior manager told us that the infrequent testing of the banked cases reflected a deliberate decision to reduce the number of violations detected. “If we tested more, we’d catch more. If we caught more, we’d have to do something about it. And we don’t have the bodies to do anything about it. Give me more deputies, and I’ll do more testing.”

The Bank

Three teams of six to seven officers are responsible for managing the roughly 85% of probationers with drug-testing conditions (about 13,600) who are assigned to the bank. Each team also has approximately 5–6 assistants who help with logistics. In contrast with practices elsewhere, this system distributes workload evenly across probation officers and ensures that some backup is available if an individual officer is overwhelmed with work.

As noted, a probationer assigned to the bank who tests clean at intake will not be tested again. A missed or dirty test at that point will result in assignment to the Bank Substance Abuse Team (BSAT). At any given time, this team manages between 75 to 100 probationers. Two officers, each assigned 35 to 50 cases, are responsible for monitoring all probationers in BSAT.

By policy, probationers managed by this team are to be tested 2–3 times per month, but this is a guideline rather than a requirement, and individual POs may vary testing frequency. A probationer who used cocaine, heroin, or methamphetamine on any one occasion would face about one chance in five of being detected at a testing rate of twice per month; three tests per month would raise that to nearly one in three. (Detection probabilities for cannabis, which remains in the system longer, are correspondingly higher.)

Besides the Bank Substance Abuse Team clientele, two other groups of probationers are subject to regular drug testing: those assigned to Level-1 supervision and those in the Probationers In Recovery program.

Level 1

Level-1 probation is intended to manage only probationers who have committed sex or violent offenses. They are monitored closely and tested frequently because the stakes are high for society when these probationers fail to comply with the terms of probation.

By policy, probationers in Level 1 are to be drug-tested 4–8 times per month, depending on the specific caseload, and are subject to surprise searches by the department. Again, these testing frequencies are guidelines, not mandates. Four tests per month would lead to a detection probability of about 40% for any incident of drug use; eight tests per month, appropriately spaced, would leave almost no opportunity for undetected drug use.

Level-1 probationers are divided into six categories:

Family violence/sex offenders: 720 probationers assigned to 18 deputy probation officers. Probationers are tested eight times per month.

Gang-suppression unit: Since very few of the probationers in this program have drug-testing conditions, this unit makes little use of drug testing.

Violent-offender program: 600 probationers assigned to 12 deputy POs. Probationers are tested eight times per month.

Women and their children: 105 probationers who are pregnant and have drug-testing conditions are monitored by three officers. Probationers are tested eight times a month and are held to “zero tolerance” for missed and dirty tests. Officers are required to report every missed and dirty test to the court.

Men and their children: a program intended to monitor probationers who are fathers with a history of drug abuse. At the time of our study 35 probationers were in this program, monitored by one officer. Such probationers are tested 4–6 times per month.

Family-violence project: addresses cases that involve domestic violence, with a goal of family reunification. We found 80 probationers in this program, only about half with drug-testing conditions. Two officers monitor the probationers in this program.

Officers are required to perform risk assessments of all new Level-1 probationers using two standardized assessment tools—the Adult Substance Use Survey and the Level of Service Inventory–Revised—which convert a set of interview answers to a numerical score. After computing the total values from both surveys, officers assign a “protective score” to each probationer. Scores range from 0 to 50, and those with high protective scores are considered greater risks to society. Officers said these probationers are “kept on a short leash” and are tested most frequently.

Senior managers told us that the goal of the program is not only to make certain that probationers comply with the terms of probation, but also to bring down the protective score over time. Officers reported that they are required to assess a probationer’s protective score every six months. When a probationer’s score improves or worsens, officers must identify the factors responsible.

Probationers In Recovery

The Probationers In Recovery program is intended to monitor only those who have both serious drug problems and good prospects for recovery. Offenders assigned to PIR are tested a minimum of four times per month and are required to attend counseling sessions twice a week. Probationers in the program are paired up with each other and are required to participate in-group activities organized by the probation department.

In addition to drug testing, PIR helps probationers get job training and look for work. Participants also attend weekly sessions with counselors to review case progress. Unlike other rehabilitation programs, PIR also organizes social gatherings to teach probationers social skills that they will need to re-enter mainstream society.

Because the program costs about \$10,000 a year per probationer, it accommodates few probationers and remains selective. In order to be eligible for PIR, probationers must have no history

of sex offenses or violent crimes and have no mental illnesses. At the time of our study, 67 probationers were in PIR, assigned to 15 officers.

PIR boasts an impressive success rate; about 85% of the participants are still in recovery after 12 months. Senior managers said they would like to expand this program to serve a larger number of probationers, but limited resources prevent them from doing so. The state funding that once carried the program has been eliminated, and it now depends entirely on foundation grants.

The program selects only probationers who are thought to have the best chances of recovery from drug addiction. This selection artifact makes it difficult to assess the program's actual effectiveness. The potential value of expanding it therefore remains unclear.

Mechanics of Testing

New probationers are court-ordered to report to a specified probation office within 48 hours of release. When those with drug-testing conditions first report to the probation office, they are urine-tested immediately. For this first test, the San Diego County Probation Department relies on a spot-test that allows officers to quickly determine if the test is positive for drugs; if so, the probationer is put into custody without even waiting for a confirmation test. Officers said that the practice of testing new probationers when they report for the first time ensures that probationers take testing seriously.

During orientation, officers explain the terms of probation and review details of the case. Then they give each probationer a testing code (usually a color). Probationers are told to call a specified telephone number every day to check which color groups are "up"; probationers with those colors are required to report for testing that day.

Probation officers in all three counties are responsible for large caseloads; this often results in reduced attention to drug testing. San Diego County has developed an innovative scheme to deal with this problem: it employs and trains part-time student workers to monitor the testing of probationers, and works with nearby universities to offer course credit to the students. Officers are responsible for ordering tests, but student workers administer and monitor them and enter the results into the computer.

Completed tests are sent to a contractor (Norchem) for analysis. Each test costs \$4.85 (including confirmation tests if the screening is positive), and covers cocaine, methamphetamine, cannabis, opiates (including heroin), and PCP.

Unlike Los Angeles, San Diego County routinely tests for cannabis, which accounts for 32% of all positive (dirty) test results. The cost of testing increases with the number of drugs tested, and the administrative strain of processing violations increases with the number of positive tests. Although testing for cannabis helps San Diego to better detect those who are not complying with the terms of probation, it remains an open question whether the county would be better off omitting cannabis and using the same resources to test more people, or to test the same number of people more frequently, for the drugs most directly linked to crime.

When Norchem completes its analysis, it sends the results to the probation department by mail (soon to be replaced by email). When the probation department receives the test results, student workers key them into a central database that can be accessed by all officers. Here again, the county has developed a way to economize on its probation officers' time and effort, offering a stark contrast between San Diego and Los Angeles, where administering tests and entering results is said to take up to 50% of the time of deputy POs with narcotics caseloads.

Test Results and Compliance

Alone among the three counties we studied, San Diego tracks tests ordered as well as test results, allowing evaluators (and, more to the point, managers) to know the precise rate of no-shows.

Norchem data for six months show about 19,500 tests ordered, with about 3,100 no-shows (16%) and another 2,600 testing positive for drugs (about 13% of those called for testing, or 16% of tests actually administered). The total noncompliance rate was thus 29%. About 50% of dirty tests showed methamphetamine; the bulk of the rest were positive for cannabis. This is close to the rates in the other two counties we examined, but cannot be directly compared with the Los Angeles figure, which excludes cannabis. (See Table 3 and Figure 2.)

That does not mean the remaining 71% of probationers tested are consistently obeying the injunction not to use illegal drugs; this is the rate of noncompliance per test, not per probationer. It suggests that even the concentration achieved by the bank system has not succeeded in creating a strong deterrent to drug use among those who are being tested.

The number of tests Norchem reported, including the no-shows, was far below the number that would have been scheduled had the San Diego County Probation Department been following its own testing guidelines. Multiplying the number of probationers in each program by the minimum monthly testing rate set by policy would yield 9,600 tests scheduled each month, compared to the roughly 3,300 tests scheduled per month in the six-month period we studied.

Some of the difference can be accounted for by probationers who are in jail or residential treatment or have absconded and are under supervision only nominally. We were not able to obtain data on the percentage of probationers that are in one of these three categories.

However, senior managers said that part of the discrepancy is the direct result of POs choosing not to test probationers at the recommended frequencies at each level. Probation department officials said that they did not see this as a problem because they trust the judgment of their POs to determine how much testing is needed in each case.

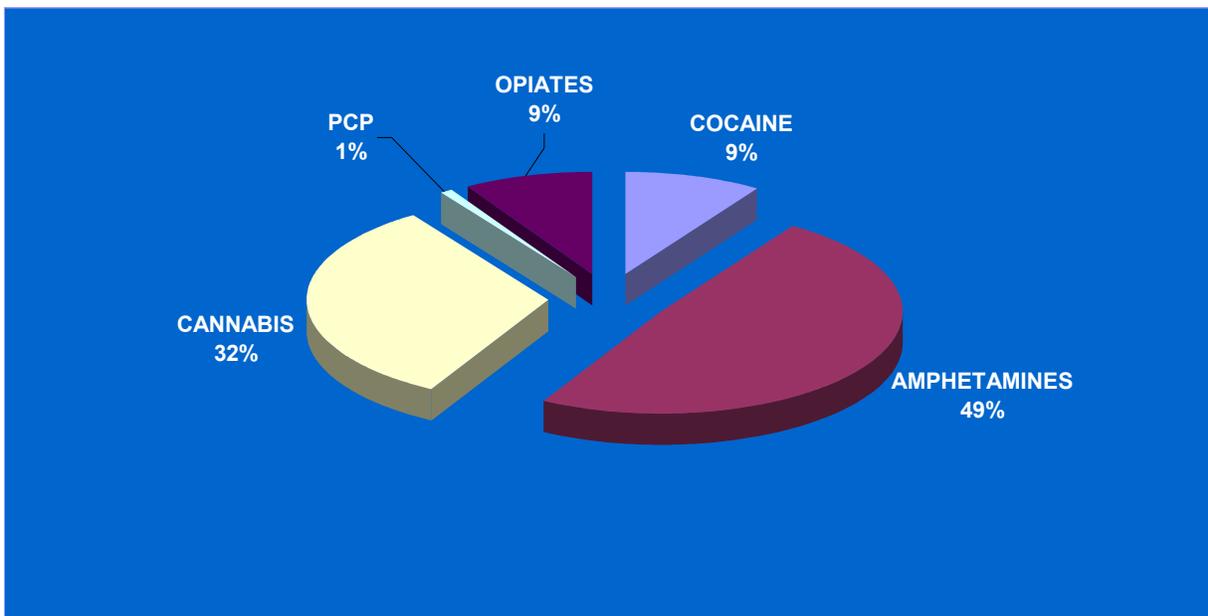
Nonetheless, with actual testing rates much lower than those indicated, the probability that any given incident of illicit drug use is detected is correspondingly smaller. An average of 3,300 tests ordered per month for 2,400 probationers on the various active-testing caseloads implies a rate of less than 1.4 tests per probationer per month, corresponding to a detection probability of no higher than one in seven for any one incident of drug use.

Table 3
Probation Drug Tests in San Diego County

	Number of Tests Ordered	Tests Administered	Positive Tests	Missed Tests	Total Estimated Noncompliance (Missed + Positive Tests)
Number	19,544	16,412	2,588	3,132	5,720
Percent	100	84	13	16	29.3

Actual data are from November 2000–April 2001.

Figure 2
Drug Types and Percents in Positive Tests in San Diego County



Training and Computer Support

San Diego POs whom we interviewed expressed satisfaction with their job training and believed the department provides adequate preparation and resources for effective case management. Aside from employing student workers to assist the deputy POs with testing, the department provides officers with personal computers equipped with preformatted forms (for violation reports) and a searchable database.

Officers said the preformatted forms help facilitate the reporting process. For example, violation report forms include spaces to insert basic information and provide check-boxes on the nature of the violation. Officers seemed very knowledgeable about how to use the database to get the information they needed, and expressed satisfaction with the current system. However, senior managers said that the database system still had room for improvement, and at the time of the

study were negotiating with a contractor to design a program that would enable officers to access data more easily.

Sanctions and Reporting

With the exception of the “women and their children” caseload, the department’s general policy is to refrain from reporting to the court drug-related violations of probation (missed or dirty tests) until the third instance. First and second offenses are dealt with informally, using sanctions within the authority of the probation department: assignment to an outpatient or residential drug treatment programs or mandatory attendance at Narcotics Anonymous or Alcoholics Anonymous meetings (usually for 30, 60, or 90 consecutive days). In addition, the Bank Substance Abuse Team uses increased frequency of testing as a sanction, and sometimes requires probationers to write essays.

The availability of immediate sanctions, which is valuable in any attempt to change behavior, is likely to be especially valuable with populations of substance abusers, who tend to be highly present-oriented. Increasing the range of sanctions available to include community-service hours or day-reporting might improve the performance of the system.

When a probationer produces a third dirty or missed test, the officer assigned to the case must write a report to court detailing the violation, including a recommended sanction: admonishment, custody, additional time on probation, or even state prison. The violation and proposed sanctions are the subject of a full adversarial hearing before the judge.

The department permits POs to exercise their clinical judgment in recommending sanctions in each case, rather than creating a sanctions formula. Senior managers said that although probation officers can recommend a range of sanctions, the department encourages officers to start with the least-severe sanction (referral to outpatient treatment) and work up to the most punitive (state prison).

While this system has the advantage of flexibility, it makes the sanctions process personal rather than impersonal—which can have the unwanted side effect of reinforcing a common attitude among offenders that psychologists call “external locus of control.” This refers to the belief that events affecting a person are due largely to chance and the decisions of others, rather than the person’s own decisions, and is linked to poor outcomes.

Violation cases from the Bank Substance Abuse Team are heard 2–3 weeks after they are reported to the court. However, the Level-1 Probationers In Recovery cases that are reported to the court are heard within 10 days. The response time to violations by high-supervision probationers in San Diego is shorter than that found in Los Angeles or Santa Cruz counties, another reflection of San Diego’s choice to monitor a relatively few probationers thoroughly. Senior probation department managers said that communication and rapport between the department and the court helped establish the understanding that high-supervision cases require quick response. Hearings are swifter now than they were in the past. Whether they can practicably be shortened further is an open question.

Effectively, the San Diego County Probation Department recommendation sets a lower limit on the sanction imposed. According to the deputy probation officers we interviewed, judges very rarely lessen the proposed sanction, and in an estimated 10% to 25% of the cases, they actually increase it. If judges were equally willing to enforce a formulaic sanctioning process, San Diego's probation department would be in a position (not shared by the other two departments we studied) to create predictable sanctions for its probationers, which would likely have a positive effect on their behavior.

Perhaps unsurprisingly, San Diego County Probation Department officers expressed satisfaction with their relationship with the courts, by contrast to the frustration expressed by Los Angeles County probation officers.

SANTA CRUZ COUNTY

Background

The Santa Cruz County Probation Department has an average of 3,500 active adult probation cases at any one time. (A larger number of offenders, mostly misdemeanants, is on "summary," or unsupervised, probation.) About two-thirds of those actively supervised probationers, or roughly 2,250, are on probation for felonies, and the remaining 1,250 for misdemeanors. About 70%, or 2,500 individuals, are subject to drug-testing orders. To manage the 3,500 cases under active supervision, the department has about 30 deputy probation officers, supplemented by an additional 8–10 support staff.

This count includes probationers in jail or residential treatment, who are considered to be part of the active caseload but are not subject to probation department drug testing. An estimated one-third of all active cases are in jail or residential treatment at any one time.²⁰ Those who abscond from probation supervision (which in Santa Cruz often means leaving the county) and have bench warrants issued for their arrest are not considered part of the active caseload, but in practice there is some lag between abscondence and the issuance of a bench warrant, so the number of probationers actually under supervision is somewhat smaller than the numbers would indicate. The Santa Cruz rate of 70% of active cases under testing orders is unusually high. It reflects at least three possible factors: the county's significant drug-abuse problem, the probation department's aggressiveness in recommending testing orders, and the judges' willingness to impose a testing requirement on the basis of the probation department's presentence report.

Santa Cruz, despite its affluence and relatively low rates of crime (violent crime in particular²¹), has significant heroin- and methamphetamine-abuse problems. The department requests drug-testing orders if there is any possible connection between the probation offense and the offen-

²⁰ Jail inmates are not routinely tested for drug use except those who are in a minimum security work-release situation where they go in and out of custody frequently. Probationers who are in residential treatment are generally tested by the rehabilitation program staff.

²¹ The property crime rate in Santa Cruz County is 766.7 per 100,000 residents and the violent crime rate is 457.8 per 100,000. (Statistics are for year-end 2000. Source: California, Office of the Attorney General: <http://www.caag.state.ca.us/cjsc/pubs.htm>.)

der's abuse of any drug, including alcohol. One Santa Cruz DPO reported, "even if a person drove a getaway car in a robbery and had alcohol in his blood, we'd get a testing order."

The contract laboratory that performs urinalysis reports handling just under 10,000 specimens per year from the county, about half of which are from adults and half from juveniles. Dividing roughly 5,000 adult tests per year evenly among all 3,500 adult active probationers would lead to a testing rate of about 1.7 tests per year. Restricting the calculation to those probationers with testing orders would raise the average rate to about two tests per probationer per year; further adjusting for those in jail or in residential treatment would boost that to about three tests per year.

Even ignoring the possibility (discussed below) that some Santa Cruz probationers game the testing system by timing their drug use to periods outside the detection window of the tests, a probationer tested randomly at the rate of three times per year would have about only one chance in 30 of being detected for any given incident of using heroin, cocaine, or methamphetamine. For most drug-involved offenders, that risk would be far too small to be an effective deterrent. Whether for this or other reasons, the Santa Cruz County Probation Department has chosen to be selective in its testing practices; not every probationer with a testing order is in fact tested regularly, and those required to do so undergo testing at varying rates.

None of the counties we studied has a program of regular drug testing for every drug-involved offender. Unlike Los Angeles and San Diego, however, which have classification systems for probationers and target drug-testing rates by offender category, Santa Cruz leaves drug testing almost entirely to the discretion of individual deputy POs.

The POs we interviewed attributed their decisions about whom to test, and how often, to their own judgment about what was appropriate and effective rather than to departmental policies. Both the county's probation managers and the individual POs seem to put great trust in professionalism, clinical judgment, and case management. Drug-testing is understood as being part of the overall relationship between a PO and a probationer, rather than as a mechanical process with externally determined characteristics. To some extent, this merely gives Santa Cruz probation officers, by policy, the discretion that probation officers elsewhere assume in practice, but the actual range of variation seems to be greater in Santa Cruz than we found in the other two counties.

Some probationers are tested once, show up as ordered, submit a clean specimen, and are never tested again, though they remain formally subject to drug testing if a probation officer requires it. Others are tested regularly. (One PO told us his policy was to have probationers schedule their own drug tests on a voluntary basis, but this practice seems to have been limited to that one caseload.) A probationer who has six clean tests in a four-month period can be moved to the "limited-services" caseload (the equivalent of San Diego's bank), under which testing virtually never occurs.

Two of the officers we interviewed suggest that their probationers voluntarily continue to test after they are no longer required to do so. One officer alluded to his reason for choosing this testing method: "I tell them, if they feel that their friends put pressure on them to get high, they

should use me as an excuse. They should say ‘I have to test for my P.O. so I can’t get high,’ and this is often all they need to stay clean.”

All of these practices seem very “touchy-feely,” in keeping with the Santa Cruz stereotype. But there is some evidence that it may be working to some extent, at least in reducing hard-drug use.

Testing Mechanics and Logistics

All probationers with testing orders are required to test at least once. At their initial meeting, the DPO reviews the probationer’s history and informs him or her how often and where the probationer is to report for testing, based on the degree of drug involvement reflected in the probationer’s record and on the PD’s presentencing evaluation. Probationers whose drug use was the primary or “controlling” case resulting in conviction (e.g., possession, being under the influence, or sale of a controlled substance) generally begin by testing at least weekly.

By contrast with the other two counties we studied, Santa Cruz makes very little use of randomized testing. Probationers are not given codes or required to call in nightly to see if they must report for testing the next day. Instead, routine tests are scheduled in advance. This probably sacrifices something by removing a daily reminder of the obligation not to use drugs; it certainly reduces the risk of detection. A surprise test is likely to be scheduled only if a client’s behavior suggests drug use, and even then it is usually simply scheduled for the next regular testing day, rather than done on-the-spot.

At the probation department’s main office on Water Street in Santa Cruz, where about 90% of the drug testing takes place—the other 10% are handled in the South County facility in Watsonville—urinalysis specimens are gathered in the public restrooms off the lobby of the county jail facility.²² Specimen collection is observed by a PO of the same gender as the probationer. Cheating is an issue; as is the case elsewhere, some Santa Cruz probationers are reported as being quite knowledgeable about beating the system.

Santa Cruz, like San Diego, has developed a system to try to minimize the workload impact on POs of the specimen-collection process. Instead of using unsworn personnel, Santa Cruz uses a team of two POs (male and female). Testing is heavily concentrated into two days of the week (Tuesdays and Thursdays); in a two-hour period (from 2:30 to 4:30 p.m.) on those two days, the two POs collect about 80% of a week’s specimens for the entire office.²³ Nonetheless, some probation officers facing heavy caseloads (up to 300 in some instances) are disinclined to test aggressively; as one of them told us, “Testing means work for me.”

The concentration of tests on two days per week and the heavy reliance on scheduled rather than randomized testing create opportunities for sophisticated drug users to game the system by restricting their drug use to low-risk days of the week. Using drugs (other than cannabis or phen-

²² The sentencing court also authorizes deputy probation officers to appear unannounced at the probationers’ residences or workplaces to collect urine specimens for analysis. Our respondents indicated that this was not a frequent occurrence, largely because of caseload size and the logistics of collecting a specimen under conditions that minimize the possibility of adulteration or substitution of the urine specimens. Storage and transportation concerns may make this option even less attractive.

²³ The Watsonville office has a similar process, testing on Thursdays and Fridays.

cyclidine) on Thursday or Friday evening would almost certainly not lead to detection in a test administered on Tuesday at the earliest; even use during the day on Saturday would very likely pass unnoticed, and use later on Saturday might pass unnoticed as well. On the other hand, scheduled testing reduces the burden on probationers, and may help account for the low rate of no-shows.

The very high ratio of detected cannabis use to use of other drugs may reflect, in part, such gaming. Because cannabis remains detectable for up to a month (depending on the amount used), it is far harder for a cannabis user to escape detection by timing their drug use.

Among the three counties we studied, only Santa Cruz routinely tests for the presence of alcohol. In addition to that and cannabis, it also tests for cocaine (including crack), benzodiazepines (the group that includes Valium), opiates (including heroin), amphetamines (including methamphetamine), and barbiturates. Positive results are confirmed by a second chemical analysis only if the probationer continues to deny drug use and asks for verification.

Of the specimens collected, just under 27% are found positive for one or more drugs.²⁴ The predominant drug detected is cannabis, which shows up in almost 20% of all specimens. Fewer than 10% of the specimens collected show the use of any other controlled substance, with cocaine (at just over 3.5%) and benzodiazepines²⁵ (about 2.75%) leading the list. Alcohol, which remains detectable in urine for only a few hours, shows up in 1.25% of specimens.

Although Santa Cruz County doesn't track the rate of no-shows, the POs we interviewed estimated that about 10% of those ordered to appear fail to do so on any given occasion. If about 5,000 specimens per year are taken from adult probationers and the no-show rate is about 10%, then a total of about 5,500 tests per year are ordered (or voluntarily submitted) in Santa Cruz, of which about 550 are no-shows, 1,300 test positive for one or more drugs, and 3,650 are clean. That indicates a total noncompliance rate of about one in three, or about 1,850 total incidents (see Table 4 and Figure 3).

The total rate of positive results (more than one-quarter of those tested) in Santa Cruz is the highest among the three counties we examined (compared to one-fifth in San Diego and about one-seventh in Los Angeles). However, the picture looks very different if we examine only the opiates, amphetamines, and cocaine. Then the positive rate in Santa Cruz drops to 5.6%, compared with 9.7% in Los Angeles and 8.6% in San Diego. Moreover, Santa Cruz reports an unusually low rate of no-shows, at about 10% of tests ordered.

To get a rate of noncompliance that is fully comparable across counties, one needs to exclude cannabis and alcohol (which are not tested in all counties) as well as benzodiazepines, with their unknown rate of excusable use, and focus only on the big-three hard drugs (opiates, ampheta-

²⁴ This figure reflects data from the contract laboratory, blending adult and juvenile test results. The Santa Cruz County Probation Department doesn't attempt to track the rate of positive drug tests among its adult probationers. Since half of the tests are for juveniles rather than adults, the actual adult rates may be higher or lower than those reported here. Given the usual sequence of drug initiations, it seems likely that the actual adult rates might be lower for cannabis and higher for the harder drugs.

²⁵ An unknown proportion of the benzodiazepine positives represent the legitimate use of prescribed medications.

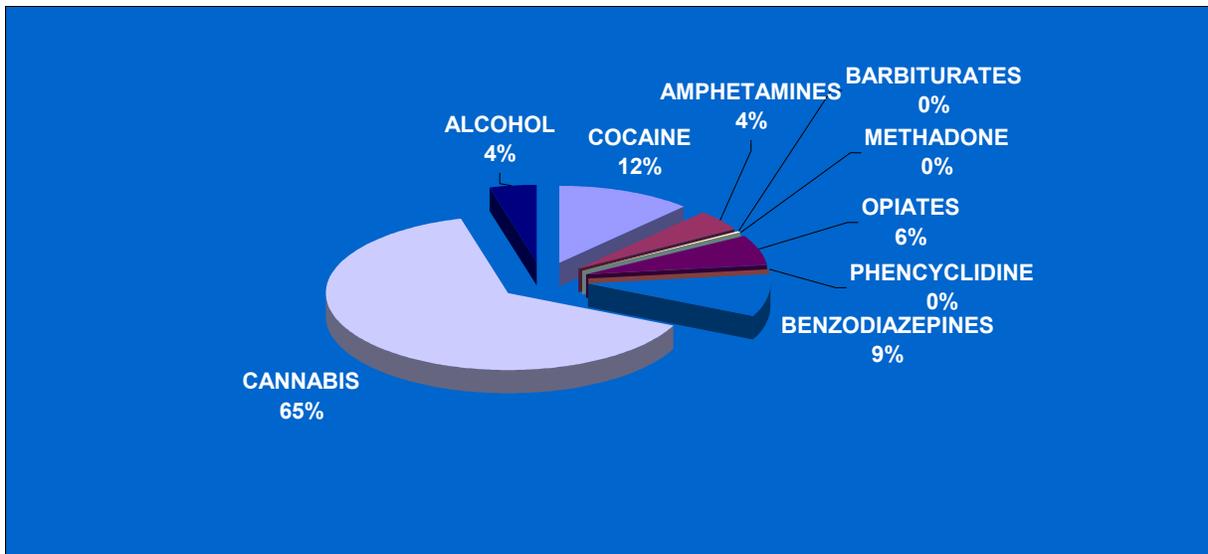
mines, and cocaine), plus the no-shows. This analysis yields a noncompliance rate of 16% for Santa Cruz County, compared with 35% for Los Angeles and 25% for San Diego.

Table 4
Probation Drug Tests in Santa Cruz County

	Estimated Number of Tests Ordered	Actual Tests Administered	Positive Tests	Estimated Number of Missed Tests (Positives x 2.5)	Total Estimated Noncompliance (Missed + Positive Tests)
Number	5,500	4,950	1,300	550	1,850
Percent	100	90	24	10	34

Annualized estimates based on data for January 2, 2001–March 31, 2001.

Figure 3
Drug Types and Percents in Positive Tests in Santa Cruz County



Because of the enormous heterogeneity among the counties, these results do not by themselves demonstrate that Santa Cruz’s program is preferable to those of the other two counties. Moreover, as noted below (under the heading “A Success Story?”), the figures themselves are open to some doubt.

Consequences of Noncompliance

As with decisions about whom to test and how often, Santa Cruz leaves decisions about responses to missed or positive tests largely to the discretion of individual POs, though each violation report to the court must be reviewed by a supervisor prior to submission. None of the POs

we interviewed regarded reporting a violation to the court as the first line of response, except for high-risk probationers on intensive-supervision caseloads.

In practice, though not by written policy, a positive finding for cannabis is not regarded nearly as seriously as a positive finding for other drugs. This is reflected in the pattern of confirmation tests: only four of the 488 cannabis positives in our study period led to a confirmation test, while all of the amphetamine positives and cocaine positives did so, suggesting that probationers are not very eager to try to clear themselves of the imputation of cannabis use.

The lab conducts confirmation testing and testing for less-common drugs of abuse only upon request and at additional cost to the county. Confirming tests for alcohol were done for all 27 positive tests in the study period and did, in fact, confirm the presence of alcohol. Confirmation testing for benzodiazepines was conducted only about one-third of the detections. This low rate of further testing may reflect the DPOs' judgment that such use was permissible under a doctor's prescription.

In any case, POs are much more likely to respond to a missed or positive test by summoning the probationer to the DPO's office, to meet, and encouraging him or her to be frank about the existence of a drug problem. The result might be the probationer's agreement to enter treatment or attend 12-step program meetings or the officer's decision to increase the probationer's testing frequency.

As in Los Angeles (but in contrast with San Diego), in Santa Cruz producing a report for the court is a largely nonautomated and consequently labor-intensive process. As everywhere, the delay between the report and a hearing tends to be measured in weeks. Again, as in Los Angeles but not San Diego, the courts do not reliably back up the POs' judgments about an appropriate sanction.

Santa Cruz County has no central system for tracking the number of instances of noncompliance with drug testing (missed appointments or dirty specimens), or the rate at which those incidents—each of them a violation of probation terms—are reported to the court. Unlike the case in Los Angeles, this does not reflect any reluctance among DPOs to enter data into the system. Both DPOs and their managers reported, and our spot-checks confirmed, that the data are there, but the county's proprietary software system is unable to extract information from the case files to produce statistical reports. Probation department management considers this to be a significant organizational deficiency.

The labor-intensity of the report-generation process can also be laid at the door of the software system. Although most of the required data are in the computer, each report must be produced virtually from scratch because the system lacks templates, stock paragraphs, or the capacity to automatically fill in items such as the probationer's name, address, date of birth, case number, sentencing offense, test dates, and test results. The DPOs' word-processing programs have templates that allow for cut-and-paste operations, but the system's data-processing limitations are significant.

Probation department managers estimated that the department makes about 125 monthly court reports for all adult probation violations, of which one-third to one-half represent drug-test non-compliance, or about 600 reported drug violations per year. In contrast, we estimated approximately 1,850 incidents of noncompliance (550 no-shows, 1,000 positive findings for cannabis only, 300 positive findings for other drugs). Assuming that the cannabis positives do not lead to court reports, the rate of reporting for other drug violations (no-shows plus positive results) would be about 70%.

In addition, to some extent, the process of meetings between the POs and noncompliant probationers can result in outcomes that amount to sanctions, such as increased test frequency or mandated treatment or verified attendance at meetings of 12-step programs. This suggests that Santa Cruz is doing a fairly thorough job of responding to the relatively few hard-drug violations it does detect.

The tendency toward flexibility and the attempt to engage probationers in a process of recovery and reintegration have their limits. Some DPOs assess some of their probationers as chronic non-compliants, whose behavior poses a danger to themselves and others, and their violations are much less likely to be treated leniently. As one DPO told us, “Some of my people I test to keep clean; others, I’m trying to catch.”

A Success Story?

To the extent that the reported pattern of no-shows and positive test results for the three most common hard drugs (cocaine, heroin, and methamphetamine) is a valid indicator of actual drug use among Santa Cruz County probationers, the county’s highly discretion-laden testing and sanctions process, and its reliance on a quasi-therapeutic relationship between probationers and their POs, must be counted as at least a partial success. But this tentative finding must be qualified in several ways.

First and most obviously, the process does not apply to cannabis. Santa Cruz probationers test positive for cannabis at a rate of nearly 20%—three times as high as those in San Diego. (Los Angeles does not test for cannabis.) Perhaps this should be considered tolerable, because cannabis use has not been shown to correlate with nondrug-related recidivism nearly as convincingly as the use of cocaine, heroin, or methamphetamine.

That raises the question of why the department tests for cannabis use if it does not intend to take action on the results. An argument could be made that testing, even in the absence of sanctions, provides some deterrence, and that it is better than nothing if cannabis test results enable the DPOs to try to cajole their clients into moderation, if not abstinence. The very high rate of detected cannabis use suggests that this process is working at best only moderately well, and in the abstract it seems like a bad idea to keep detecting violations without doing anything about them. Cannabis use might be a candidate for a program of administrative sanctions (such as community-service hours) not requiring a court hearing. At a minimum, the Santa Cruz County Probation Department ought to be able to articulate why it continues to test for a drug whose use it rarely sanctions.

Second, the apparently low rate of no-shows reflects an administrative guesstimate, not an actual count. If the real rate were significantly higher, that would cloud the picture. For this strategic purpose, as well as for immediately operational reasons, the computer system ought to be reconfigured to allow the extraction of basic statistical data from the case files.

Third, the mixture of juvenile and adult test results probably artificially reduces our estimate of hard-drug use among Santa Cruz probationers, even as it probably inflates the estimate for cannabis.

Fourth, and perhaps most troubling, the Santa Cruz testing system is simply too easy for a sophisticated drug user to game. The practice of scheduling almost all tests in advance, and concentrating them on two days of the week (not including Sunday or Monday), allows virtually unlimited undetected occasional use of most drugs.

The high ratio of cannabis positives to all other positives reflects in part the prevalence of the drug, its relatively long detection window, the lack of deterrence due to the lack of sanctioning for cannabis use, and, very likely, the capacity of users of other drugs to avoid detection by timing their use.

At first glance, the frequency and scheduling of drug testing, and the frequency of sanctions for noncompliance, do not appear likely to create enough deterrent effect to substantially reduce drug use in an offender population. If the Santa Cruz program is working, it must be due at least in part to the clinical skills of its deputy probation officers. That possibility cannot be ruled out, but without further evidence it would be rash to assume that the county's probation department has produced such a surprising ratio of effect to cause.

The probation department has the capacity to determine how much of its apparent success is real, and how much is mere illusion. If it were to take a random sample of its entire population of probationers subject to testing, including those on the limited-service caseload, and subject that sample to unannounced testing (by some combination of call-ins and home or workplace visits), the resulting noncompliance rate would be a valid estimator of the actual behavior of the department's clientele.

For maximum validity, it would be necessary to test the entire sample within a day or two, to minimize the deterrent effect that might result as probationers hear from others that a test blitz is in progress. There is no need for scientific precision, however, so that sample need not be very large: 200 would be generous, and 100 more than adequate, to say whether the true rate of non-compliance with respect to hard-drug use is really as low as it seems.

CONCLUSIONS AND RECOMMENDATIONS

At any one time, California has more than twice as many offenders on probation as in prison. Release on probation involves a nominal obligation to refrain from further illegal activity, including drug possession. Citizens are entitled to expect those obligations to be fulfilled. If they can be flouted with impunity, probation becomes a less attractive alternative to prison, which in-

creases the pressure on judges and legislators to rely primarily on incarceration to control crime and punish offenders. Improving probation supervision, which costs a tiny fraction of the cost of incarceration, is a key to reducing crime while reducing the costs of imprisonment.

Many probationers are frequent users of illicit drugs. Their drug use contributes both to recidivism and to the continued operation of illicit markets, with all their associated costs: violence, neighborhood disruption, the enticement of juveniles into criminal activity, and the financial and other burdens of drug-law enforcement and imprisonment. Reducing illicit drug use among probationers, especially use of such hard drugs as cocaine, methamphetamine, and heroin, is therefore essential to curbing recidivism, shrinking illicit drug markets, and further lowering crime rates.

Drug-testing of those under probation supervision, with appropriate sanctions for violations, is potentially a highly useful tool for better management of the offender population. The elements of such a program are frequent-enough testing to make undetected drug use unlikely, swift and predictable sanctions, and the shortest possible time lags between drug use, its detection, the assignment of a sanction, and its actual imposition.

In examining drug testing in three California counties (Los Angeles, San Diego, and Santa Cruz) just prior to the effective date of Proposition 36, we found that none of those counties had a program that could reasonably be expected to make a major impact in the overall problem of illicit drug use among probationers.

Only a minority of drug-involved offenders is subject to more-than-occasional testing. Even among that minority, only a relative few are tested frequently enough to create a convincing deterrent to continued drug use. Test results are delayed rather than immediate, and sanctioning is delayed and unpredictable, especially when the violation involves a missed test appointment rather than detected drug use. Partly as a result, noncompliance rates are high in each of the counties: more than 30% of orders to appear for drug testing are either ignored entirely or result in a finding of drug use.

Part of the problem is that drug-testing is insufficiently frequent. Testing can be an effective means of reducing illicit drug use among probationers, but it works best with frequent tests and reliable sanctions. Weekly testing generates about a 35% chance of detecting any given incident of drug use; twice-weekly testing brings that figure up to more than 80%. In the offices we studied, only a tiny proportion of the probationers—even among the minority subject to any regular testing at all—are tested as often as once a week. A more typical rate is once a month, which means that a probationer contemplating use of a drug (other than cannabis) faces only one chance in ten of being detected.

Inadequacies in resources and authority are largely responsible for this missed opportunity. The workloads of the three probation departments we studied are all much too heavy to allow them to do the job right, and they lack both authority and capacity to institute a credible program of administrative sanctions that could be applied without going back to court each time.

In the absence of such a program, the paperwork burden associated with reporting violations to the courts leads to large numbers of detected violations going entirely unpunished, which discourages the aggressive use of testing and sanctions to control drug abuse and crime. As one senior probation manager commented, “If we tested more, we’d find more [violations]. If we found more, we’d have to do something about it. And we don’t have the bodies to do anything about it. So we don’t test.”

Infrequent testing and lax sanctioning make offenders confident that they can continue using drugs with impunity. In the long-term, result of a well-functioning testing-and-sanctions program could result in sufficiently reduced drug use to keep the number of detected violations small enough to manage. The same logic applies to failures to appear for testing. Treating no-shows less severely than positive tests encourages savvy probationers to game the system by not showing up for testing if called when they have been using drugs.

Caseloads and Resources

The departments we studied have adapted to the imbalance between caseloads and resources in three ways: reducing the number of probationers who are actually tested regularly, keeping their testing frequencies below the optimum, and not reporting all violations to the court. In effect, except for clients assigned to special caseloads, the three departments seem to have largely resigned themselves to managing the paper flow, rather than addressing the challenge of inducing their clients to lead law-abiding lives (including desistance from the use of illicit drugs).

The limited resources of probation departments would be better used if they were more highly concentrated on a smaller number of probationers. There remains uncertainty about how frequent testing has to be, and how swift and reliable sanctioning has to be, to dramatically reduce violation rates. However steep those program requirements might be, they could be met for at least some number of probationers. Once a credible program had been built, and the violation rate for those subject to it had come down, it could be expanded at relatively modest cost. Testing itself is fairly cheap, in time and resources, compared to the cost of actually sanctioning violations.

Where the courts reliably confirm the sanctions recommendations made by the probation department, as is now the case in San Diego, it should be possible to institute a program of administrative sanctions without any new legislative authority. Probationers admitting to, or detected in, violations could be given the choice between accepting an administrative sanction (such as hours of community service, or a period of day-reporting) or demanding a court hearing that would lead, if the violation were proven, to more severe sanctions (perhaps two days’ confinement). Sanctions do not have to be severe to change behavior, as long as they are swift and certain.

Within current constraints, some departments are much better than others at making the testing and sanctions process easy on overworked deputy probation officers. By employing students from nearby universities to perform the mechanical tasks of administering tests and entering data into the computer system, San Diego reserves scarce and expensive time for the tasks that only DPOs can do. In addition, the county also has largely automated the process of generating court reports. Since almost all of the information that goes into such reports already exists (or should exist) on computer, printing them out in the requisite form can and should require very little time

and effort for probation officers. A logical next step would be integrating the system so that an electronically generated report could be submitted to the court the same way.

Los Angeles has instituted another innovation that could be exploited more fully there and copied elsewhere as well. Before a specimen is taken, each probationer is asked either to admit to having used illicit drugs recently or sign a form denying such use. An ideal monitoring system might include a telephonic, automated version of that process, with each probationer calling in on designated days twice each week to either acknowledge or deny recent drug use, then facing some probability, if use is denied, of being called in for an actual test.

If the sanctions system were arranged so that the penalty for admitting drug use were less than the penalty for falsely denying it (or for failing to call in at all), the deterrent power of any given number of tests could be multiplied. A possible further refinement would have a second level of randomization: the admit-or-deny process could be repeated before the specimen is actually taken, with randomization in which specimens were actually analyzed.

All three counties currently send specimens to off-site commercial laboratories for analysis, building in a delay of several days between testing and getting results, and requiring probationers who have tested positive to return to face sanctioning. An alternative would be in-house testing, using on-site analytical machines or any of several testing kits that produce on-the-spot results. Specimens would still have to be sent out for confirmatory analysis if a probationer continued to deny drug use in the face of a positive test, but false positives are relatively rare and incentives can be created to discourage unjustified demands for confirmation.

Because drug-involved offenders characteristically put a great premium on the present compared to the near future, shrinking the time from violation to detection (and from detection to sanctioning) is essential to an effective program. In the absence of administrative sanctions, this would require working with the courts to speed the hearing process.

Ideally, the sanctions schedule for violations could be built into the judge's original testing order, leaving the hearing to deal only with the factual question of whether a violation occurred. (Proposition 36 would complicate this approach but need not make it unworkable; in particular, the courts might find that making a false statement about past drug use constituted a nondrug violation not subject to the Prop. 36 process.)

Under current resource constraints, none of the departments we studied could possibly provide adequate testing and sanctions capacity to deal with the current level of illicit drug use among all of their probationers. Thus, adding resources is essential, and there is very good reason to think that doing so would be a good investment in public safety, and highly cost-effective compared to continuing to add to the prison population.

Adding more resources is not a panacea, however. By concentrating existing resources on a small group of probationers, streamlining processes, and using current technologies, any of the departments we studied could create a credible testing-and-sanctions program for at least some of its clients. None has chosen to do so, in effect tolerating what seem to us to be unacceptably high rates of noncompliance. None of the senior officials we interviewed expressed a sense that

the current situation is out of control or any determination to make major changes. This lack of active dissatisfaction may be the greatest barrier to change. The first step in taking advantage of the potential of probation to shrink drug use (and with it recidivism) is to notice that the potential exists, and the system has not been using it.

Recommendations

1. Add the resources and create the processes needed to create an effective program of frequent drug testing and consistent sanctioning for drug-using offenders on probation. This recommendation would entail:
 - ▶ Probation staffing
 - ▶ Computer support
 - ▶ Sanctioning by formula
 - ▶ Swift, consistent judicial processing or authority for administrative sanctions
 - ▶ Creating sanctions capacity other than jail (community service, day reporting, specialized low-security confinement facilities)
 - ▶ Warrant-service capacity
2. Concentrate existing resources as needed to create a credible program, even if only for a small part of the caseload, rather than spreading resources so thinly as to lose credibility.
3. Economize on the time of deputy probation officers in administering drug tests, entering data, and writing reports by having other, lower-salaried, employees perform these tasks.
4. Automate the process of reporting drug-test violations to the court.
5. Commit to imposing some nontrivial sanction (community-service hours, day reporting, or very brief confinement) for every failure to appear or instance of detected drug use.
6. Create data systems that enable probation supervisors to verify that tests are ordered as planned and that violations are handled according to policy.
7. Reduce turnaround time for test results by converting from contract laboratories to on-the-spot testing.
8. Consider dropping cannabis from the list of drugs for which probationers are routinely tested.