



AMERICAN UNIVERSITY
WASHINGTON, DC

JUSTICE PROGRAMS OFFICE

SCHOOL OF PUBLIC AFFAIRS

FREQUENTLY ASKED QUESTIONS SERIES: Therapeutic Responses to Positive Drug Tests

Subject: **Therapeutic Responses To Positive Drug Tests**
From: BJA Drug Court Technical Assistance Project
Date: February 1, 2013

QUESTION:

How Should Drug Courts Respond Therapeutically to Positive Drug Tests of Participants?

We are finding that a common response by a number of drug courts to a positive drug test from a drug court participant is to impose an automatic jail sanction without any inquiry into the individual situation(s) of the participant, treatment services he/she is receiving/needing, etc. The jail time seems to range between a weekend to 30 days but we have found at least one program that incarcerates participants for up to 120 days.

This practice is inconsistent with research findings regarding evidence based responses to drug use by individuals in drug treatment programs, as further referenced below.

Recognizing that addiction – including relapse and/or continued drug use – is a complex disease with no easy standard responses that can be applied universally, we have attempted to provide reference to a few resources that may guide programs in determining how to respond therapeutically – rather than punitively -- to positive drug tests by participants.¹ Drug tests should be considered as a tool for measuring the effectiveness of the treatment services being provided. Where the individual tests positive for drug use, the positive drug test result should be a trigger for determining the circumstances leading up to the positive test and whether an adjustment/enhancement, etc., in treatment services is warranted. While there may be situations in which a jail sanction is deemed appropriate, these should be determined after inquiry into the circumstances of the drug use and a therapeutic response is deemed inappropriate. Use of automatic sanctions or use of lengthy jail terms without access to treatment can be counter-therapeutic, making it important that alternative, more flexible approaches be considered that promote continuity of involvement in drug court/substance abuse treatment.

The following excerpt from NIDA's Principles of Drug Abuse Treatment for Criminal Justice Populations sets the tone for such a response:

¹ Roger Peters, Phd., Professor, Department of Mental Health Law and Policy. University of South Florida

Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide. National Institute on Drug Abuse. (page 22). <http://www.drugabuse.gov/publications/principles-drug-abuse-treatment-criminal-justice-populations>

“Drug testing can determine when an individual is having difficulties with recovery. The first response to drug use detected through urinalysis should be a clinical one—for example, increasing treatment intensity or switching to an alternative treatment. This often requires coordination between the criminal justice staff and the treatment provider. (Note that more intensive treatment should not be considered a sanction, but rather a routine progression in health care practice when a treatment appears less effective than expected.)”

SUPPORTING EXCERPTS FROM OTHER REFERENCES:

Principles of Drug Addiction Treatment: A Research-Based Guide. National Institute on Drug Abuse
<http://www.drugabuse.gov/publications/principles-drug-addiction-treatment>

“8. An individual’s treatment and services plan must be assessed continually and modified as necessary to ensure that it meets his or her changing needs: A patient may require varying combination of services and treatment components during the course of treatment and recovery. In addition to counseling or psychotherapy, a patient may require medication, medical services, family therapy, parenting instruction, vocational rehabilitation, and/or social and legal services. For many patients, a continuing care approach provides the best results, with the treatment intensity varying according to a person’s changing needs.” (p. 4)

“12. Drug use during treatment must be monitored continuously, as lapses during treatment do occur: Knowing their drug use is being monitored can be a powerful incentive for patients and can help them withstand urges to use drugs. Monitoring also provides an early indication of a return to drug use, signaling a possible need to adjust an individual’s treatment plan to better meet his or her needs.” (p. 5)

“Research has shown that long-term drug abuse results in changes in the brain that persist long after a person stops using drugs. These drug-induced changes in brain function can have many behavioral consequences, including an inability to exert control over the impulse to use drugs despite adverse consequences—the defining characteristic of addiction. Understanding that addiction has such a fundamental biological component may help explain the difficulty of achieving and maintaining abstinence without treatment...Nevertheless, research indicates that active participation in treatment is an essential component for good outcomes and can benefit even the most severely addicted individuals.” (p. 7)

“Unfortunately, when relapse occurs may deem treatment a failure. This is not the case: successful treatment for addiction typically requires continual evaluation and modification as appropriate, similar to the approach taken for other chronic diseases...For the addicted patient, lapses to drug abuse do not indicate failure—rather; they signify that treatment needs to be reinstated or adjusted, or that alternate treatment is needed” (p. 12)

Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide
National Institute on Drug Abuse
<http://www.drugabuse.gov/publications/principles-drug-abuse-treatment-criminal-justice-populations>

“6. Drug use during treatment should be carefully monitored:...Monitoring drug use through urinalysis or other objective methods, as part of treatment or criminal justice supervision, provides a basis for assessing and providing feedback on the participant’s treatment progress. It also provides opportunities to intervene

to change unconstructive behavior—determining rewards and sanctions to facilitate change, and modifying treatment plans according to progress.” (p.2)

“10. A balance of rewards and sanctions encourages prosocial behavior and treatment participation: When providing correctional supervision of individuals participating in drug abuse treatment, it is important to reinforce positive behavior. Nonmonetary “social reinforcers,” such as recognition for progress or sincere effort, can be effective, as can graduated sanctions that are consistent, predictable, and clear responses to noncompliant behavior. Generally, less punitive responses are used for early and less serious noncompliance, with increasingly severe sanctions issuing from continued problem behavior. Rewards and sanctions are most likely to have the desired effect when they are perceived as fair and when they swiftly follow the targeted behavior.” (p. 4)

“Graduated sanctions, which invoke less punitive responses for early and less serious noncompliance and increasingly severe sanctions for more serious or continuing problems, can be an effective tool in conjunction with drug testing. The effective use of graduated sanctions involves consistent, predictable, and clear responses to noncompliant behavior.” (p. 22)

“Drug testing can determine when an individual is having difficulties with recovery. The first response to drug use detected through urinalysis should be a clinical one—for example, increasing treatment intensity or switching to an alternative treatment. This often requires coordination between the criminal justice staff and the treatment provider. (Note that more intensive treatment should not be considered a sanction, but rather a routine progression in health care practice when a treatment appears less effective than expected.)” (p. 22)

Quality Improvements for Drug Courts: Evidence-Based Practices
Monograph Series 9

National Drug Court Institute

http://www.ndci.org/sites/default/files/nadcp/Mono9.QualityImprovement%20new_0.pdf

“Clients are most likely to respond well to a sanction if they feel they (1) had a fair opportunity to voice their side of the story, (2) were treated in an equivalent manner to similar people in similar circumstances, and (3) were accorded respect and dignity throughout the process. When these factors are absent, behavior fails to improve and clients may sabotage their own treatment goals” (p. 112)

The Drug Court Judicial Bench Book

Edited by Douglas B. Marlowe, J.D., Ph.D. and Judge William G. Meyer (Ret.)

National Drug Court Institute

http://www.ndci.org/sites/default/files/nadcp/14146_NDCI_Benchbook_v6.pdf

“The imposition of sanctions can be traumatic for clients and can even be disturbing for court professionals with vested interests in their clients’ success, particularly if there are concerns about the validity of the test results. Doubts regarding the accuracy and reliability of drug-testing procedures can exacerbate those concerns over participant punishment. The confirmation of positive test results provides a large measure of confidence to the court’s decision-making process and allows the judiciary to sanction clients without fear of wrongful or inappropriate penalties.” (p.124)

Peters, R.H., & Osher, F.C. (2004)

Co-occurring Disorders And Specialty Courts. Delmar N.Y

The National GAINS Center.

“Incarceration should be used sparingly as a specialty court sanction for participants with co-occurring disorders. Unless there are major public safety risks present, these participants should be incarcerated for only brief periods, and should be rapidly involved in jail mental health and other related services to insure adequate continuity of medication and to address other treatment needs.” (p. 23.)

We welcome any additional comments or perspective on this issue.

Bureau of Justice Assistance (BJA) Drug Court Clearinghouse/Technical Assistance Project
Justice Programs Office, School of Public Affairs
American University
4400 Massachusetts Avenue NW, Brandywine, Suite 100
Washington D.C. 20016-8159
Tel: 202/885-2875 Fax: 202/885-2885
e-mail: justice@american.edu Web: www.american.edu/justice