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A P P E N D I X T O
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before

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

SENATE BILL 2565

(Permits local governments to establish drug test policies
for police and firemen)

SENATE BILL 2826

(Recognizes employers' rights to administer drug tests and
authorizes Commissioner of Health to set test standards)

ASSEMBLY BILL 2850 (ACS)

(Establishes uniform standards and ground rules for employee
drug tests and makes an appropriation)

April 9, 1987
Freeholder Meeting Room
Union County Administration Building
Elizabeth, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Raymond Lesniak, Chairman
Senator Christopher J. Jackman, Vice Chairman
Senator Edward T. O'Connor, Jr.
Senator Gerald Cardinale
Senator Donald T. DiFrancesco

New Jersey State Library

ALSO PRESENT:

Dale C. Davis, Jr.
Office of Legislative Services
Aide, Senate Labor, Industry and Professions Committee

Jaci S. Goldrosen
Office of Legislative Services
Deputy Legislative Counsel

* * * * *

Hearing Recorded and Transcribed by
Office of Legislative Services
Public Information Office
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Testimony by the New Jersey
Industrial Union Council, AFL-CIO

by: Thomas M. Fricano, Secretary-Treasurer

My name is Thomas M. Fricano and I am appearing here today on behalf of the N.J. Industrial Union Council, AFL-CIO, of which I am Secretary-Treasurer, and Archer Cole, President, who is out of state on a long-standing job assignment.

Accompanying me is Rick Engler, Assistant to the IUC President.

In addition to my IUC officership, I am Assistant Director of Region 9 of the United Auto Workers, AFL-CIO. Archer Cole is also Director of Organization for the International Union of Electronics and Electrical Workers.

So, our views on drug testing have been shaped by intensive discussion and convention decision of our International Unions, as well as by the National AFL-CIO guidelines adopted less than a year ago, following great deliberation among its 100 affiliated organizations.

In New Jersey, IUC affiliates represent the views of over 200,000 industrial and public sector employees whose opinions have been solicited over a period of months and whose Unions are unanimously opposed to A-2850, the Drug Testing Bill, which passed the Assembly by a single vote.

We of the IUC do not understand why the New Jersey Assembly had to rush to be Number One in seeking to impose drug testing on our more than 3.5 million working men and women, when no other industrial state has moved as fast or as far as ours.

From the President of the U.S. to Congress to the Courts, to our communities and families, to the colleges and schools, and to the entertainment and sports world, the problem of drugs has proved to be extremely complex and controversial, with no clear direction or solutions emerging.

Yet, the New Jersey Assembly has taken on itself to enact simplistic and flawed solutions in A-2850, which violate the principles of practically every Union in the United States in regard to substance abuse.

We believe that A-2850 should be rejected by the New Jersey Senate. We believe that the Senate should undertake a thorough study of the issue of drug testing in the workplace.

The IUC would be more than willing to turn over to a Senate Study Commission the findings and experiences of numerous Unions which have dealt with alcohol and drug abuse, not in theory, but right on the job, where employee assistance programs have evolved in industry after industry.

We will turn over to such a New Jersey Senate Commission the report of "The Commission to Examine Chemical Testing of Employees" in the State of Maine, and whose findings resulted in the proposed passage of legislation prohibiting "substance abuse testing in the workplace."

As for A-2850, it is flawed in a multitude of ways which violate the rights of New Jerseyans as U.S. citizens, as working people, and as Union Members.

A-2850 permits employers to conduct random and routine drug tests on the vast majority of employees who have never used drugs.

Under A-2850, Article 5, random and routine testing can take place whenever the employer claims to have a "compelling interest" to make such tests and with the decision of what constitutes a "compelling interest" left entirely to the employer!

Random and routine testing, under A-2850, is also permitted in the following five circumstances:

- If the test is conducted as part of an investigation of employees involved in an accident, although the preponderance of industrial accidents have nothing to do with drug use.
- If the test is conducted as part of an Employee Assistance Program, although practically every EAP program adopted by

managements and unions do not require testing but stress rehabilitation and employee counselling to enable the worker to return to the job drug free.

- If the test is conducted as part of an employee medical examination required by the employer. This means that an employee returning to work after breaking his arm would be subject to drug testing, although such a test would be totally irrelevant to the injury.
- If the test involves individuals in high risk occupations. This will lead to endless litigation as to what is high risk, even though the Department of Labor is given the responsibility of drawing up a list of such high risk occupations. Furthermore, "high risk" has been pre-empted by Federal Law in transportation and nuclear industries and by State Law for Law Enforcement Personnel.
- If the test is conducted in accordance with the terms of the collective bargaining agreements which permit private employers to administer random and routine drug tests, a provision which will give employers the opportunity in negotiations with the Union to press for demands for such testing with no safeguards whatsoever.

A-2850 permits employers to discharge at will employees who test positive, which proves that its outlook is punitive rather than corrective.

A-2850 denies employees in the private sector the right to a program of detoxification, rehabilitation and counselling, which has been at the foundation of Employee Assistance Programs in operation in numerous industries and unions.

A-2850 falls short in providing proper confidentiality which is the key to employee cooperation, crucial to the success of attacking substance abuse on the job, whether involving alcohol or drugs. In this connection, it is noteworthy that A-2850 excludes our collective bargaining agents any role in assisting the individual employee in the entire test procedure, to reinforce the employee in his need for confidentiality, as well as support.

A-2850 allows employers to pressure Unions to accept "drug tests on any basis" which opens the door to management to make wage and benefit gains contingent upon the acceptance of punitive drug testing provisions.

A-2850 has no appropriation of funds for education on substance abuse in the workplace, when it is universally accepted that to head-off drug or alcohol dependency we must reach people before they fall prey and become users, which requires the kind of persistent educational instruction, which has been utilized in regard to cigarette smoking.

Speaking about education, it is appropriate to note that President Reagan, who, with great fanfare, went before the American people on the problem of drugs in the U.S. a year ago, has submitted his 1988 budget to Congress with a reduction of \$900 million to combat drugs, including \$200 million for education on drug abuse!

In calling for rejection of A-2850 and the establishment of a Senate Study Commission, the IUC submits the following statement of principles:

"It is recognized throughout the nation that to deal realistically and effectively with the problem of illegal drug use it is necessary to expend efforts and resources in the direction of education and rehabilitation, in order to discourage the use of drugs, rehabilitate those who are drug users and, in the workplace, seek to keep employees drug-free and gainfully employed."

Any program for drug testing must be non-punitive and is to be implemented only when there is probable cause that an employee's job performance is being impaired by the use of an illegal substance. Such a program shall involve all levels of management.

Such a program shall eliminate random and routine testing in the workplace, which violates citizens' rights and shall establish the role of collective bargaining in any drug testing program where Union representation exists, including the right of Unions and Management to ban drug testing in favor of mutually agreed on Employee Assistance Programs, whose purpose it shall be to educate and rehabilitate and keep employees productive and self-supporting.

What good does it do to enact legislation whose end product it is to discharge workers, to abandon employees, many of them in the infancy of their work careers, leaving them without jobs, with destructive references and with little outlook for future employment. We do not need additional welfare recipients and broken lives.

We need an approach to substance abuse which will help solve societal problems. We must be compassionate and deliberate in our solutions and not act out of frustration, panic or political pressure.

AC:mr

April 6, 1987

WHAT'S WRONG WITH ASSEMBLY BILL 2850 - THE PREEMPLOYMENT AND
EMPLOYMENT DRUG TESTING STANDARDS ACT

On December 8, 1986 the New Jersey Assembly passed Bill 2850 "The Preemployment and Employment Drug Testing Standards Act." It passed by a bare one-vote margin. It currently is pending action in the New Jersey Senate Labor Committee.

The Industrial Union Council, AFL-CIO, representing over 200,000 public and private sector workers, urges you to read A-2850 and make your own judgements. Copies are available from the IUC, 16 Commerce Drive, Cranford, N.J. 07016 (201) 272-4200.

The IUC Task Force on Workplace Drug Testing has carefully analyzed this bill, drawing on criteria set forth by the National AFL-CIO and International unions such as UAW, OCAW, CWA, IUE, SEIU, the Operating Engineers, etc.

Here is our analysis of A-2850 as of March 2, 1987:

The intent of A-2850 is not unreasonable. Since drug testing is now widespread, this bill seeks to regulate the testing. Positive elements of the bill include its requirements for a written employer drug testing program, a confirmatory test after an initial drug screen, and the opportunity for rehabilitation for public sector employees.

However the bill remains seriously flawed in numerous areas:

1) While A-2850 has been publicized by its supporters as discouraging random and routine testing in the workplace, there are six major exceptions in the bill which encourage random and routine testing, especially in the private sector:

A) If the employer has a "compelling interest" to make random and routine tests. There is no definition of what a compelling interest is supposed to be. The bill leaves this to management discretion. This alone is a loophole that could allow an entire workforce to be randomly or routinely tested.

B) If the test is conducted as part of an investigation of employees involved in an accident, although the preponderance of industrial accidents have nothing to do with drug use. No credible data has been presented by the sponsors of this bill to show that occupationally related injuries or accidents are related to drug use.

C) If the test is conducted as part of an Employee Assistance Program, although most EAP programs adopted by management and unions do not require testing but stress rehabilitation and employee counselling to enable the worker to return to the job drug free.

D) If the test is conducted as part of a medical exam required by the employer. This means that an employee returning to work after breaking an arm would be subject to drug testing, although such a test would be totally irrelevant to the injury. This provision could discourage workers from taking valuable occupational health exams (i.e. for asbestos or lead related diseases) if they knew they could be subject to drug testing.

E) If the test involves individuals in "high risk occupations." Obviously people who hold the lives of others in their hands should be held to a higher standard of job performance. But drug testing won't do that. Urinalysis cannot measure current impairment or intoxication. It would be far more meaningful to require, for example, airline pilots to undergo a visual acuity or motor coordination test.

In this bill, the state Department of Labor is given the responsibility of drawing up a list of high risk occupations. The Department of Labor's suggests that over 600,000 of New Jersey's 3.2 million person workforce are in high risk occupations and could be subject to random and routine testing.

F) If the test is conducted in accordance with the terms of a collective bargaining agreement which permits employers to administer random and routine drug tests, a provision which will give employers the opportunity in negotiations with the union to press for such testing.

These six "exceptions" will encourage random and routine testing and will easily allow for the harassment of employees and union activists.

2) Even if these six exceptions were removed, the employers right to test in any circumstance is established. The bill says that "A private [or public] employer may require an employee to submit to a drug test if the private employer has reasonable suspicion that the employees job performance is being or could reasonably be expected to be affected by the influence of a drug..." Reasonable suspicion is far too broad a criteria. And the "could reasonably be expected to" language above allows the employer to test anyone or everyone.

The only basis for testing should be that the employer has probable cause, based on objective facts, that the applicant or employee is under the influence of an illegal substance at the time of the request, and that the employee's job performance, at the time of the request, based on objective facts, is being substantially impaired by the use of an illegal substance.

3) A-2850 has no provision for rehabilitation for private sector employees. The opportunity for rehabilitation and return to work is a cornerstone of the National AFL-CIO position on drug testing. A-2850, in its current form, will encourage firing of private sector employees, thus increasing the problems of indi-

viduals with drug addiction and throwing potentially productive people on the street.

4) While A-2850 claims to set minimum standards for drug testing, in reality it would only do this for non-union employees. Nothing in this bill would be a minimum standard if an employer forced a union to accept less protection during negotiations. It would be the equivalent of a public policy that said that "The minimum wage law covers everyone -- except for union workers who could be forced to accept less through negotiations."

Thus even provisions like the requirement for a confirmatory test could be eliminated by management in negotiations.

5) A-2850 allows employers to suspend employees without pay if they test positive on an initial screening test pending completion of a confirmation test. The initial screening tests, however, can have inaccuracy rates of up to 60-80%. The bill presumes that the employee is guilty and has to be proven innocent.

6) Individual employee rights and union rights are virtually non-existent in this bill. Employees who are forced to take drug tests do not even have the right to drug test data from the testing lab, only the results. There is no prohibition on an employer observing an employee while urinating to provide a sample. Employees are not provided with a right to union representation and the union is not notified when employees are going to be tested.

7) The employer can use a drug test sample -- broadly defined as a "human body part or product medically or chemically capable of revealing the presence of an illegal drug in the human body" for any purpose. For example, employers can use the sample to test for pregnancy, AIDS, diabetes, etc. Tests can reveal what prescription medications an employee is using. None of this is any of the employer's business.

8) The bill allows employers to report to police the results of tests, including the frequently inaccurate results of the initial screen. This is another example of the essentially punitive, not preventative, nature of this legislation. Other measures to protect individual confidentiality are also inadequate.

9) The bill allows employers to test employees. However, the employee is not allowed to request a test of an employer or supervisor. If safety concerns are truly a reason why employers want drug testing, isn't it reasonable that an employee should be able to request a drug test for a supervisor under the same conditions that an employee can be tested?

10) There is nothing in this bill to prevent an employer from disciplining an employee, based on an accurate initial screen and confirmatory test, for passive inhalation of marijuana. While the

bill empowers the State Department of Health to set standards that could prevent such discipline, there is no specific instruction in the bill that the Health Department set criteria to address this problem.

These ten significant problem areas identified above are not the only things wrong with A-2850. The IUC will prepare a more detailed analysis of A-2850 for the Senate Labor Committee.

March 2, 1987

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APPENDIX E. TRANSCRIPT OF A PRESENTATION BY LEWIS L. MALTBY,
Vice-president of Drexelbrook Controls, Inc.

THE DRUG TESTING DEBATE: REMEDY OR REACTION?

AN EMPLOYER'S PERSPECTIVE

Presented by:
LEWIS L. MALTBY
Vice President
Drexelbrook Controls, Inc.
Horsham, Pennsylvania

My company makes precision instruments that control hazardous materials in chemical plants and refineries. If our equipment doesn't work right - people die. The recent tragedy in Bhopal, India is an example of what can happen when our type of equipment malfunctions. We can't tolerate workplace drug abuse - and we don't.

But we don't do drug testing and we're not going to do drug testing.

Our reasons for deciding against drug testing have little to do with civil liberties. We're not a philanthropic organization. But when our top management considered the idea of drug testing, we concluded that it would actually hurt our performance and our profits. My purpose is to share our reasoning with you in the hope that it will be useful to you should you have to negotiate with your management on this issue.

One reason we don't do drug testing is that the testing isn't accurate. The combination of cross-reactivity inherent in immunoassay technology and the lack of careful skilled handling of test samples, caused by the economic pressure to minimize testing costs, has produced staggering error rates. (Thirty percent false positives is typical, and the Center for Disease Control found up to seventy percent false positives at some labs.)

These kinds of error rates make drug testing useless to me as an employer. It costs a lot of time and money to recruit and train good employees. It takes us, on the average, between two and three months to find and hire a new employee, six more months to train them, and another two years before they become fully effective. We have to spend time and money on interviews, reference checks, and training. And we have to pay the new employees while they are learning their jobs. It costs us over \$10,000 to hire and train even an entry level employee. For the average employee this cost exceeds \$25,000. Every time we terminate an employee for drug abuse I need to be confident that he or she really is a drug abuser. I can't afford to fire a productive employee on the basis of a test that isn't much better than flipping a coin.

Even more important, even if the tests were accurate, it wouldn't tell me what I really need to know. As an employer, I need to know an employee's condition when he or she shows up for work. And that's exactly what drug testing does not tell me. Traces of drugs remain in the urine from three days to several weeks, depending on the drug. So, a positive drug test result doesn't tell me anything about an employee's condition at the time of the test. For all I know, that employee who just tested positive for marijuana might be sober as a judge. And I can't afford to fire good employees because of something they do on their own time that doesn't affect their job performance.

Our industry is very competitive. We have at least six major domestic competitors trying to take business away from us. We're now starting to face competition from foreign manufacturers as well. In order to succeed in this kind of environment our company's performance and the performance of each individual in it has to be as good as it can possibly be. But, if I select people based on factors other than performance, I won't get the strongest possible team. In a competitive world I have to select my people based on performance and performance alone.

Finally, and most important, we don't do drug testing because of the damage it would do to the attitude of our entire workforce. We want every employee to give us 100% effort every day. And we want them to make every decision with the best interests of the company at heart. And, by and large, we get that. But that kind of commitment doesn't come easily. You have to earn it. One way we earn it is by treating our employees like adults. We trust them to do their jobs right and don't subject them to a lot of unnecessary rules. For example, we don't have a dress code and we don't have fixed work hours. We trust our employees to know what working hours and style of dress are required for them to get their jobs done. Another thing we do to earn that commitment is to respect their rights. For example, we scrupulously avoid prying into our employee's private lives. Their private lives are their own and we don't interfere.

But drug testing flies in the face of all of this. It would undermine everything we try to do to earn our employees' trust and commitment. To begin with, it would be an act of distrust on our part. Instead of trusting our employees to come to work physically and mentally prepared to work, I'd be treating them like sneaky children who have to be watched constantly. And I have never seen anything turn employees off so fast as the feeling that management distrusts them. Drug testing also undercuts our policy of respecting our employees' rights by attempting to pry into their private lives and tell them what they can and can't do on their own time, in their own homes. And if we treat our employees that way we will soon go from having a group of loyal dedicated people to having employees who are suspicious and antagonistic. The lost quality and productivity this would cause are immeasurable. We have mostly good hard-working people at our company, and we can't poison our entire company atmosphere in an unreliable attempt to catch a handful of possible drug abusers.

At this point, many employers would respond, "I didn't realize there were all these problems with drug testing - but we have to do something." That's right - they do have to do something. Our company doesn't tolerate drug abuse and I'm certainly not advocating that others tolerate it either. So let me tell you about our program to combat workplace drug abuse.

Our program to stop drug abuse is something we should all do anyway - we practice good management of people.

We business people always say that people are our most important asset. And it's true. What we do at Drexelbrook is try to put that idea into practice.

For example, when we hire a new employee, we conduct several in-depth interviews - with different interviewers. And we check references - thoroughly. Not with the personnel department - all they ever give us is name, rank, and serial number - but with their previous supervisors. And we screen out the drug abusers. Not because anyone tells us directly, of course, but by learning about which applicants had chronic absenteeism, inconsistent quality, and bad work habits at their former jobs. And we find out with much better accuracy than with a hit or miss drug test.

Once we've hired someone, we take the trouble to get to know that person - as a person. And when employees have problems outside the workplace, we try to help. Sometimes we help by having our financial people help arrange a personal loan at our bank. Sometimes we help by having our legal department straighten out a problem with an employee's landlord. Mostly, we help just by listening and caring.

Finally, we tell our employees what performance we expect from them - and then pay attention to their results. If an employee's performance consistently falls short of our expectations, their supervisor sits down with them and discusses the problem. Usually they tell us what it is. And when the problem is drugs or alcohol, we get them into a treatment program.

That's our program - and it works. By doing good interviewing and reference checking, we almost never hire an employee with a drug or alcohol problem. We have had employees who developed such problems after we hired them. But our supervisors noticed their declining job performance quickly, confronted them, and got them into treatment. Almost all those individuals are still with us - as productive employees.

Let me tell you about one of our employees who developed a problem. This employee, I'll call him Joe, was a lathe operator in our machining shop. For the first five years Joe was with us he was a very good employee, but then he started to slip. His sick days started to pile up, he was frequently late for work, and the quality of his work started to decline. His supervisor noted the pattern and sat down with him to discuss the problem. Joe acknowledged that his performance had slipped, denied having any problems, and promised to do better. Unfortunately, his performance only got worse. So, we confronted him again. The time he reluctantly confessed that he had an abuse problem, but said he would stop on his own. As

you can imagine, he failed. Finally, the Production Manager explained to him that his performance had declined to a point where it was no longer acceptable and, since he had failed to handle it himself, he had no alternative but to accept professional help, unless he wanted to lose his job. When he agreed to this, he was immediately escorted to the drug and alcohol unit of the local hospital, which had a place waiting.

Joe was in treatment for just over a year. He completed treatment two years ago. Since then, his work had improved so much that when an opening occurred for a first level supervisor, we gave Joe a shot at it. He did so well that we sent him to our management training program. Joe now runs our entire machine shop.

I've spoken to other companies with employee assistance programs and they report similar success.

So there's the choice that industry faces. We can attack workplace drug abuse with drug testing. It's quick, it's easy, and it's cheap. It just doesn't work. It gives us inaccurate and irrelevant information and undermines the trust of the good employees who resent being ordered to pee in a bottle when they've done nothing wrong. Or, we can take the time to learn about our employees, watch their job performance, and help them when it starts to slip. It's time-consuming, difficult, and expensive. But it works. Not just in preventing workplace drug abuse, but in creating a committed and productive workplace.

Workplace drug abuse is a serious problem. Everyone agrees that employers must take steps to deal with it. Some people think the answer is drug testing. But there is another way to deal with the problem. And it's a better way for management as well as labor.

TESTIMONY ON A-2850 ACS
PRESENTED TO THE
LABOR, INDUSTRY, AND PROFESSIONS COMMITTEE
OF THE
NEW JERSEY STATE SENATE

BY

HONORABLE ROBERT E. LITTELL
ASSEMBLYMAN, 24TH LEGISLATIVE DISTRICT

APRIL 9, 1987

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to speak on Assembly Bill No. 2850.

A-2850 is an attempt to establish a public policy to regulate an employment practice that affects an ever increasing number of New Jersey's workers. It is an effort to provide Legislative leadership in the establishment of uniform standards and ground rules for drug tests in employment and preemployment situations.

The drug testing policy proposed in A-2850 is based on three assumptions that my cosponsor, Tom Foy, and I share. First, drug abuse threatens the safety and vitality of our workforce, our businesses, and our society. Second, our response to the threat of drug abuse as it is manifested in employment situations should include fair and accurate drug tests when those tests are necessary to reduce or eliminate drug abuse on and off the job. Finally, while drug tests may help us meet the threat posed by the abuse of illegal drugs, we should not forget that the tests may create problems of their own. Unregulated and unjustified tests could lead to the harassment of workers, the decline of worker morale, and the devastation of careers and families. Thus, we should permit drug tests only if those tests are accurate and fair and only if the ground rules for testing are consistent with our Constitution and the norms of a democratic society.

Later today you will undoubtedly hear many criticisms of A-2850. Employer representatives are likely to tell you two things: (1) A-2850 will tie our hands in waging war against drugs; and (2) A-2850 creates a new set of employee rights that will generate a landslide of litigation. Neither criticism is valid. There is nothing in this bill which prevents an employer, private or public, from administering drug tests when the tests are needed to protect the employer, the employee, or fellow workers and when the tests are administered in a proper manner. The bill does not tie the hands of any employer who establishes and operates a testing program that recognizes basic and long-recognized employee rights. Indeed, A-2850 requires employers to do what any prudent employer would do if he found that drug testing was necessary to curb drug abuse in the workforce.

On the other side, some representatives of employee groups are likely to tell you that A-2850 is anti-labor and that the legislation will wrap a cloak of legitimacy around employer actions that are unconstitutional. Yet, there is nothing in this bill which requires an employer to administer drug tests on job applicants or employees. A-2850 does not impose drug tests on anyone. Nor does it legitimize drug tests that are unnecessary, inaccurate, or unfair. Rather, the bill provides a framework in which testing can be done according to

uniform standards and ground rules that give job applicants and employees more protections than they presently have. I submit that the bill as it stands now provides adequate protections for employee rights, including the right to due process, the right to be free from unreasonable search and seizure, and the right to privacy. In addition, the bill contains effective criminal penalties and civil remedies to back up any employee whose rights are violated by an employer's actions.

To understand the full significance of the policy proposed in A-2850, the bill must be judged not only against the abstract standards of its critics but also against the current situation in the workplace. Today, no public authority regulates tests. No statute identifies and protects the rights of workers and their employers. Every day hundreds of employees in the State are required to submit to drug tests without justification or cause, without notice, without guarantees of confidentiality, without safeguards to protect accuracy, without verification of test results, and without job protections.

As cosponsors of this legislation, Tom Foy and I want to see the following conditions imposed upon the administration of drug tests in this State--

- Labs should be regulated.
- Employees should be given written notice of the employer's drug use and drug testing policies as well as written results of the drug test.
- Results of the tests should be confidential information.
- Highly accurate confirmation tests should be done before disciplinary action is taken against an employee.
- Employees should have the right to do independent confirmation tests on samples that test positive for illegal drugs.
- There should be reporting opportunities for legitimate drug use by employees.
- Employers who test workers for drugs should cooperate with the State in drug education programs for employees.
- Criminal penalties should fall upon individuals who violate basic rules of confidentiality or who deliberately damage the integrity of the chain of custody.
- Reasonable and effective civil remedies should be available for aggrieved employees.
- Ground rules should be set to tell employers and employees who can be tested and when.
- Random and routine tests should be permitted in high-risk occupations to protect the safety of the public.
- Collective bargaining should be used to establish ground rules for testing whenever possible.

Beyond this, consideration should also be given to what will be done with employees who suffer from drug addiction. Under the current bill, public

employers are required to provide their employees with a temporary leave of absence for detoxification, counseling, and rehabilitation when these treatments are medically appropriate. The bill does not require private sector employers to provide the same benefit when those employers institute a drug testing program.

As you know, there is considerable interest in establishing in this bill a requirement that would force any employer with a drug testing policy to establish a drug rehabilitation program. When this bill was released by the Assembly Labor Committee, I promised to address the rehabilitation issue in follow up legislation.

My inquiries into this issue have shown that there are many complex questions that need to be addressed before employers should be required to provide drug rehabilitation benefits in their employee insurance packages under any condition. First, if we require private sector employers to provide rehabilitation when rehabilitation slots are not available, would an employer be subject to civil action if he took disciplinary action against a drug abuser without providing rehabilitation or would the employer be forced to employ people who are incapable of safely performing their jobs? It has been estimated that there are approximately 150,000 people, many of whom are in the workforce, in need of drug rehabilitation in New Jersey. Yet, there are less than 9,000 in-State drug rehabilitation slots available for this population. Currently, employer provided health insurance programs provide some benefits for employees with drug addiction. Many workers suffer from polyaddiction and are treated for drug addiction under their employer's health coverage for alcohol addiction. So-called "creative coding" in hospitals also brings some drug addicts under the employer's health insurance plan. But the sad truth is that New Jersey lacks sufficient drug rehabilitation slots to cover the needs of its workforce. Drug rehabilitation, therefore, must be treated as a supply problem before we can realistically link rehabilitation to drug testing.

Second, what will drug rehabilitation cost New Jersey's employers and, more importantly, will the cost be more than our medium-sized firms can bear? Blue Cross/Blue Shield of New Jersey estimates that the costs of alcohol rehabilitation increased 5 fold between 1977 and 1981: from \$3 million for 458 clients in 1977 to \$15 million for 17,958 clients in 1981. With drug rehabilitation a similar pattern of increasing costs may emerge. Fortunately, most large employers and many employers who conduct drug tests have employee assistance programs in place. The New York Times reported on March 26, 1987 that over half of the Fortune 500 companies have EAP's for their employees. This is roughly the same number which have drug testing programs. But what about smaller employers--companies with 100 or so employees who may need a very limited drug testing program--where will they turn? Will they be able to absorb the costs of drug

rehabilitation insurance? I asked the State Department of Health to compile a list of costs for various kinds of drug rehabilitation services. According to the department's estimates:

- Employee Assistance Program costs range from \$22 to \$28 per employee per year. (This includes evaluation, two or three counseling sessions, referral to treatment as necessary, and follow up. The figure represents assistance for other problems beyond drug addiction, but it does not include detoxification or extended post-detoxification counseling and therapy.)
- Inpatient/ Hospital-based care for drug rehabilitation, with a New Jersey DRG rate imposed, will cost roughly \$6,300. Inpatient/ Private Psychiatric care will range from \$3,000 to \$30,000.
- Outpatient counseling costs will range from \$65 to \$75 per session, usually from four to ten weeks.
- Outpatient Follow Up costs vary from \$30 to \$35 per session with one session per week.
- Outpatient Methadone Maintenance costs fall in the area of \$65 for admission to the program and \$20 per week for treatment.

Simply put, drug rehabilitation can be expensive on a per employee basis. It will almost certainly lead to increases in employer health insurance costs, increases which may be too much for some employers to bear without causing cutbacks in jobs or increases in the prices of their goods or services.

To ensure that drug rehabilitation is available for all workers who need and deserve it, I will soon be proposing legislation to establish a Statewide employee assistance program. The program would be administered by the Department of Health on a regional basis through hospitals or medical centers. The program would provide evaluation, referral, and limited rehabilitation services for employees suffering from drug addiction. The services could be funded by a small increase in the Temporary Disability Benefits contributions of employers and employees. An increase of one-eighth of one percent would generate more than \$9 million per year for the program. State funding for community drug programs currently amounts to about \$8 million per year, with an additional \$10 million recommended for Fiscal Year 1988 for increased drug enforcement, education, and rehabilitation.

Under the legislation, employers who establish their own EAP, and their employees, could be exempt from contributions if their program met certain standards. An appropriation would be used to get the program underway, and user fees could be collected to offset sudden increases in operating costs. All

employees who are not covered by an EAP would be eligible. Through such a program, in-state rehabilitation slots would increase, and employer costs would be kept at a manageable level.

In closing, let me reiterate that A-2850 represents a solid public policy for dealing with drug testing in New Jersey. Policy makers in Washington and from many state capitols have used the bill as the backbone for drug testing legislation in their jurisdictions. Without doubt, it is the most comprehensive legislation on drug testing in the nation. It provides guarantees for employees and employers, and permits testing in accordance with uniform standards and ground rules. I urge you to approve this legislation, and thank you for this opportunity to speak on such an important matter.

THE COST-IMPACT OF EMPLOYEE ASSISTANCE PROGRAMS

October 1985

**Division of Alcoholism
Occupational Section**



This report was prepared by Jim Mastrich, Coordinator of EAP Counseling Services for Organizational Resources of Rutgers Medical School, and Bern Beidel, Chairman of the Occupational Advisory Committee.

The authors acknowledge the assistance of two organizations who made major contributions to this project. The National Institute of Alcohol Abuse and Alcoholism (NIAAA) provided a thorough computer search of the literature. Hazelden Foundation Research Services provided a succinct overview of the issues in Finding the Bottom Line and a significant portion of their discussion has been included in this report.

Overview

Many studies are presented in this report that detail the corporate and societal cost of alcoholism, drug abuse and emotional problems. It will also be demonstrated that employee assistance programs and other treatment interventions produce significant positive results. This success translates into reduced absenteeism, increased productivity and reduced health care/insurance costs. We feel that after reading this, you will agree that EAPs are clearly a wise investment.

There are a number of other studies that further substantiate the findings presented in this report. They have been excluded from the text in an effort to present the documentation in a readable fashion. A reference section has been provided and is recommended for those interested in further examining the cost impact of employee assistance program efforts.

PROOF THAT HAVING AN EAP WILL SAVE YOUR COMPANY MONEY

WHY BOTHER READING THIS?

The purpose of this report is to demonstrate proof positive that an employee assistance program can save corporate dollars. It has been prepared so that you, as a corporate decision maker, will have access to information about specific cost-offsets that accompany EAPs. A reference section has been included so that you can examine the source documents for all the studies included. In fact, you are encouraged to do so. We are convinced the more you know about EAPs, the easier it will be to decide in favor of initiating one.

It should be noted that most up-to-date EAPs incorporate the "broad brush" model, wherein a variety of life stresses that impact on the employee are addressed. Broad brush EAPs help employees and their family members deal with alcohol and drug problems, legal and financial concerns, marital, family and medical problems. However, because these programs were first initiated to address alcohol problems, many of the studies which document the costs of the troubled employee and the cost-offset of their treatment are based on occupational alcohol efforts. The results of these studies have been generalized to be made applicable to the variety of personal problems which are addressed by broad brush employee assistance programs.

What follows is information about: 1) the impact of the troubled employee on business and industry; 2) evidence of cost-offsets of treatment; and finally, 3) the cost impact of employee assistance programs.

WHAT ARE THE COSTS OF THE TROUBLED EMPLOYEE?

HOW LARGE IS THE PROBLEM?

The typical alcoholic is employed. Straus and Bacon (cited Mayer, 1983) determined in 1951 that alcoholics are comprised of both men and women who tend to have a good job and are usually married. The fact that 10 percent of adult Americans who drink are alcoholic (NIAAA, 1981) or experience problems as a result of their drinking, and that 95 percent of these individuals hold positions of responsibility within their community and through their employment (Wrich 1980), raises a basic question as to the impact of these working alcoholics on productivity, morale, and health care costs.

GENERAL PRODUCTIVITY LOST

There are various estimates for the actual costs of alcoholism and alcohol abuse. A study by the Research Triangle Institute estimated that in 1977 alcohol abuse manifested in health problems, absenteeism, tardiness, time spent in alcoholism treatment, lowered quantity and quality of work, and criminal activities, costs society over \$49 billion annually (NIAAA, 1982). Over \$30 billion alone has been attributed to lost productivity (Quayle, 1983), a 300 percent increase since the First Special Report to the United States Congress in 1971 (NIAAA, 1971).

INCREASED INCIDENCE OF HEALTH PROBLEMS AMONG ALCOHOLIC EMPLOYEES

A number of studies have compared employed alcoholic groups with matched groups of workers who have no alcohol problems. Maxwell (1959) found that problem drinkers incurred more instances of sickness absenteeism, were absent longer, generated more sickness-payment costs and incurred significantly more accidents on and off the job than the control group. Pell and D'Alonzo (1970)

compared the sickness absenteeism of employed problem drinkers and a control group matched for age, sex, payroll class and geographical location. The frequency, disability and severity rates of alcoholics were significantly greater for all major categories except for disorders of the urinary system. The most frequent causes of excessive absenteeism among alcoholics were accidents, musculoskeletal disorders and digestive disorders. These same authors also conducted a five-year mortality study on alcoholic employees, (Pell and D'Alonzo, 1973) matching groups as before, with each comprised of approximately 900 employees. The conclusions showed that the five-year mortality rates included 11.9 percent of the alcoholic group as compared to only 3.7 percent of the control group. There was an almost four to one ratio of death due to cancer and a two to one ratio of death due to cardiovascular disease between the alcoholic and control groups. It is worth noting that, while 11 percent of the alcoholic mortalities were attributable to cirrhosis of the liver, there was no incidence of cirrhosis in the control group. These and other consequences and the costs of problem drinkers to employers have been well documented (Francek, 1980; Roman, 1973; Threatt, 1976; Berry and Boland, 1977).

INCREASED HEALTH INSURANCE RATES

Whenever "troubled" alcohol abusing employees became ill or have accidents, an additional price is paid by their employers: increasing health insurance rates. The National Institute on Alcohol Abuse and Alcoholism (1978) estimates that 12.1 percent of all health expenditures in the United States are directly attributable to alcoholism and alcohol related problems. Hospital utilization studies indicated that alcoholics are among high-cost patients who use a disproportionate percentage of services, and that almost 30 percent of all general admissions are people suffering from complications due to alcoholism (Zook and Moore, 1980). Complicating an already difficult situation is the realization that, contrary to popular opinion,

alcohol and drug problems in industry are not confined to blue-collar workers and minority groups; in fact, drug and alcohol use and abuse is relatively widespread (Rogers and Colbert, 1975).

The toll that alcoholism takes on industry and society at large cannot be measured solely in terms of dollars and units of productivity. The lives of spouses, children, parents and siblings of alcoholic workers are so pervasively affected that in 1974, approximately 20 million people were believed to be members of families with an active alcoholic member. The devastating social, psychological and economic consequences that these individuals suffer is becoming known as the "family illness."

There are studies (some of which are discussed below; others are listed in the Appendix) demonstrating that both employee assistance and treatment programs show positive outcomes not only in terms of health care but also in expenditures, legal costs, employment, and other areas. There is, in fact, a measurable "return on investment" and impact on the "bottom line" for employee assistance and chemical dependency treatment.

THE COST OFF-SETS OF CHEMICAL DEPENDENCY TREATMENT*

Hoffman and Belitte (1982) reported on the results of the Chemical Abuse/Addiction Treatment Outcome Registry (Table 1) Study. Comparisons between individuals one year before and one year after treatment were provided in several dimensions instrumental to the issue of cost-benefit. It is noteworthy that in the year following treatment, there was a 58 percent decrease in hospital days and a 45 percent decrease in hospital admissions. This has an obvious bearing on the reduction of health care costs and insurance premiums. Germane to the

*The major portion of the material presented below is from The Bottom Line, 1985, The Hazelden Foundation.

Table 1

Hospitalizations One Year Before and One Year After Inpatient Substance-Abuse Treatment (CATOR Study)

	Before			After			Percentage Change Patients	Percentage Change Days
	No. of Days	No. of Patients	%	No. of Days	No. of Patients	%		
Detox related	829	83	13	39	12	2	86	95
Medical	1,998	154	24	1,118	94	14	39	44
Psychiatric	772	37	6	360	14	2	82	53
Total Days	3,599	218*	43%	1,517	117*	18%	46%	58%

*Total is less than the sum because some patients have hospitalizations and/or physician visits for multiple reasons.

Source: Chemical Abuse/Addiction Treatment Outcome Registry, St. Paul - Ramsey Hospital Medical Education and Research Foundation

question of productivity before treatment: 34 percent of employees were cited for job absenteeism, 38 percent experienced work performance problems, and 12 percent had lost their jobs. After treatment those figures dropped to 2 percent, 1 percent, and 2 percent, in respective categories. These findings clearly indicate the financial and humanitarian value of treatment.

One of the most comprehensive and illustrative studies of cost impact for chemical dependency treatment was of the California Pilot Project by Holder and Hallan (1981). The California study covered a four year period including the year before insurance coverage for alcoholism treatment was available, the period during which coverage was provided, and a follow-up period of more than two years. As shown in figures 1 - 3, there is strong evidence that when coverage for alcoholism is available, employees will use this coverage, with the result being a net reduction in health care utilization and costs for both the alcoholic and the alcoholic's family.

Another study of prepaid group practice HMO's done by the Federal Government found similar results (U.S. Department of Health and Human Services, 1982). Some of the conclusions of this study were: 1) that there was "sustained improvement on work-related dimensions" (meaning that following treatment the employee showed improvement in job performance and other work areas); 2) "days sick or absent declined by 50 percent throughout the period of follow-up"; and 3) "clients showed sustained reduction in ambulatory health care service utilization. For the HMO study there was a lower reduction in ambulatory care utilization compared to the California study. This may be due, however, to the HMO's lesser use of hospital care and greater use of ambulatory or outpatient care. But again, this study demonstrates that there can be significant reductions in health care utilization and improvement in occupational job performance following employees' treatment for chemical dependency.

Figure 1

Average Monthly Inpatient Admissions per Individual - 1973-1979

Blue Cross/Blue Shield of California
Enrollees from State Employees

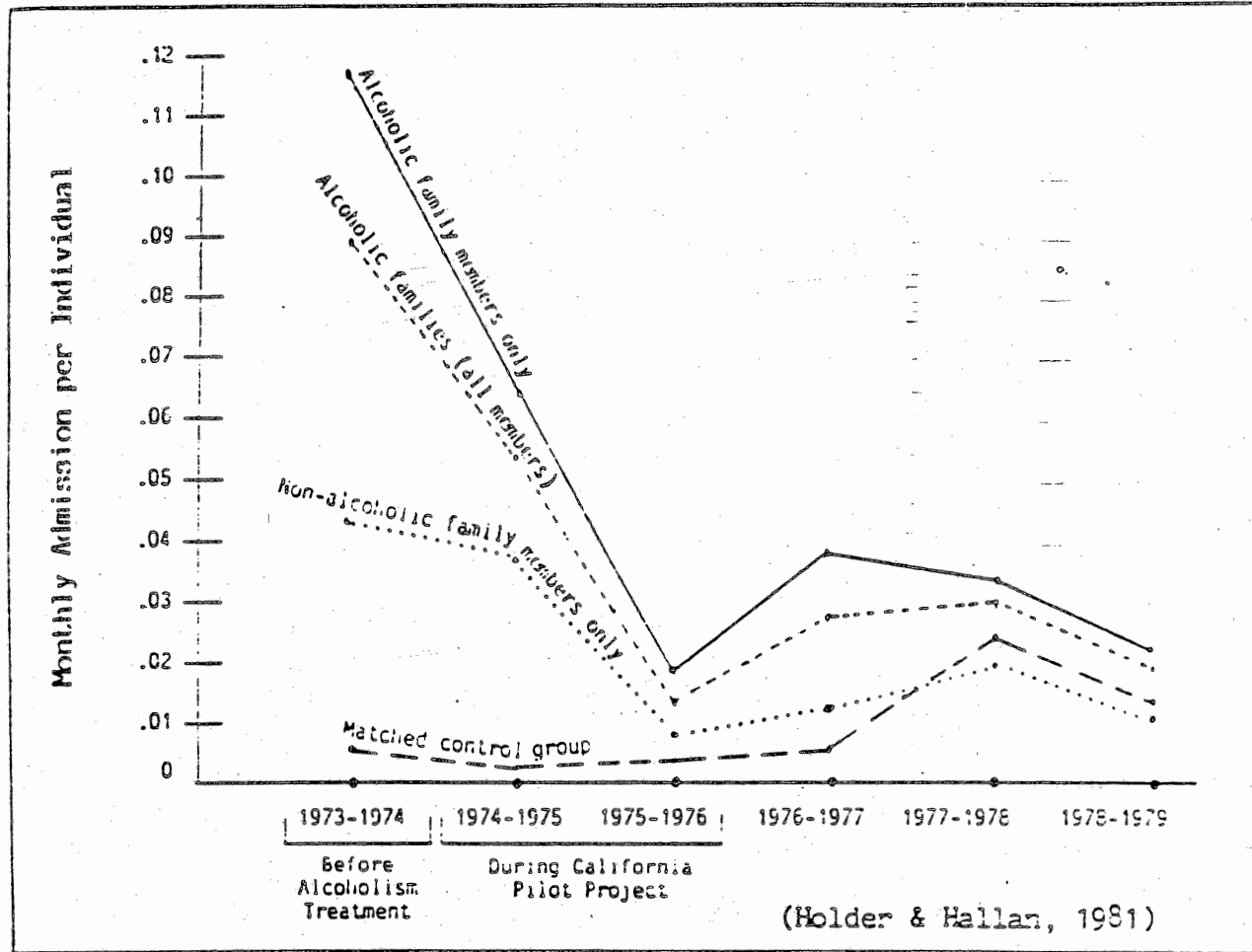


Figure 2

Average Medical Care Costs per Month per Individual - 1973-1979*

Blue Cross/Blue Shield of California
Enrollees from State Employees

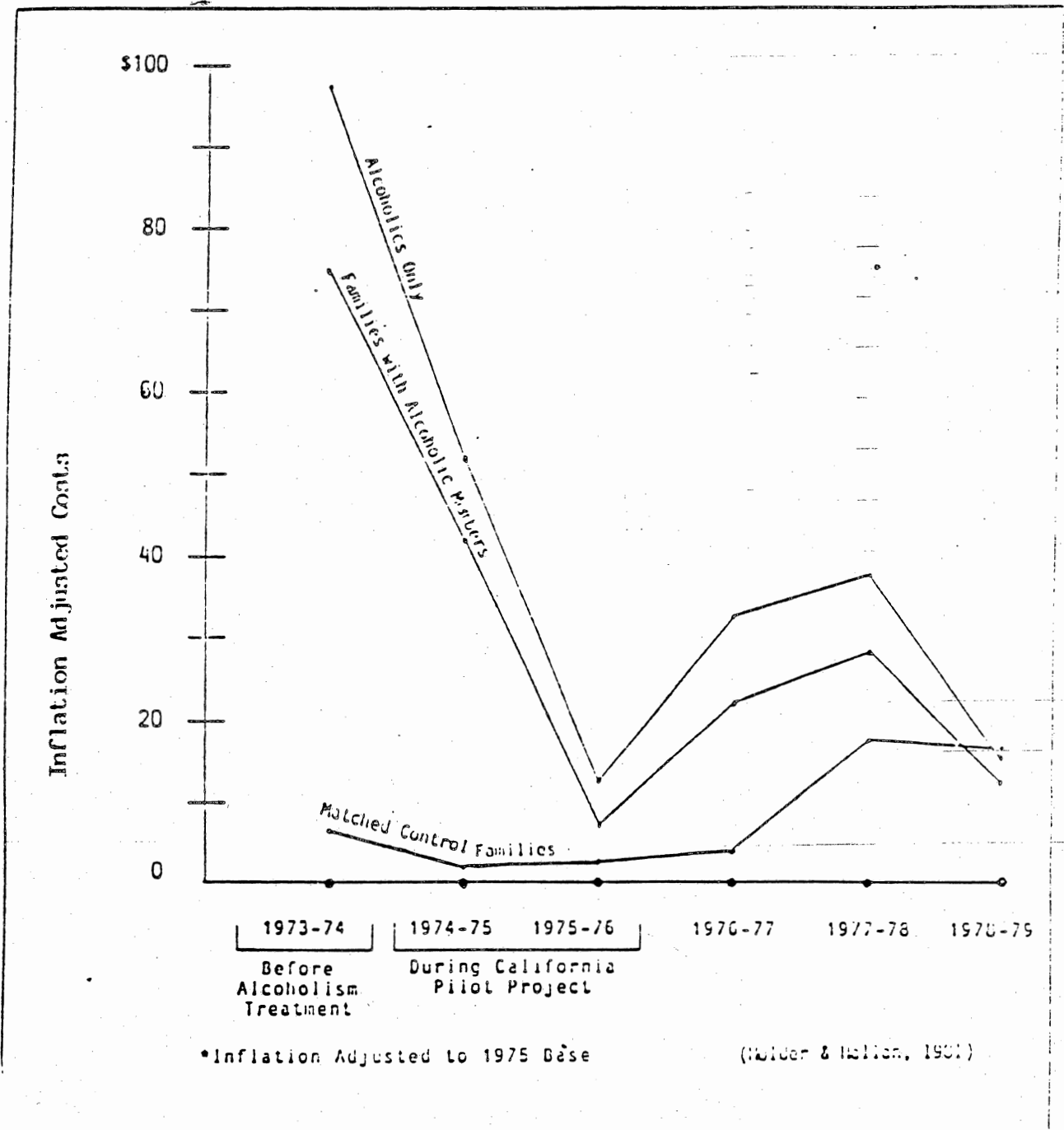
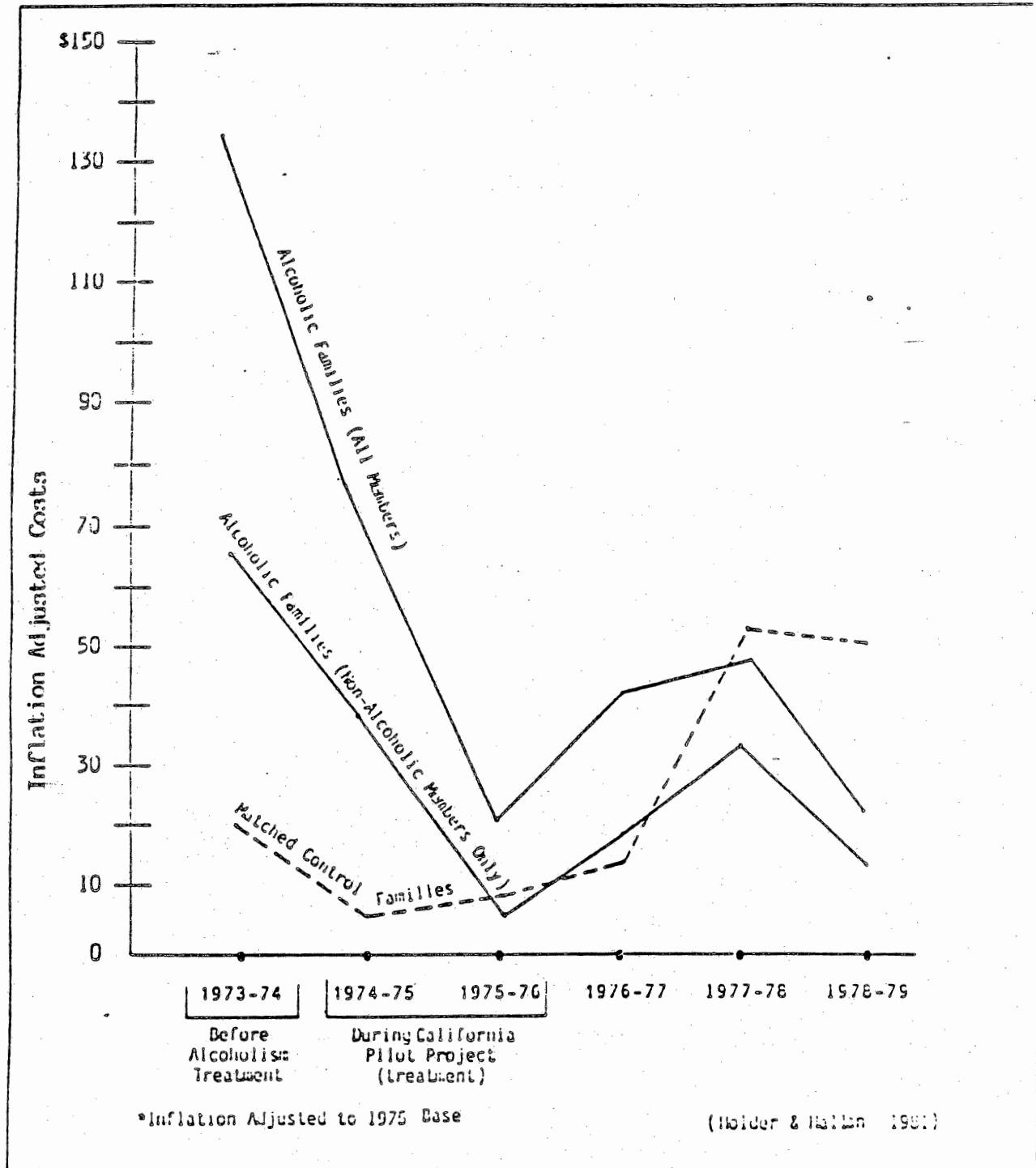


Figure 3

Average Monthly Total Medical Care Costs per Family - 1973-1979*

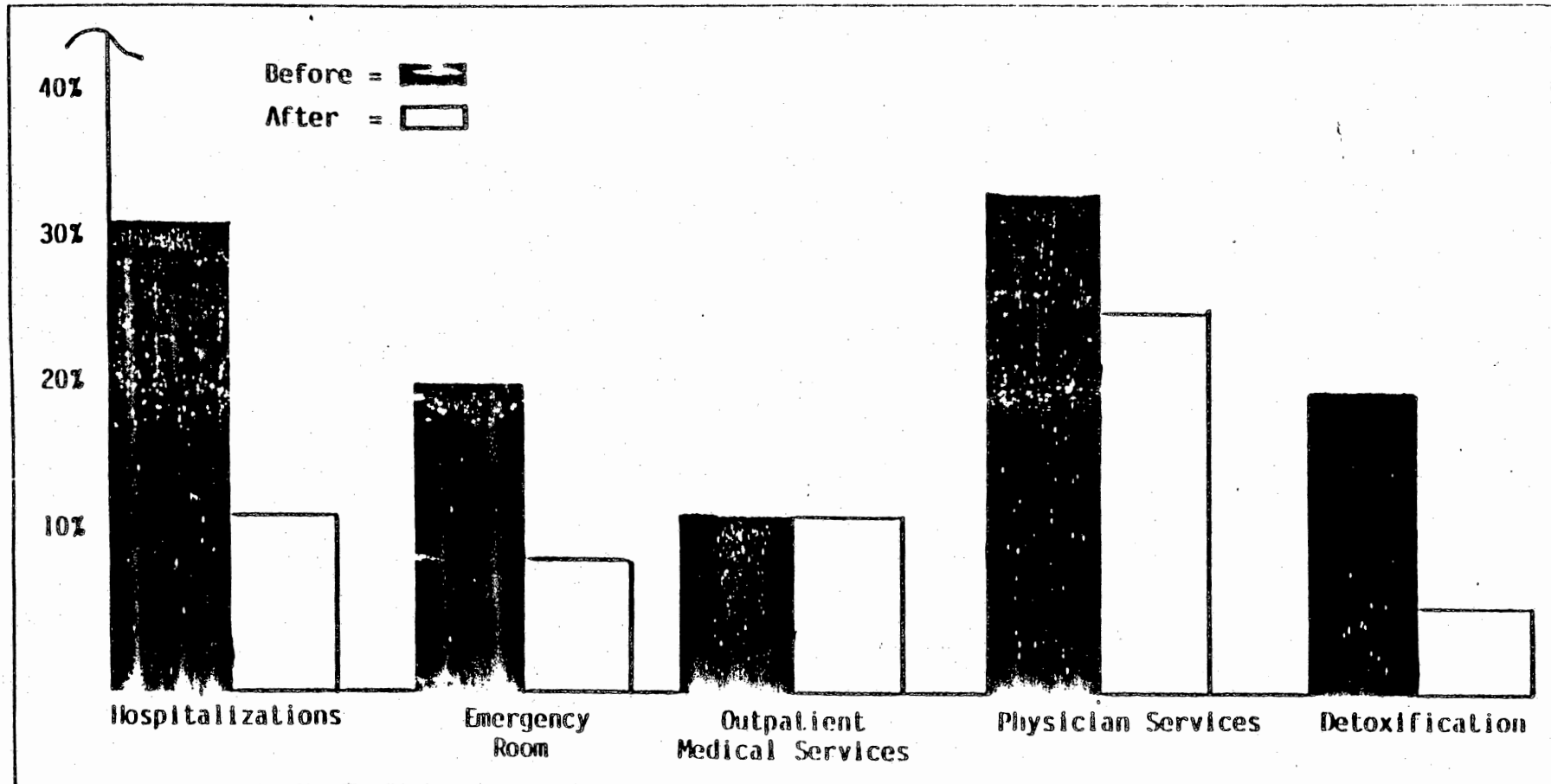
Blue Cross/Blue Shield of California
Enrollees from State Employees



Figures 4 - 6 display data from a study conducted by Hazelden of patients at St. Joseph's Hospital in St. Paul and a small sample of patients at the Charlotte Treatment Center in North Carolina. This study was based on a total random sample of 216 admissions. The typical patient admitted to these programs was an employed male who had been drinking for approximately 14 years with a primary diagnosis of alcoholism. Compared to the CATOR sample, (Hoffman and Belitte, 1982) these patients were less likely to be unemployed and dependent on unemployment or welfare for their income. Most of these patients were high school or college graduates, married, and had their treatment funded by insurance. Data were collected at the time of admission covering the year prior to treatment and for one year after treatment. The same questions were asked by a telephone interview or mailed questionnaire to compare changes before and after treatment. Again, the same types of changes were found as in previous research. Hospitalizations for medical reasons decreased from 31 percent hospitalized before treatment to 11 percent after treatment; emergency room use decreased from 20 percent to 8 percent; detoxification use decreased from 20 percent to 6 percent. Outpatient services did not change significantly. This has also been found in other research and may indicate that many of these people continue to use outpatient care in their continuing recovery following treatment. Several questions concerned the problems that occurred in occupational areas as a result of the person's alcohol and drug use, and again, as in other research, significant changes were found. For example, 42 percent of the patients reported using alcohol at work before treatment, and 7 percent reported using it after treatment. Before treatment, an average of 17 days of work was missed due to illness; whereas, after treatment the average number of days missed was six and a half. Interestingly, several changes in other areas were also found following treatment. Where 12 percent of the patients had to stop their education before treatment due to alcohol and drug use, only 4

Figure 4

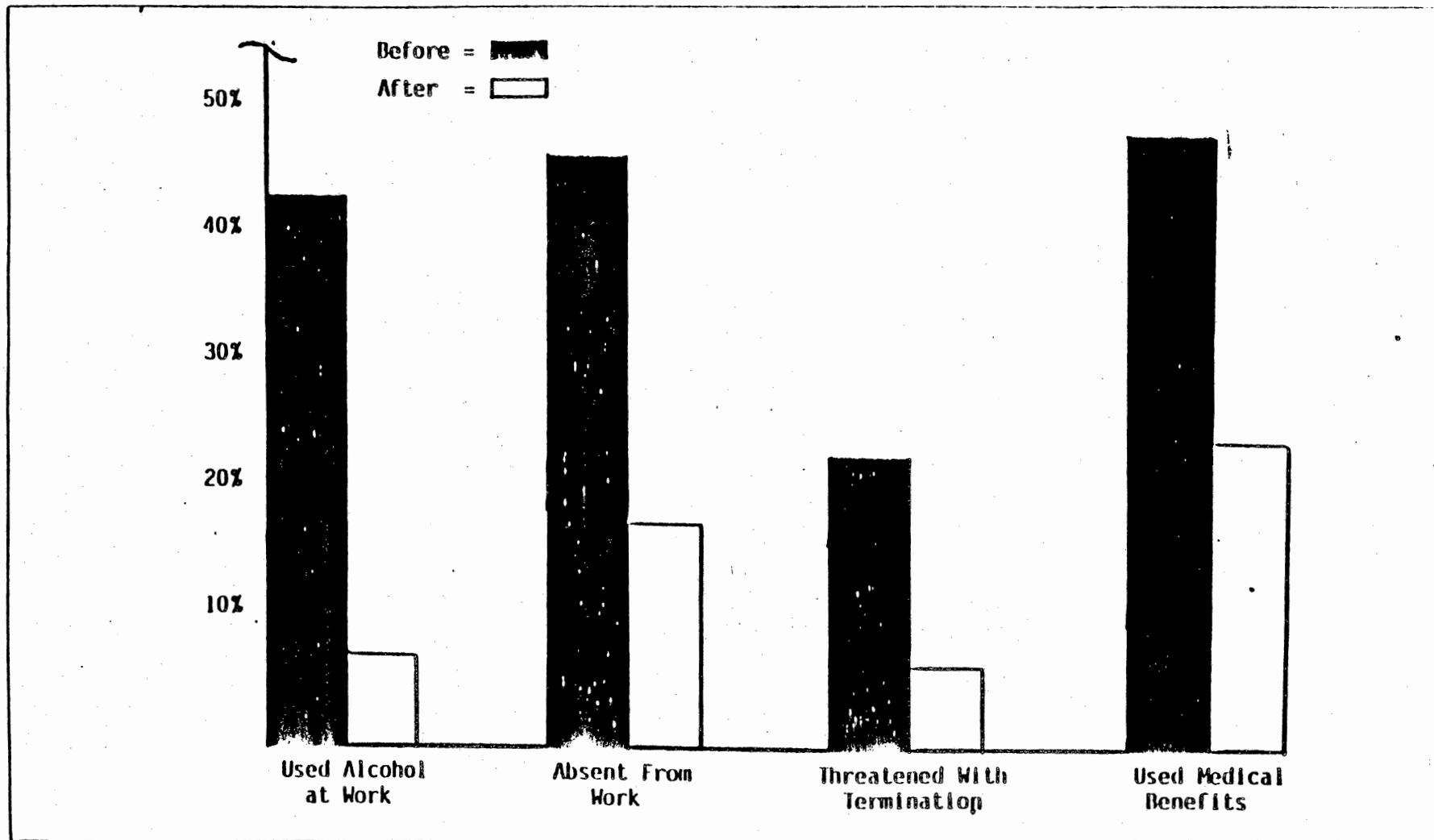
Use of Health Care Services Before and After Chemical Dependency Treatment



34X

Figure 5

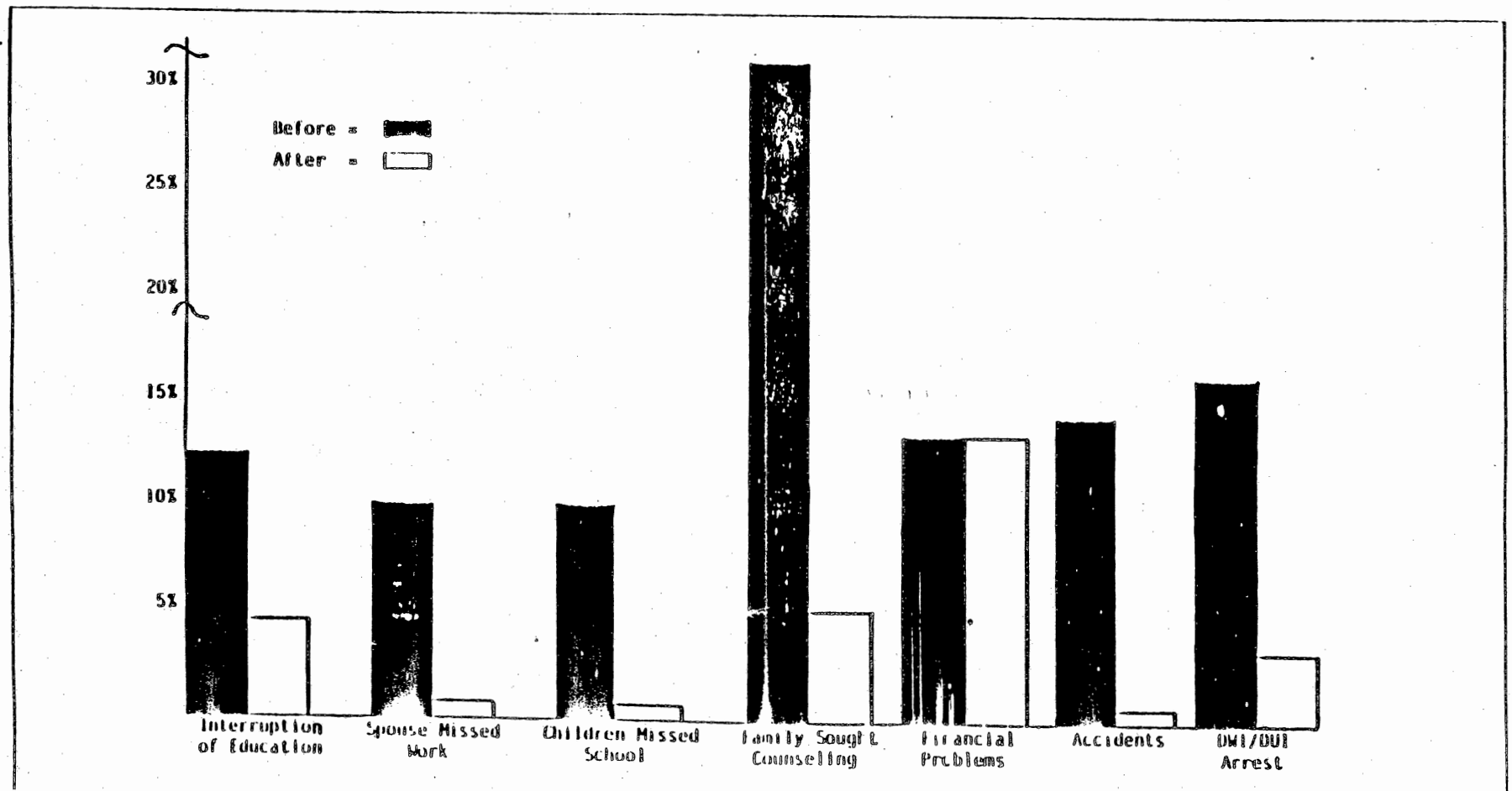
Alcohol/Drug Related Occupational Problems
Before and After Chemical Dependency



35X

Figure 6

Other Problems Before and After Chemical Dependency Treatment



36X

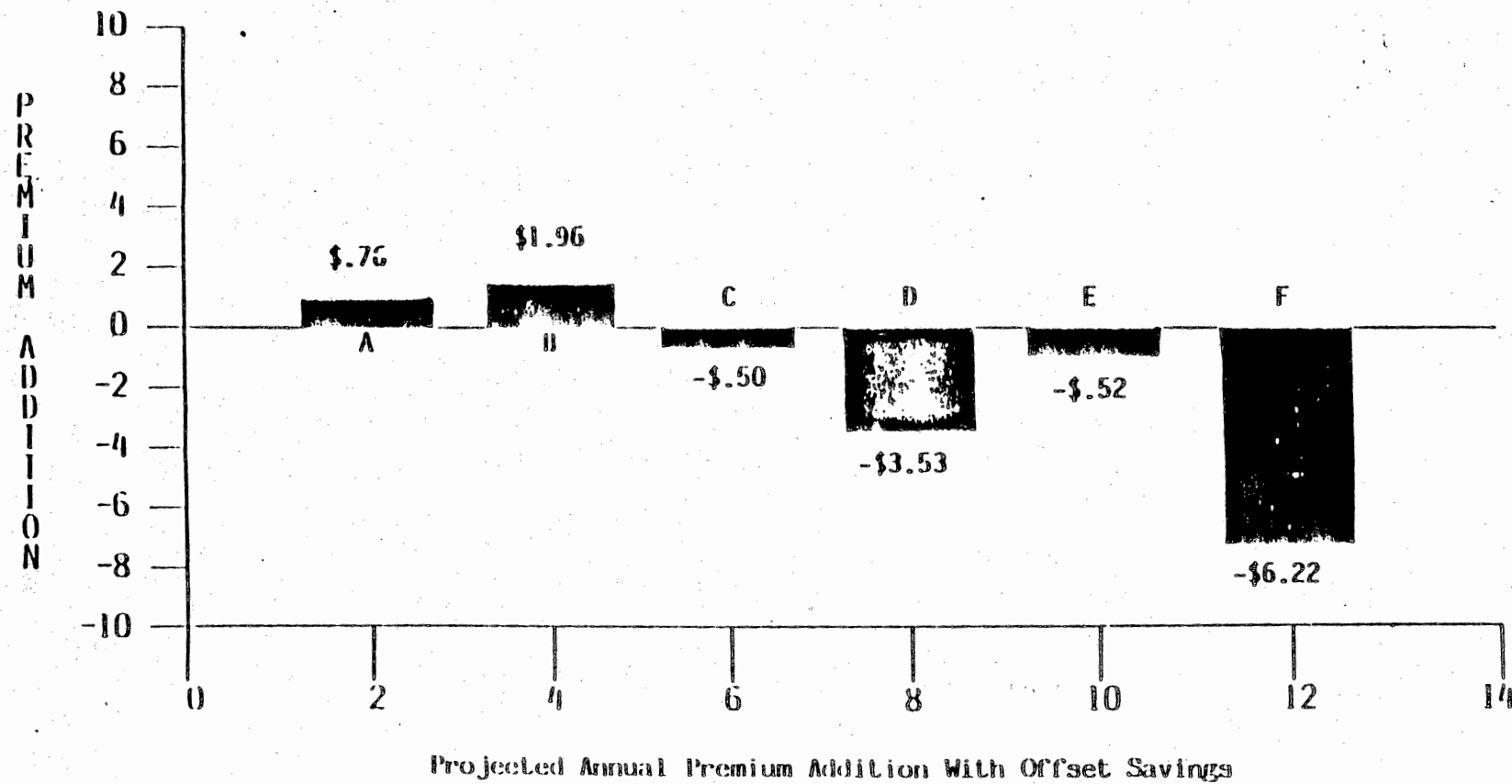
percent had this problem following treatment. We also found that for many of these patients, their drinking had impacted their spouses ability to perform on the job and their children's ability to maintain school performance. Because these patients came to treatment from throughout the United States, it was not possible to assign a dollar figure to their health care utilization before treatment and after treatment. But again, there is evidence that chemical dependency treatment shows a significant cost-impact.

By comparing these findings with national norms, the validity of the study can be demonstrated. According to published figures in Medical Benefits (October 31, 1984) the use of health care after treatment by the patients in this study closely resembles national norms. Where 10.3 percent of the U.S. population have been hospitalized in a one year period, 11 percent of the former patients were hospitalized in the year after chemical dependency treatment. Days of work lost due to illness or injury averages five days for the U.S. and 6.5 days for the former patients. From a cost-impact perspective, the results are similar to the California project study: alcoholics have significantly higher rates of health care utilization and job performance before treatment, but following treatment their behavior closely matches the national norms. The difference between this pre and post-treatment behavior is a cost savings that offsets the cost of the treatment.

One of the more interesting studies recently done used data from several of the studies listed in the Appendix to develop different models of insurance coverage for chemical dependency treatment with the objective of determining where the biggest cost savings could be made (U.S. Department of Health and Human Services, 1982). Figure 7 and Table 2 summarize the results of this study. The basic finding was that providing alcoholism treatment coverage results in reductions in the use of other health care services, as well as a reduction in health care costs for the provider. But this finding applies most directly to those plans that gave more than one treatment option.

Figure 7

Cost Savings Resulting From Reduced Health Care Utilization



- LEGEND:
- A - Inpatient Only -- Limited (fee-for-service)
 - B - Inpatient Only -- Expanded (fee-for-service)
 - C - Typical Employee Plan (fee-for-service)
 - D - Typical Employee Plan (prepaid)
 - E - Model Plan (fee-for-service)

Table 2

Net Benefits From Alcoholism Treatment

Insurance Plan*	Number of Alcoholic Patients	Total Family Members ^{1/}	Annual Health Treatment Offset Value/Client	Total Annual Offset Value	Total Annual Alcoholism Treatment Charges	Net Annual Charges ^{4/}
A	44	119	\$ 787 ^{2/}	\$ 93,653	\$ 169,516	\$ 75,863
B	99	267	\$ 787 ^{2/}	\$ 210,129	\$ 406,456	\$ 196,327
C	238	643	\$ 787 ^{2/}	\$ 506,041	\$ 456,046	\$ -49,995
D	257	694	\$1,554 ^{3/}	\$1,078,476	\$ 725,369	\$ -353,107
E	487	1,315	\$ 787 ^{2/}	\$1,034,905	\$ 982,307	\$ -52,558
F	477	1,288	\$1,554 ^{3/}	\$2,001,552	\$1,380,010	\$ -621,542

^{1/} Assumes 2.7 persons per family

^{2/} Based on the average Table 4-3 offset values for fee-for-service plans.
I.e. $\$925 + \$648 \div 2 = \$787$

^{3/} Based on the average of Table 4-3 offset values for prepaid plans total health care costs.
I.e. $\$1,039 + \$2,186 \div 1,430 \div 3 = \$1,554$

^{4/} Derived from: Total Annual Alcoholism Treatment Charges less Total Annual Offset

***Key to Plans**

A - Inpatient only--limited (fee-for-service, 14 days inpatient)
 B - Inpatient only--expanded (fee-for-service, 30 days inpatient)
 C - Typical employee plan (fee-for-service, 60 days inpatient plus outpatient)
 D - Typical employee plan (prepaid, 60 days inpatient plus outpatient)
 E - Model plan (fee-for-service, 30 days inpatient, 30 days intermediate care, 45 outpatient visits)
 F - Model plan (prepaid, 30 days inpatient, 30 days intermediate care, 45 outpatient visits)

(NIAM, 1983)

Another recent study conducted by H-2, Inc. of Chapel Hill, NC for the National Institute on Alcohol Abuse and Alcoholism examined the impact of alcoholism treatment services on overall health care utilization and costs for individuals and families filing claims with the Aetna Life Insurance Company under the Federal Employees Health Benefit Program (FEHBP) (U.S. Department of Health and Human Services, 1985). This study examined claims filed during calendar years 1980-83 for a treatment group processing alcoholism claims and a comparison group consisting of families who filed no alcoholism claims during the same period. The four major findings of this study follow:

1. On the average, alcoholic families used health care services and incurred costs at a rate about twice that of similar families with no known alcoholic members.
2. The typical treated alcoholic in the Aetna population was a Federal employee or annuitant in his/her late forties or early fifties. Sixty-eight percent were male and 32 percent were female.
3. There is a gradual rise in the overall health care costs and utilization for alcoholics during the three years preceding alcoholism treatment, with the most dramatic increase occurring in the six months before treatment.

After alcoholics start treatment, their health care costs drop significantly and eventually reach approximately the level that existed several years prior to treatment.

The most significant drop in health care costs occurs for treated alcoholics under the age of 45. This is consistent with the findings of other studies for this age group.

4. Using a variety of forecasting techniques, the project estimated that the average alcoholic's treatment costs could be offset by reductions in other health care costs within two to three years following the start of

treatment. That is, the average alcoholism treatment costs can be recovered within three years after treatment initiation.

The study concludes that alcoholism treatment is associated with statistically significant reductions in total health care costs. Further, these findings are also consistent with the reduced health care costs observed following diagnosis and treatment initiation for other chronic diseases, i.e. hypertensive disease, respiratory disease, diabetes, and ischemic heart disease (Schlesinger et al., 1983) and with research showing reductions in health care costs associated with mental health care (Schlesinger et al., 1983; Roweton, 1983; Mumford et al., 1984).

THE COST OFF-SETS OF MENTAL HEALTH TREATMENT

The cost-savings associated with mental health care, alluded to in the previous section, have been further substantiated by a review of recent studies (Scharfstein, Muszynski, and Arnett, 1985). In their discussion, the authors state:

When benefits for mental health care are expanded and the stigma associated with receiving treatment for mental conditions decreases, an initial increase in insurers' costs attributable to psychiatric care is likely to occur. However, with psychiatric problems no longer masked under other diagnoses, and with early detection and appropriate treatment of these conditions, it also is probable that such costs will be offset partly by reduced expenditures for care of other illnesses.

Over the past few years there has emerged a body of evidence that spending for psychotherapy produces savings elsewhere through increased employee productivity, reduced absenteeism and lower costs for other medical care. (p. 33).

One dramatic study cited in their article was conducted in 1983 and involved the Blue Cross-Blue Shield federal employees health plan. It demonstrated that a "group of patients who began outpatient psychotherapy following diagnosis of

chronic medical disease used 56 percent fewer medical services during the third year after diagnosis than a group with the same diseases who received no outpatient psychotherapy" (p. 33).

This study, in conjunction with others cited by the authors, illustrates that treatment of mental illness is not only cost-effective but is directly measurable in terms of savings generated through the non-utilization of other medical services.

THE COST IMPACT OF EMPLOYEE ASSISTANCE PROGRAMS

HOW IS EAP's COST-EFFECTIVENESS MEASURED?

In order to survive, EAPs must appeal to the profit motive of industry. These programs have been established on the premise that treatment will pay for itself by the employee's restored productivity (Roman and Trice, 1976; Archer, 1977). Several "human-capital" models have been proposed on the grounds that corporate managers will choose to initiate EAPs if sufficient cost-benefit ratios can be projected (Schramm, 1980; Swint et al., 1979). Some of the factors considered include: productivity lost, value of employee, replacement costs and treatment costs.

Finney wrote in the March 1985 issue EAP Digest about the need to more realistically estimate the cost savings of employee assistance programs. He suggests use of the Cost-Savings Worksheet (Figure 8), as a means to distinguish between the costs to an organization without an EAP, the costs with an EAP, and the cost-savings resulting from the implementation of an EAP. By incorporating the various aspects of EAP costs, Finney has proposed a straightforward cost-estimate alternative. Although the accuracy and suitability of his method has yet to be determined, it does provide further direction in addressing the cost-impact issue.

Cost-Savings Worksheet
Letters identifying each cost-item correspond to those used in the formulas

Costs Without EAP

A. Number of employees in workforce	_____
B. Number of troubled employees in workforce (A x .10)	_____
C. Average wage of employees (per year)	\$ _____
D. Wages to troubled employees (B x C)	\$ _____
E. Reduced productivity (D x .375)	\$ _____
F. Average health care costs per employee (per year)	\$ _____
G. Troubled employee health care costs (B x F x 2.5)	\$ _____
H. TOTAL COSTS OF TROUBLED EMPLOYEES (E + G)	\$ _____

Costs With EAP

I. Number of troubled employees contacting EAP per year (A x .05)	_____
J. Number of troubled employees not contacting EAP (A x .05)	_____
K. Number of troubled employees rehabilitated through EAP (I x .75)	_____
L. Number of troubled employees not rehabilitated through EAP (I x .25)	_____
M. Program costs (A x \$15/employee)	\$ _____
N. Non-hospital treatment (A x .025) x (\$225/employee)	\$ _____
O. Hospital treatment (A x .025) x (\$7,000/employee)	\$ _____
P. Unsuccessful rehabilitation costs L x C = D* or wages of unsuccessfully rehabilitated employees D* x .375 = E* or reduced productivity of unsuccessfully rehabilitated employees F x L x 2.5 = G* or health care costs of unsuccessfully rehabilitated employees E* + G* = P	\$ _____
Q. Costs of troubled employees not contacting EAP J x C = D ¹ or wages of troubled employees not contacting EAP D ¹ x .375 = E ¹ or reduced productivity of troubled employees not contacting EAP F x J x 2.5 = G ¹ or health care costs of troubled employees not contacting EAP E ¹ + G ¹ = Q	\$ _____
R. TOTAL COSTS WITH EAP (M + N + O + P + Q = R)	\$ _____

Cost-Savings With EAP

S. Successful rehabilitation cost-savings. K x C = D ⁺ or wages of troubled employees rehabilitated through EAP D ⁺ x .375 = E ⁺ or reduced productivity of troubled employees rehabilitated through EAP (this returns to normal) F x K x 2.5 = G ⁺ or health care costs of troubled employees rehabilitated through EAP (this returns to normal) E ⁺ + G ⁺ = S	\$ _____
T. Actual cost with EAP (R - S = T)	\$ _____
U. TOTAL COST-SAVINGS WITH EAP (H - T = U)	\$ _____

*Relates to unsuccessfully rehabilitated employees.
¹Relates to troubled employees not contacting the EAP.
⁺Relates to successfully rehabilitated employees.

An article by Turkington in the August, 1985 issue of the American Psychological Association Monitor cited the cost savings of several major corporations: New York Telephone Company documents \$1.5 million annual savings as a result of its broad brush EAP; DuPont, Inc. noted a return of more than \$500,000 net profit on its initial investment; the U.S. Postal Service estimates an annual savings of more than \$2 million.

Most EAPs save far more money than they cost simply by reducing absenteeism. The National Institute of Alcohol Abuse and Alcoholism estimates a \$5.78 return on every \$1 invested in an EAP. We recognize your need as a corporate decision maker to understand the "nuts and bolts" of EAP cost savings. The next section provides the information to substantiate these claims. It has been the experience of many EAPs that while these cost savings are not immediate, a return on investment is usually realized when the program has been integrated into the organization and reflects an adequate utilization rate by the employee population. In other words, the more the program is promoted and utilized the greater the probability of a positive cost impact. A program which relies exclusively on its written policy to generate referrals and is void of organizational training and promotional efforts is unlikely to yield the cost impact results cited below.

THE STUDIES ON EAP COST-EFFECTIVENESS

By referring people to chemical dependency and mental health treatment, employee assistance programs can help reduce the health care expenses and job performance costs of a corporation. There are several studies of employee assistance programs (see Appendix) which have found that employees using a program show definite improvement in job performance and decreases in health care utilization. Many studies have been done with occupational alcoholism programs with consistent findings of cost-impact. For example, Tables 3 and 4

Table 3

Analysis of 104 Employees Who Underwent* Active Treatment for Alcoholism

Sickness and Accident Benefits	One Year Before Treatment	First Year After Treatment	Second Year After Treatment	Results
Number of S & A Claims	182	99	29	84% decrease
Number of days lost	3,440	1,779	624	82% decrease
Amount paid in S & A Benefits	\$93,554	\$48,691	\$17,590	81% decrease

Table 4

Cost Analysis of the 48 Oshawa Plant Employees Who Did Not Undergo Active Treatment for Alcoholism, One Year Before Referral and One Year After Referral*

Sickness and Accident Benefits	One Year Before Referral	One Year After Referral	Results
Number of S & A Claims	57	68	19% increase
Number of days lost	688	1,521	121% increase
Amount paid in S & A Benefits	\$19,082	\$43,413	128% increase

*From Business Quarterly, Winter 1983

indicate the impact of the General Motors - United Auto Workers Substance Abuse Program. Clearly, the program saves GM thousands of dollars by reducing sickness and accident claims benefits and days lost. Table 4 demonstrates that these savings do not occur for untreated alcoholics and, in fact, the result of not treating alcoholism among employees will be an increase in costs associated with alcoholism. Finally, the reader should note that the GM data do not include other significant costs related to alcoholism, such as health care claims and absenteeism.

A study by ATT (Geata, Greg and Lynn, 1982) was initiated to demonstrate financial accountability and cost efficiency of the EAP. All EAP clients over a period of two years were included. A major finding was that 86 percent were considered "rehabilitated" or "improved" following treatment. At the time of referral to the EAP, 76 percent demonstrated poor job performance, while after treatment 43 percent and 36 percent demonstrated good and excellent job performance respectively. There were significant reductions in absenteeism, accidents on the job, and visits to the medical unit. The study included specific cost-savings for each of these factors. The overall cost-saving, considered rather conservative, was nevertheless \$448,000.

The major problem is the difficulty in precisely measuring and assigning dollar amounts to those areas where an employee assistance program has the greatest impact, such as absenteeism, and overall job performance. Table 5 is a summary of a study done at Hazelden on a random sample of 119 employees of a company with an employee assistance program. Most contacts were voluntary, although a few employees were supervisory referrals. Table 6 shows similar results for the Burlington Northern Employee Assistance Program. These tables are illustrative of what is typically found in the impact studies of employee assistance programs. There are significant and major reductions in absenteeism and also evidence of a decrease in use of health care services and Workman's Compensation.

Table 5

Comparison of Employee Job Performance Indicators
Before And After Contacting The EAP

(N=109)

<u>Number of:</u>	<u>Use Before</u>	<u>Use After</u>	<u>Amount of Change</u>
Times arrived late for work	196	61	-135 times
Times left work early	120	43	- 77 times
Times of other absenteeism	56	0	- 56 times
Times used Health Insurance Plan	96	90	- 6 times
Sick days	158	126	- 32 days
*Medical leave days	41	75	+ 34 days
Accidents on the job	2	2	0 accidents
Times Worker's Compensation used	8	0	- 8 times
Short-term disability	0	0	0 days

*Note: The increases for this item reflect the employees' use of treatment or health care during the four months after the initial contact with the EAP. One would expect the use of this benefit to decrease in the long-term.

Table 6

Burlington-Northern EAP Study
Job Performance Changes

Indicators (Previous Month)	At Intake** (N=646)	At 3 Months Follow-up (N=501)	At 12 Months Follow-up (N=464)
Used health insurance	17%	8%*	5%
Arrived late for work	17%	5%*	3%
Left work early	13%	4%*	3%
Took sick days	18%	7%*	8%
Used medical leave	4%	< 1%	2%
Had an accident on the job	2%	< 1%	1%
Used short-term disability	1%	< 1%	< 1%
Used worker's compensation	1%	< 1%	< 1%
Absent for other reasons	13%	4%	14%
Filed a grievance	1%	—	—
Job Performance Ratings (Previous Month)			
Improved	2%	45%	39%
Stayed the same	41%	22%	23%
Worsened	28%	2%	3%
Unknown	28%	31%	35%
Job In Jeopardy			
Yes	25%	7%*	4%
No	48%	65%	63%
Unknown	27%	28%	33%

*These differences between intake and follow-up responses were statistically significant at the .01 level for a matched group of 225 clients completing both the intake and three month follow-up forms.

**In order to increase the sample size, intake data were included on a twelve-month sample of clients: July, 1982 - June, 1983.

Other studies of blue collar employees have found a greater impact in the area of accidents and injuries. The major impact of an employee assistance program, however, is in those areas that are difficult to measure and almost impossible to express in dollars. These areas include such benefits as an improvement in the employee's quality of life and the work environment, and long-term health improvement (see Figure 9).

In an internal study of their EAP, CIGNA measured their Program's benefits in the following areas:

1. Decreased short-term absence (one week or less)
2. Improved productivity
3. Reduced claim costs

Tables 7 and 8 illustrate in hours and percentages respectively the decreased short-term absences at one CIGNA location. Dramatic changes are particularly noted for alcohol cases and supervisory referrals (where individuals sought help after a performance problem had been identified). Based upon 1,500 cases seen yearly nationwide, savings in the third year would exceed \$100,000.

In measuring improved productivity, CIGNA asked supervisors to estimate the productivity lost due to a problem worker based on their observances. The supervisors estimated 17 percent loss of salary, not including costs of benefits or loss of time by supervisors and co-workers. Based on the average salary of EAP clients (which was higher than the corporate-wide average) and nationwide experience of 10 percent supervisory referrals, improved productivity exceeds \$800,000 annually.

Utilizing the average claim payment per year and utilizing existing studies supporting the fact that claims by alcoholics are three times greater prior to treatment, they projected that helping their alcoholic employees nationwide (approximately 10 percent of their total clients) would save in excess of \$250,000 yearly in medical claims.

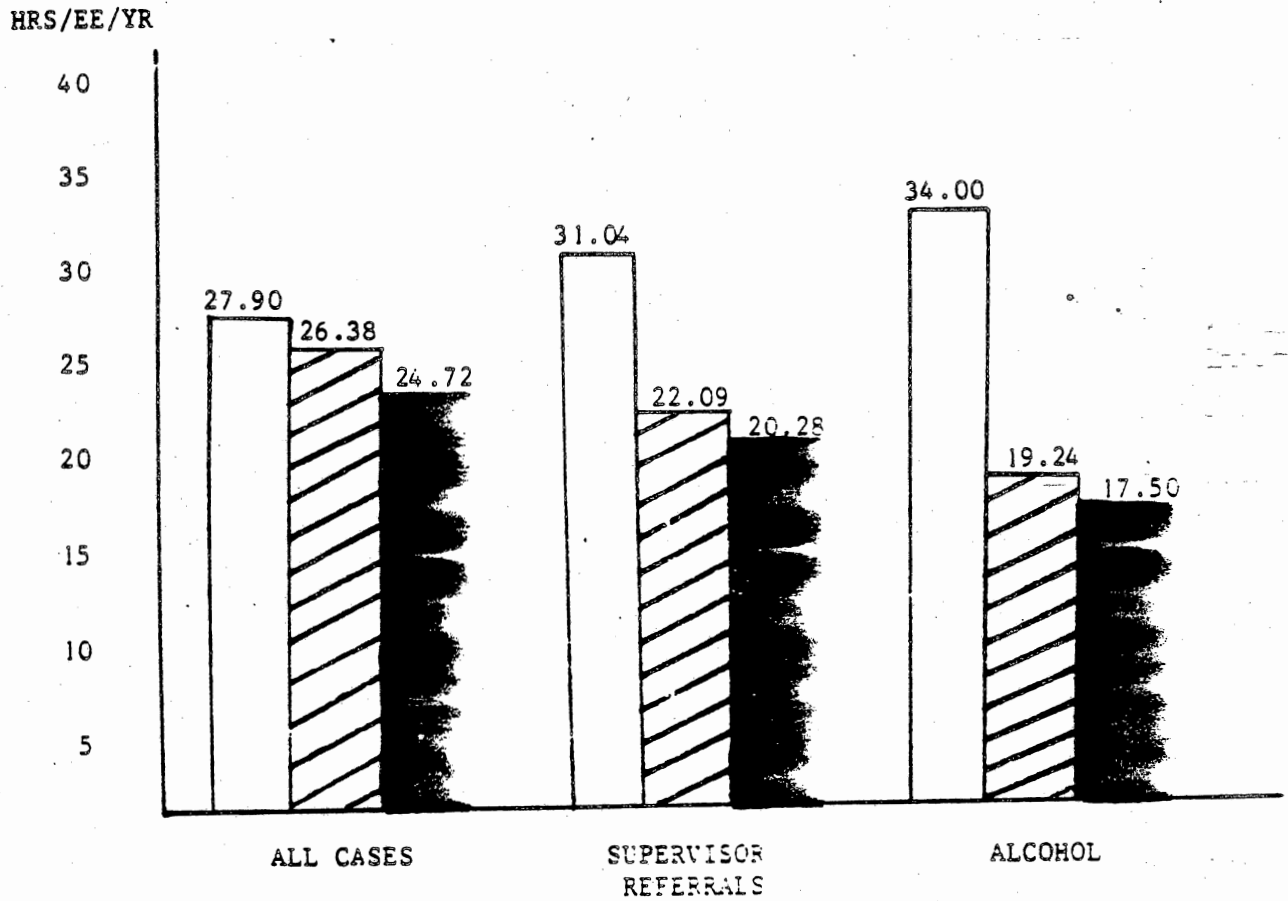
Figure 9

Costs Of An EAP	
I.	Costs Of The Program
II.	Treatment Costs
III.	Opportunity Costs

Cost-Impact Of An EAP	
I.	Benefits That Can Be Easily Measured in Dollars
A.	Health benefits utilization, medical claims
B.	Accidents, injuries
C.	Worker's Compensation, Unemployment Insurance
D.	Sick leave, disability
II.	Benefits That Are More Difficult To Measure In Dollars
A.	Absenteeism, absences
B.	Turnover, terminations
III.	Benefits That Are Very Difficult To Measure In Dollars
A.	Morale
B.	Job performance
C.	Quality of employee life and work environment
D.	Long-term health improvement

Table 7

Changes In Short-term Absences
(1 yr. prior; 1 yr. after; 3 yrs. after)



New Jersey State Library

Table 8

Decrease In Short-term Absences

1 Yr Before 1 Yr Before Cumulative
Vs. 1 Yr After Vs. 3 Yrs After 3 Yrs

TOTAL

SUPERVISOR
REFERRALS

ALCOHOL

-5.4%	-19.5%	-9.7%
-28.8%	-33.0%	-19.7%
-43.4%	-59.1%	-40.3%

These costs savings do not include the intangible benefits of helping employees and family members and providing supervisors with continuous support in resolving highly sensitive and often disruptive employee problems which if left unresolved impact negatively on morale, health and productivity (Yoskowitz, 1985).

With a Grant-In-Aid from the International Foundation of Employee Benefit Plans, Madonia (1985) conducted a recent study (June 1 to November 30, 1984) of the workforce in metropolitan Houston utilizing a stratified sample of companies with and without employee assistance programs. His primary interest was in examining the process companies utilize to measure the impact of the EAP on health insurance costs and other factors. While his findings reflect some trends in benefit plan provisions and comparisons of EAP and non-EAP company characteristics, his major conclusions, which are summarized below, support the positive impact of EAPs in the areas of improved productivity and reduced health insurance costs:

1. Several companies examined the impact of their EAPs on employee absenteeism and tardiness, reporting a decrease in both areas as a consequence of the EAP. "Similarly, 18 percent of the companies examined how EAPs affect productivity or job performance. All companies examining those variables concluded there was an increase in productivity or job performance." (p. 5)
2. Other companies examined several additional areas, i.e., workers' compensation, general health conditions, alcohol and drug use, to name a few, and reported positive outcomes as a consequence of the EAP.

In the conclusion to his study, Madonia offers the following summation of the health insurance cost impact of EAPs:

Several conclusions on insurance use and costs are apparent from the research findings. More claims for nervous and mental disorder benefits are submitted by employees from companies with EAPs than from companies without EAPs, although the added use of these benefits apparently does not

result in higher insurance costs for companies sponsoring EAPs. In fact, a trend is noted in the sample data that points to lower rates of increase in insurance costs in EAP companies where restrictions are placed on inpatient psychiatric coverage. The overall findings on insurance use and costs tentatively support the offset effect principle; treating psychological disorders lessens the need for medical care, which ultimately reduces insurance costs.

The reports from this survey also allow one to conclude that if an EAP is offered by a company, it will be used by employees. Company research, when conducted, shows positive outcomes from EAP utilization. This is reflected in higher employee morale and cost savings for the corporation. (p. 7)

Although the author points to the tentativeness of these results because few companies have systematically studied the impact of their EAPs on insurance costs, he does indicate that interviews with company benefit managers revealed that these managers see the positive results of EAPs, consider that in the long run the EAP will result in insurance cost savings for the company, and view EAPs as good for employee morale.

As previously indicated, the Appendix provides a listing of several cost-impact studies and the reader interested in further information is encouraged to consult them. Additional information is also available through the Occupational Section of the New Jersey Division of Alcoholism.

APPENDIX

EAP Cost-Impact Studies

Source	Type of Company	Sample Characteristics (N)	Type of EAP	Type of Treatment	Length of Follow-up	Criteria	Outcome
Gaeta, Lynn & Grey, 1982	AIT	110 total all consecutive cases	Broad-brush	inpatient outpatient EAP counseling & self-help	up to 2 yrs.	Performance appraisal Accidents Absences Visits to medical	86% consider improved Significant decrease in accidents, visits to medical and absence. Computed average replacement cost to be \$2,100 per employee.
Heyman, 1976	4 large service and manufacturing	162	Alcoholism			Self-reported performance	67% of coerced clients and 33% of voluntary clients improved.
Manello, 1979	7 railroads	1,571	Alcoholism			"Return to adequate work levels"	"About 70% of those who accepted treatment were successfully rehabilitated"
Mastrich, 1985	10 companies	310 randomly selected	Broad-brush	inpatient	1 yr.	Job performance Drinking behavior	75% were abstinent 81% demonstrated satisfactory job performance
Milstead-O'Keefe, 1980	10 companies in community Agency of Labor Management	13 women alcoholics	Broad-brush			5 measures of performance	Success rate equaled "71-88% across the work performance criteria"
Presnall, 1980	Not given	167 problem drinking men	Alcoholism			Amount of drinking absenteeism	73/167 improved, decrease from 47-61 work shifts lost annually prior to treatment to 12-21 work shifts lost annually after treatment, depending on drinking outcome

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Source	Type of Company	Sample Characteristics (N)	Type of EAP	Type of Treatment	Length of Follow-up	Criteria	Outcome
Foote, et al., 1978	4 companies	Company A: N=341 Company B: N=22 Company C: N=57 Company D: N=159 mainly men		Broad-brush	13 months after referral	Absenteeism	Company A: no data; Company B: Increase from 244 to 298 average hours annually; Company decrease from 307 to 133; Company D: decrease from 628 to 492
						Disciplines	Company A: decrease from .6 to .5 average number annually; Company B: decrease from 1.1 to .7; Company C: decrease from 1.0 to .2; Company D: decrease from 1.6 to .7
						Grievances	Company A: no data; Company B: decrease from .2 to 0 average number annually; Company C: decrease from .1 to 0; Company D: decrease from 1.4 to .9
						On-the-job accidents	Company A: decrease from 2.3 to 1.7 average number annually; Company B: decrease from 1 to .9; Company C: decrease from .3 to 0; Company D: no data
						Visits to medical unit	Company A: decrease from 7.3 to 5.9 average number annually

Source	Type of Company	Sample Characteristics (N)	Type of EAP	Type of Treatment	Length of Follow-up	Criteria	Outcome
						Amount paid in worker's compensation benefits	Company A: decrease from \$163 to \$124 average annually; Company B: decrease from \$320 to \$237; Company C: decrease from \$130 to \$5
						Amount paid in sickness & accident benefits	Company A: Increase from \$425 to \$679 average annually; Company B: Increase from \$123 to \$205; Company C: decrease from \$2,035 to \$824; Company D: increase from \$593 to \$629
Chopra et al., 1979	Not given	86 coerced clients and 100 voluntary clients (all men)	Alcoholism	3 week inpatient program	Max. of 14 months	Abstinence	48% of coerced and 34% of voluntary clients reported abstinence
Friedberg & Johnson, 1980	200 businesses & industries	370 coerced clients and 58 voluntary clients (95% men)	Alcoholism	3 week inpatient program followed by 80-90 hrs. of aftercare	12 months	Abstinence	31% of coerced and 36% of voluntary clients reported abstinence; 32% & 21% reported improvement
						Work status	15% of coerced and 7% of voluntary were fired
						Ontario Problem Assessment Battery	"Significant Improvement"
						Supervisor's Rating form	"Significant Improvement"

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Source	Type of Company	Sample Characteristics (N)	Type of EAP	Type of Treatment	Length of Follow-up	Criteria	Outcome
Anonymous, 1980	Illinois Bell	752 referred problem drinkers with at least 5 years of employment before and after referral	Alcoholism	Varied; hospital recommended for 50%	At least one year	Abstinence Supervisor's ratings Disability claims Off-duty accidents Requiring > 7 day absence On-duty accidents	58% reported abstinence; 19% reported improvement Prior to referral 90% had fair to poor ratings. After referral 66% had good ratings. Decreased by 52% Decreased by 42.4% Decreased by 61.4%
Schumm, et al., 1978	3 companies	206 referred problem drinkers	Alcoholism	Varied; in-patient recommended for 10%	3-30 months 12-30 months	Job retention Treatment outcome	81% remained employed in the company 38.3% successfully completed treatment or were still actively involved in treatment
Hazelden Studies							
Spicer, Barnett, & Kliner, 1979	Referrals from many companies to a treatment center (Hazelden)	N=191 (mostly males)	N/A	4 week residential treatment	12 months	Self-reported alcohol use Self-reported drug use Self-reported improvement in: relationship with spouse, general physical health,	69% abstinent (compared with 62% in total patient population) 78% abstinent (compared with 70% in total patient population) 78-91% reported improvement

Source	Type of Company	Sample Characteristics (N)	Type of EAP	Type of Treatment	Length of Follow-up	Criteria	Outcome
						self-image, ability to manage finances	
						Self-reported improvement in job performance	85% reported improvement
						A.A. attendance > 1 x week	58% reported improvement
						Self-reported improvement in overall quality of life	59% reported improvement
Hazelden, 1981	Hennepin County Employees	N=109 EAP clients 63% women 37% men	Broad-brush	Varied; only 48% referred to inpatient treatment	4 months	Self reported: quality of work quantity of work relationship co-workers relationship with supervisors # of times arrived to work late # of times left work early # of times other absenteeism times used health insurance sick days medical leave days accident on job times used Workers' Comp. short-term disability	46% improved 35% improved 33% improved 32% improved Decrease from 196 times to 61 times total Decrease from 120 times to 43 times Decrease from 56 times to 0 times Decrease from 96 to 90 Decrease from 158 to 126 Increase from 41 to 75 No change (2) Decrease from 8 to 0 No change (0)

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News



W. CARY EDWARDS
ATTORNEY GENERAL

FOR IMMEDIATE RELEASE
October 23, 1986

FOR FURTHER INFORMATION CONTACT:
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Attorney General W. Cary Edwards today issued drug testing guidelines for New Jersey's law enforcement officers who carry firearms, based upon recommendations by the New Jersey Criminal Justice Advisory Council, a group which includes both law enforcement union and management officials.

In letters to all New Jersey mayors, police chiefs, county prosecutors and sheriffs, Attorney General Edwards urged adoption of the law enforcement drug testing guidelines for officers who carry firearms. The guidelines call for drug testing when an applicant applies for a law enforcement position, during training and on the job when there is a reasonable suspicion of unlawful drug use.

"It is my view that the establishment of uniform and rational statewide drug testing guidelines is absolutely necessary in order to maintain a drug-free law enforcement community and at the same time safeguard the rights of individual police officers," Edwards said in guidelines distributed to all law enforcement agencies in the state.

The major features of the guidelines for state and local police, corrections officers, county and state investigators and

detectives, sheriff's officers and other law enforcement personnel who carry guns are:

- ° All applicants for law enforcement positions must submit to urinalysis prior to appointment. Those who refuse to submit to testing or who produce positive test results for unlawful drug use will be rejected from employment and will be barred from applying for any other law enforcement position for at least two years.
- ° Police academy trainees will be subjected to unannounced drug testing. Trainees who refuse to submit to testing or who test positively will be dismissed.
- ° Permanently appointed officers will be subjected to unannounced drug testing when there is a reasonable suspicion of unlawful drug use. Those who refuse to submit to testing or who test positively will be dismissed.
- ° N.J. State Police will maintain a central registry for law enforcement applicants and officers who have produced positive test results for unlawful drug use.
- ° All law enforcement supervisors should be required to undergo in-service training in substance abuse detection to be offered through the Division of Criminal Justice.

Edwards noted that although statewide figures on drug use by law enforcement officers are not available, his office estimates

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that less than 2 percent of all law enforcement officers use illegal drugs, based on available information.

"While drug use among law enforcement officers in New Jersey is undoubtedly minimal," Edwards said in the guidelines, "it cannot and will not be tolerated to even the slightest degree."

He added that because of the severity of the recommended penalties, "it is extremely important that strict measures be employed to ensure that all drug screening is conducted in accordance with legally accepted standards to ensure fairness and reliability of test results.

One such standard calls for urinalysis as the preferred method of drug screening because of its reliability and its ability to detect residual drugs in a subject's system as well as impairment at testing time.

While the guidelines are issued today as recommendations, Edwards and First Assistant Attorney General Donald R. Belsole said that they have instructed Frederick P. DeVesa, assistant director of the Division of Criminal Justice, to draw up within the next 60 days any legislation, directives, rules and regulations necessary to make to make the guidelines mandatory.

In the meantime, he said those law enforcement agencies within the Department of Law and Public Safety which employ officers carrying firearms will be expected to adopt the guidelines as quickly as the necessary internal procedures can be established.

Edwards noted that for the past decade, State Police officers have been required to undergo physical examinations, including urinalysis, annually. The Attorney General suggested that other law enforcement agencies may wish to adopt similar policies requiring annual physicals, including screening for drug use.

"In my view, the demands of the law enforcement profession warrant medical examinations of officers on a regular basis," Edwards said in the guidelines.

The Attorney General's policy closely follows the recommendations of the New Jersey Criminal Justice Advisory Council. At the Attorney General's request, last spring the Council created an ad hoc committee to research the issue of drug testing.

On Sept. 9, the Council issued its recommendations with the support of each member of the ad hoc committee, including union and management officials.

"The Council's ad hoc committee, which was chaired by State Police Captain Roy Bloom, met on numerous occasions and conducted an exhaustive study of the issues related to drug testing, including thoroughly researching current drug screening programs, existing drug testing technology and the financial and operational impact of drug testing upon the law enforcement community," Edwards said.

"They should be praised for their hard work," he added. "Their input was critical to my formulation of drug testing guidelines for law enforcement officers."

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W. CARY EDWARDS
ATTORNEY GENERAL

October 22, 1986

TO: ALL LAW ENFORCEMENT AGENCY HEADS

RE: LAW ENFORCEMENT DRUG SCREENING GUIDELINES

As a result of the growing concern over drug use in our society, I have received numerous inquiries from State, county and municipal law enforcement agencies regarding the urine testing of police officers. In response thereto, I requested that the New Jersey Criminal Justice Advisory Council thoroughly research current drug screening programs, existing drug testing technology, and the financial and operational impact of drug testing upon the law enforcement community. After several months of deliberation, the New Jersey Criminal Justice Advisory Council has submitted a report to me outlining their findings and recommendations.

After considering the Advisory Council's recommendations and the emerging case law, it is my view that the establishment of uniform statewide drug testing guidelines is absolutely necessary in order to maintain a drug-free law enforcement community and at the same time safeguard the rights of individual police officers.

As Attorney General of the State of New Jersey, it is my responsibility to ensure that our citizens are provided police protection by officers whose integrity and competence are beyond question. It is also my responsibility to ensure that the safety of our law enforcement officers is not undermined by illicit drug use within their ranks. While drug use among law enforcement officers in New Jersey is undoubtedly minimal, it cannot and will not be tolerated even to the slightest degree.

TO: ALL LAW ENFORCEMENT AGENCY HEADS

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Accordingly, I strongly urge that the following drug testing guidelines be adopted by all law enforcement agencies in the State.

1. All law enforcement applicants who will be responsible for the enforcement of the criminal laws of this State and who will be authorized to carry a firearm pursuant to 2C:39-6, should submit to a urinalysis prior to appointment.
2. An applicant who produces a confirmed positive test result indicating unlawful drug use or who refuses to submit a urine sample should be rejected from employment and should be barred from applying for any other law enforcement position for a minimum of at least two years.
3. Standard law enforcement application forms and existing guidelines for applicant background investigation should be revised to ensure disclosure of prior drug use or prior rejection from employment for drug related purposes.
4. Subsequent to appointment, all officers should be subjected to unannounced drug testing by urinalysis during mandatory basic training.
5. A trainee who produces a positive test result indicating unlawful drug use or who refuses to submit a urine sample should be dismissed from the training academy and from his law enforcement position, subject to any available rights to a hearing.
6. Permanently appointed law enforcement officers should be required to undergo further mandatory drug screening whenever there is individualized reasonable suspicion to believe that the officer is unlawfully using drugs. Officers should be tested under these circumstances only with the approval of the county prosecutor or chief executive officer of the department or his designee.
7. Permanently appointed officers who produce positive confirmed test results indicating unlawful drug use that are upheld after a fair and impartial hearing should be dismissed from employment.
8. Permanently appointed officers who willfully refuse to submit to urinalysis when there is reasonable suspicion to believe that the officer is unlawfully using drugs

TO: ALL LAW ENFORCEMENT AGENCY HEADS
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should be dismissed from employment, if, after a fair and impartial hearing, it is determined that the officer was properly ordered to undergo testing.

9. The identity of every law enforcement applicant, trainee and permanently appointed officer who has produced positive confirmed test results for unlawful drug use should be forwarded to a central registry maintained by the Division of State Police, River Road, West Trenton, New Jersey 08625.
10. All supervisors in law enforcement agencies should be required to undergo in-service training in substance abuse detection that will be offered through the Division of Criminal Justice.
11. Standard police department rules and regulations should be adopted to require that:
 - (a) officers must disclose the use of any drugs (prescription and over-the-counter) which may impair job performance;
 - (b) officers must report evidence of suspected drug use by other officers to department superiors;
 - (c) officers will be required to submit to mandatory drug testing whenever there is individualized reasonable suspicion to believe that they have been unlawfully using drugs;
 - (d) officers who refuse to submit to lawful orders to undergo drug testing or who produce positive test results for unlawful drug use will be dismissed from employment.

Given the severity of the recommended penalties for unlawful drug use by law enforcement officers, it is extremely important that strict measures be employed to ensure that all drug screening be conducted in accordance with legally accepted standards that ensure fairness and the reliability of test results. Although the case law is still not completely settled, it is my opinion that drug testing procedures must be reasonable, reliable and must adhere to due process considerations in order to satisfy constitutional requirements. Accordingly, the following minimum standards must be adhered to during drug testing of law enforcement applicants, trainees and permanently appointed officers.

TO: ALL LAW ENFORCEMENT AGENCY HEADS
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METHODS AND PROCEDURES
FOR DRUG SCREENING

1. Urinalysis will be the primary method for the drug screening of law enforcement applicants, trainees and permanently appointed officers.
2. Established quality control and chain of custody procedures must be maintained throughout the entire testing process, from sample acquisition to delivery at the laboratory. Sample procedures recommended by the Criminal Justice Advisory Council are attached for your adoption.
3. All urine samples obtained from law enforcement applicants, trainees and permanently appointed officers will be delivered to the State Police Laboratory at Sea Girt for analysis.
4. No adverse action may be taken against an applicant, trainee or officer until the State Police Laboratory preliminary analysis and subsequent confirmation have been reported to the submitting law enforcement agency.

It should be noted that the guidelines outlined above do not in any way prohibit or regulate the urinalysis of law enforcement officers during regularly scheduled and announced medical examinations. In my view, the demands of the law enforcement profession warrant medical examinations of officers on a regular basis. I encourage agencies to provide for regular medical examinations to ensure that officers are physically fit to perform their duties without risk of harm to themselves or to others. These kinds of announced examinations may include urinalysis and are not intended to be regulated by these guidelines.

These guidelines are not intended to require the testing of civilian employees of law enforcement agencies. Given the diverse nature of civilian law enforcement positions, decisions regarding which employees should be tested are better left to local discretion. If testing of civilian employees is conducted, the methods and procedures set forth herein should be followed.

Obviously, full implementation of these guidelines by all law enforcement agencies is a complex undertaking that involves many significant legal and practical questions.

In order to resolve these questions and to bring about full implementation of these guidelines, I intend to seek legislation and the necessary state level funding within 60 days. I will also issue supplementary directives, legal opinions, proposed

TO: ALL LAW ENFORCEMENT AGENCY HEADS


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agency rules and regulations and other guidance that will facilitate the implementation of a rational statewide drug testing program in the near future.

The Division of Criminal Justice will continue to monitor drug testing in the law enforcement community and related litigation in order that appropriate revision; can be made to these guidelines if warranted.

In the interim, I recommend that wherever possible, drug testing consistent with these guidelines be instituted as soon as reasonable notice of testing requirements can be provided to those who may be tested. In order to protect the rights of those tested, law enforcement agencies that do initiate a drug screening program must comply with the attached testing methods and procedures for the drug screening of law enforcement applicants, trainees and veteran police officers.


W. CARY EDWARDS
ATTORNEY GENERAL

METHODS AND PROCEDURES FOR DRUG SCREENING
PERMANENTLY APPOINTED LAW ENFORCEMENT OFFICERS

I. Methods and Procedures

The following procedures apply to the acquisition and testing of urine samples obtained from permanently appointed law enforcement officers who are authorized to carry a firearm pursuant to 2C:39-6 for the purpose of determining unlawful drug use.

Urine samples shall be ordered from a permanently appointed law enforcement officer when there is individualized reasonable suspicion to believe that the officer is using illegal drugs. Urine samples shall not be ordered from a permanently appointed officer without the approval of the county prosecutor or the chief executive officer of the agency or someone acting in that capacity during his absence.

II. Notification of Drug Screening

Notification that drug screening through urinalysis will be conducted when there is individualized reasonable suspicion to believe that an officer is using drugs will be included in all police department rules and regulations. In addition, every law enforcement agency will also provide notice through agency rules and regulations that any officer who has reasonable suspicion to believe that a fellow officer is using illegal drugs must immediately report that fact to the Chief Executive Officer of that agency or his designee. Finally, existing agency rules and regulations will be further expanded to provide notice that any officer who is confirmed positive for illegal drug use will be:

- A. Dismissed from the agency;
- B. Included in a central registry maintained by the Division of State Police to be accessed only through court order or as part of a confidential background investigation for future law enforcement employment;
- C. Reported to the county prosecutor.

In addition, notification will also be provided that any officer who refuses to provide a urine sample upon a lawful request made upon individualized reasonable suspicion, will also be dismissed.

III. Laboratory Method

The New Jersey State Police Laboratory in Sea Girt, New Jersey will be the sole facility for both the initial screening and confirmation analysis of urine. Currently, the enzyme multiple

immunoassay test (EMIT) and thin layer chromatography (TLC) are used as initial drug screening procedures. Gas chromatography/mass spectrometry is used to confirm all positive results of initial drug screening procedures. As new procedures are developed and proven to be more reliable and efficient, alternate methods of screening and/or confirmation testing may be adopted.

IV. Preliminary Acquisition Procedures

Prior to the submission of a urine sample, the permanently appointed officer may complete a medical questionnaire which shall clearly describe all drugs, both prescription and non-prescription, ingested during the past 30 days.

V. Specimen Acquisition Procedure

Permanently appointed law enforcement officers will be required to submit a urine sample when there is individualized reasonable suspicion to believe that an officer is using illegal drugs.

At the time that the urine sample is provided, the officer will have the option to submit two samples. Both samples will be acquired according to the procedures outlined herein. One will be forwarded to the State Police Laboratory for testing; the remaining sample will be stored in a frozen state within the department according to departmental procedures regarding chain of custody and evidence storage procedures. This sample will be made accessible to the officer or his attorney.

The department/agency shall be responsible for acquiring urine specimens from permanently appointed law enforcement officers and shall designate an individual to serve as the official monitor. The officer may also choose to name another witness to the sample acquisition.

Prior to requesting that an officer submit a urine sample, the department shall document the basis for reasonable suspicion and prepare a confidential report.

The official monitor shall be responsible for ensuring that all forms have been thoroughly and accurately completed by the officer. Prior to the submission of the sample, both the official monitor and the officer will inspect the specimen bottle for indications of pre-void tampering.

Generally, the officer will submit the urine sample in the presence of the official monitor. On those rare occasions where the officer is not able to provide a sample in the presence of the official monitor, the monitor will permit the officer to provide an unwitnessed sample, so long as the officer removes his clothing in the presence of the official monitor prior to entering a room where he/she has no access to water or any other additive.

The official monitor shall always be of the same sex as the officer being tested. If there are no female members available from within the agency to serve as the official monitor for female officers, the department may request that a female member of a neighboring agency or the prosecutor's office serve as the official monitor.

Urine samples will be processed in accordance with accepted chain of evidence procedures and every effort will be made to ensure that the identity of the officer being tested remains confidential. Throughout the urine acquisition process, the identity of the officer shall be preserved through social security number - no forms forwarded to the laboratory will contain the officer's name.

The officer will complete the information requested on the specimen bottle label and the laboratory chain of request form. After the official monitor has inspected the information for accuracy, the officer will void at least (50) ml. of urine into the specimen bottle. The officer will then secure the cap of the specimen bottle and initial and wrap evidence tape along the top of the bottle, along the cap and down the other side. The officer will place the specimen bottle and the original copy of the laboratory chain of custody form in a plastic evidence bag and initial and seal the bag with evidence tape prior to surrendering the specimen to the official monitor. The officer and agency shall also maintain a copy of the laboratory chain of custody form.

After ascertaining that all forms have been completed accurately by the officer and serving as a witness to the void, the official monitor shall take possession of the sample and place it in a controlled access refrigerated storage area until it is delivered to the State Police Laboratory at Sea Girt. This delivery shall occur within 24 hours of acquisition.

VI. Drug Screen Results

The State Police Laboratory at Sea Girt will orally notify the chief executive officer of the agency immediately upon completion of analysis as to the results, whether positive or negative. The laboratory will report only those samples as positive which have been confirmed to be positive for the presence of drugs. The State Police Laboratory will follow up all oral notifications with written reports. All permanently appointed officers who are screened and confirmed to be positive for the presence of illegal drugs will be notified by the police chief or director as soon after oral notification is received from the laboratory as possible. A copy of the laboratory report will be provided to the officer by the department upon his request.

METHODS AND PROCEDURES FOR DRUG SCREENING
APPLICANTS FOR SWORN LAW ENFORCEMENT POSITIONS

I. Methods and Procedures

The following procedures apply to the acquisition and testing of urine samples obtained from law enforcement applicants who will be responsible for the enforcement of the criminal laws of this State and who will be authorized to carry a firearm pursuant to 2C:39-6 for the purpose of determining unlawful drug use.

II. Notification of Drug Screening Requirement

Notification that drug screening through urinalysis is mandatory during pre-employment and again during training will be included in all advertisements and announcements of law enforcement positions. This notification will also indicate that a negative result is a condition of employment both before and during the probationary appointment.

An applicant for a sworn law enforcement position will be requested to sign a waiver (Attachment A) consenting to the sampling and testing of urine during the employment screening process. This waiver will include notification that a positive confirmation of the presence of illegal drugs in the applicant's urine will result in:

- A. Rejection for employment.
- B. Inclusion of the applicant's positive drug result in a central registry maintained by the Division of State Police to be accessed only through court order or as part of a confidential background investigation for future law enforcement employment.
- C. A bar from obtaining sworn law enforcement employment for a period of two years from the date of a positive confirmation test.

This waiver will also include information that failing to provide the sample will result in rejection for employment.

Although criminal proceedings would not ordinarily be justified in the case of a positive drug test obtained as a result of mandatory, unannounced testing; the Chief Executive Officer of the Department may report positive drug test results to the county prosecutor in appropriate circumstances.

III. Laboratory Method

The New Jersey State Police Laboratory in Sea Girt, New Jersey will be the sole facility for both the initial screening

and confirmation analysis of urine. Currently, the enzyme multiplied immunoassay test (EMIT) and thin layer chromatography (TLC) are used as initial drug screening procedures. Gas chromatography/mass spectrometry is used to confirm all positive results of initial drug screening. As new procedures are developed and proven to be more reliable and efficient, alternate methods of screening and/or confirmation testing may be adopted.

IV. Preliminary Acquisition Procedures

Prior to the submission of a urine sample, the applicant will complete a medical questionnaire which shall clearly describe all drugs, both prescription and non-prescription, ingested during the past 30 days. (Attachment B)

V. Specimen Acquisition Procedure

Applicants for sworn law enforcement positions will be required to submit a urine sample at a time during the pre-employment stage when the applicant is seriously being considered for appointment.

A staff member of the appointing authority will serve as the official monitor, and as such will be responsible for ensuring that all required forms, such as waivers, laboratory request forms and medical questionnaires have been thoroughly and accurately completed by the applicant. Prior to the submission of the sample, both the staff member and the applicant will inspect the specimen bottle for indications of pre-void tampering.

Generally, the applicant will submit the urine sample in the presence of the official monitor. On those rare occasions where the applicant is not able to provide a sample in the presence of the official monitor, the appointing authority may choose to permit the applicant to provide a sample without the witness, so long as the applicant removes his clothing in the presence of the official monitor prior to entering a room where he/she has no access to water or any other additive.

The official monitor shall always be of the same sex as the applicant being tested. If there are no female staff members available from within the appointing agency who can serve as the official monitor for female applicants, the appointing authority may request that a female member of a neighboring agency or the prosecutor's office serve as the official monitor.

Urine samples will be processed in accordance with accepted chain of evidence procedures. Throughout the urine acquisition process, the identity of the applicant shall be preserved through social security number - no forms forwarded to the laboratory will contain the applicant's name.

The applicant will complete the information requested on the specimen bottle label and the laboratory chain of request form.

After the official monitor has inspected the information for accuracy, the applicant will void at least (50) ml. of urine into the specimen bottle. The applicant will then secure the cap of the specimen bottle and initial and wrap evidence tape along the top of the bottle beginning on one side of the bottle, along the cap and down the other side. The applicant will place the specimen bottle and the original copy of the laboratory chain of custody form in a plastic evidence bag and initial and seal the bag with evidence tape prior to surrendering the specimen to the official monitor. The applicant and the appointing agency shall also maintain a copy of the laboratory chain of custody form.

After ascertaining that all forms have been completed accurately by the applicant and serving as a witness to the void, the official monitor shall take possession of the sample and place it in a controlled access refrigerated storage area until it is delivered to the State Police Laboratory at Sea Girt. This delivery shall occur within 24 hours of acquisition.

VI. Drug Screen Results

The State Police Laboratory at Sea Girt will orally notify the appointing authority of the results of the urinalysis, whether negative or positive. The laboratory will only report those samples as positive which have been confirmed to be positive for the presence of drugs. The laboratory will follow up all oral notifications with written reports. All applicants who are found positive for drugs will be orally notified by the appointing authority of the positive confirmation result as soon after the oral notification from the laboratory as possible. A copy of the laboratory report may be provided to the applicant by the appointing authority if he requests it.

ATTACHMENT A
DRUG SCREENING THROUGH URINALYSIS
APPLICANT CONSENT

I, _____, understand that as part of the pre-employment process, the _____ will conduct a comprehensive background investigation in an effort to determine my suitability to fill the position for which I have applied. I further understand that as part of the pre-employment process, I will be required to submit to and perform certain medical and physical examinations. In accordance with the efforts of the _____ to select only those most qualified for law enforcement, I do hereby consent to the sampling and submission for testing of my urine for the purpose of drug screening. I understand that a negative result is a condition of employment.

I also understand that refusing to supply the required samples or producing a positively confirmed test result for the presence of illegal drugs will result in the rejection of my application for employment. I understand that in the case of a positive result, my name will be forwarded to a central registry maintained by the Division of State Police and will be made available only upon court order or as part of a background investigation for a law enforcement position. I understand that a confirmed positive test result indicating the presence of drugs will bar me from securing future law enforcement employment for a period of two years. I understand that after this two year period, a positive test result may be considered in evaluating my fitness for future law enforcement employment.

I understand that the results of the urinalysis will be provided to me as soon as possible after receipt by the _____ Police Department.

I hereby acknowledge receipt of a copy of the methods and procedures for drug screening applicants for sworn law enforcement positions.

Signature of Witness

Signature of Applicant

Date

Date

ATTACHMENT B
DRUG SCREENING
MEDICATION INFORMATION

In order to ensure the accuracy of established urine screening and confirmation procedures, I am providing the following information:

- A. During the past 30 days I have taken the following prescription medications:

Name of Medication	Prescribing Physician	Date Last Taken
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- 1.
- 2.
- 3.

If you do not know the exact name of medication, indicate illnesses for which medication was prescribed in space designed for name of medication.

- B. During the past 30 days, I have taken the following non-prescription medications (cough medicine, cold tablets, aspirin, etc.)

Non-Prescription Medication	Date Last Taken
-----------------------------	-----------------

- 1.
- 2.
- 3.

Signature of Witness

Signature of Applicant

DATE

DATE

METHODS AND PROCEDURES FOR DRUG SCREENING TRAINEES FOR SWORN LAW ENFORCEMENT POSITIONS

I. Methods and Procedures

The following procedures apply to the acquisition and testing of urine samples obtained from law enforcement trainees who will be responsible for the enforcement of the criminal laws of this State and who will be authorized to carry a firearm pursuant to 2C:39-6 for the purpose of determining unlawful drug use.

II. Notification of Drug Screening Requirement

Notification that drug screening through urinalysis is mandatory during pre-employment and again during training will be included in all advertisements and announcements of law enforcement positions. This notification will also indicate that a negative result is a condition of employment both before and during the probationary appointment.

A trainee for a sworn law enforcement position will sign a waiver (Attachment A) consenting to the periodic unannounced sampling and testing of urine during attendance at a law enforcement academy. This waiver will include notification that a positive confirmation result for the presence of drugs in the trainee's urine will result in:

- A. Dismissal from the academy and from the law enforcement agency.
- B. Inclusion of the trainee's positive drug result in a central registry maintained by the Division of State Police to be accessed only upon court order or as part of a confidential background investigation for future law enforcement employment.

This waiver will also include notification that failing to provide the sample will result in dismissal from the academy.

Although criminal proceedings would not ordinarily be justified in the case of a positive drug test obtained as a result of mandatory, unannounced testing; the School Director or the Chief Executive Officer of the Department may report positive drug test results to the county prosecutor in appropriate circumstances.

III. Laboratory Method

The New Jersey State Police Laboratory in Sea Girt, New Jersey will be the sole facility for both the initial screening and confirmation analysis of urine. Currently, the enzyme multi-

plied immunoassay test (EMIT) and thin layer chromatography (TLC) are used as initial drug screening procedures. Gas chromatography/mass spectrometry is used to confirm all positive results of initial drug screening. As new procedures are developed and proven to be more reliable and efficient, alternate methods of screening and/or confirmation testing may be adopted.

IV. Preliminary Acquisition Procedures

Prior to the submission of a urine sample, the trainee will complete a medical questionnaire which shall clearly describe all drugs, both prescription and non-prescription, ingested during the past 30 days. (Attachment B,

V. Specimen Acquisition Procedure

Trainees will be asked to submit a sample during academy attendance.

A staff member of the academy will serve as the official monitor, and as such will be responsible for ensuring that all required forms, such as waivers, laboratory request forms and medical questionnaires have been thoroughly and accurately completed by the trainee. Prior to the submission of the sample, both the staff member and the trainee will inspect the specimen bottle for indications of pre-void tampering.

Generally, the trainee will submit the urine sample in the presence of the official monitor. On those rare occasions where the trainee is not able to provide a sample in the presence of the official monitor, the academy may choose to permit the trainee to provide a sample without the witness, so long as the trainee removes his clothing in the presence of the official monitor prior to entering a room where he/she has no access to water or any other additive.

The official monitor shall always be of the same sex as the trainee being tested. If there are no female staff members available from within the academy who can serve as the official monitor for female trainees, the academy may request that a female member of a neighboring agency or the prosecutor's office serve as the official monitor.

Urine samples will be processed in accordance with accepted chain of evidence procedures. Throughout the urine acquisition process, the identity of the trainee shall be preserved through social security number - no forms forwarded to the laboratory will contain the trainee's name.

The trainee will complete the information requested on the specimen bottle label and the laboratory chain of request form. After the official monitor has inspected the information for accuracy, the trainee will void at least (50) ml. of urine into the specimen bottle. The trainee will then secure the cap of the

specimen bottle and initial and wrap evidence tape along the top of the bottle beginning on one side of the bottle, along the cap and down the other side. The trainee will place the specimen bottle and the original copy of the laboratory chain of custody form in a plastic evidence bag and initial and seal the bag with evidence tape prior to surrendering the specimen to the official monitor. The trainee and the academy shall also maintain a copy of the laboratory chain of custody form.

After ascertaining that all forms have been completed accurately by the trainee and serving as a witness to the void, the official monitor shall take possession of the sample and place it in a controlled access refrigerated storage area until it is delivered to the State Police Laboratory at Sea Girt. This delivery shall occur within 24 hours of acquisition.

VI. Drug Screen Results

The State Police Laboratory at Sea Girt will orally notify the academy of the results of the urinalysis, whether negative or positive. The laboratory will only report those samples as positive which have been confirmed to be positive for the presence of drugs. The laboratory will follow up all oral notifications with written reports. All trainees who are found positive for drugs will be orally notified by the academy of the positive confirmation result as soon after the oral notification from the laboratory as possible. A copy of the laboratory report may be provided to the trainee by the academy if he requests it.

ATTACHMENT A

DRUG SCREENING THROUGH URINALYSIS

TRAINEE CONSENT

I, _____, understand that I will be required to submit a urine sample at some unannounced time during my attendance at the _____ Academy. I also understand that a negative result is a condition of continued attendance at the academy and hereby consent to the sampling and submission for testing of my urine for the purpose of drug screening.

I also understand that refusing to supply the required sample or producing a positively confirmed test result for the presence of drugs will result in my dismissal from the academy. I also understand that in the case of a positive test result, my name will be forwarded to a central registry maintained by the State Police and will be made available only upon court order or as part of a background investigation for a law enforcement position.

I understand that the results of the urinalysis will be provided to me as soon as possible after receipt by the _____ Academy.

I hereby acknowledge receipt of a copy of the methods and procedures for drug screening trainees for sworn law enforcement positions.

Signature of Witness

Signature of Trainee

DATE

DATE

New Jersey State Library

ATTACHMENT B
DRUG SCREENING
MEDICATION INFORMATION

In order to ensure the accuracy of established urine screening and confirmation procedures, I am providing the following information:

- A. During the past 30 days I have taken the following prescription medications:

Name of Medication	Prescribing Physician	Date Last Taken
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- 1.
- 2.
- 3.

If you do not know the exact name of medication, indicate illnesses for which medication was prescribed in space designed for name of medication.

- B. During the past 30 days, I have taken the following non-prescription medications (cough medicine, cold tablets, aspirin, etc.)

Non-Prescription Medication	Date Last Taken
-----------------------------	-----------------

- 1.
- 2.
- 3.

Signature of Witness

Signature of Trainee

DATE

DATE

CRIMINAL JUSTICE ADVISORY COUNCIL
RECOMMENDATIONS AS TO DRUG
TESTING OF LAW ENFORCEMENT APPLICANTS,
POLICE ACADEMY TRAINEES AND
CURRENTLY EMPLOYED LAW ENFORCEMENT OFFICERS

September 1986

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CRIMINAL JUSTICE ADVISORY COUNCIL
RECOMMENDATIONS AS TO DRUG
TESTING OF LAW ENFORCEMENT APPLICANTS,
POLICE ACADEMY TRAINEES AND
CURRENTLY EMPLOYED LAW ENFORCEMENT OFFICERS¹

INTRODUCTION

According to the most recent National Survey on Drug Abuse, conducted in 1982, approximately 8 percent of the U.S. population uses marijuana at least once a month. In addition, the Drug Enforcement Administration's current Narcotics Intelligence Estimate indicates that cocaine consumption in the United States rose 11 percent from 1983 to 1984. Recognizing that no subgroup of our society is immune from drug use and that the public's perception in the integrity of law enforcement is contingent upon citizens being assured that law enforcement officials charged with the responsibility of enforcing drug laws are not using illicit drugs, the Attorney General formed an ad hoc subcommittee of the Criminal Justice Advisory Council to make recommendations regarding whether and under what circumstances law enforcement officers should be tested for illicit drug use.

Testing a law enforcement officer for illegal drug use is a complex and sensitive subject which touches upon a number of important practical and legal issues. The subcommittee met on eight occasions

¹ The Criminal Justice Advisory Council on Drug Testing of Law Enforcement Officers is comprised of management law enforcement personnel, union representatives and legal advisors.

between April and September to give this complex subject serious study. It heard expert testimony and became acquainted with literature in the field. After extensive discussion over this five-month period, the subcommittee members presented a report outlining its recommendations on the subject to the Criminal Justice Advisory Council. After additional study and extensive discussion, the Council arrived at a consensus concerning this issue and submits its recommendations in this report.

The Council recommends that all applicants for law enforcement positions be tested for illegal drug use prior to appointment. Thereafter, we believe that all probationary officers should again be tested for illegal drug use during the mandatory training conducted at a police academy. After completing this training and attaining permanent status, a veteran officer should be tested when there is individualized reasonable suspicion to suspect that he is using illegal drugs.

The Council recommends that an applicant who produces a positive result for illegal drug use or refuses to be tested should be rejected from consideration for employment. A police academy trainee who produces a positive test result or refuses to be tested should be dismissed from the academy and his law enforcement position. A veteran officer who produces a positive result or refuses to be tested should be dismissed from his law enforcement position.

This report also includes a number of procedural and administrative recommendations designed to implement a reliable and accurate drug testing program as well as to safeguard the rights of those applicants and officers who are tested.

I. DRUG TESTING OF LAW ENFORCEMENT APPLICANTS AND
POLICE ACADEMY TRAINEES

According to the most recent National Survey on Drug Abuse, conducted in 1982, approximately 20 million persons, or over 8 percent of the U.S. population, uses marijuana at least once a month.² In fact, this survey revealed that 27% of all 18 to 25 year olds use marijuana at least once a month.³

A report released by the Police Training Commission of the Division of Criminal Justice covering approximately the same time frame as the study quoted by the President's Commission Report listed the 1981-1982 statistics with respect to the age of police officer trainees who participated in commission-approved basic courses. Approximately 51% of these trainees were between the

² President's Commission on Organized Crime, Report to the President and Attorney General, America's Drug Habit: Drug Abuse, Drug Trafficking and Organized Crime 33 to 35 (1986) [President's Commission Report] citing Helen C. Jones, The Marijuana Question (1985). The U.S. Census Bureau estimated that the U.S. population was 232 million in 1982. President's Commission Report at 34, n. 70.

³ President's Commission Report at 34 citing H. Jones, The Marijuana Question at 468. The subcommittee is aware that some studies purport to demonstrate that marijuana use has decreased over the past several years. President's Commission Report at 34 and n.71; Drug and Alcohol Use Among New Jersey High School Students 23 (1984). Nonetheless, according to the Drug Enforcement Administration's current Narcotics Intelligence Estimate, cocaine consumption in the United States rose 11 percent in 1984 from 1983. The illicit use of dangerous drugs in general increased by 15 percent. The New York Times, July 31, 1986 at p.A3.

ages of 18 and 25.⁴ While the percentage of marijuana and drug use among those persons who decide to devote their lives to law enforcement is probably lower than use among the general youth population, it is apparent that some individuals applying for New Jersey law enforcement positions use illegal drugs.

The New Jersey Criminal Justice Advisory Council firmly believes that illegal drug use cannot be tolerated in the law enforcement profession in this State. Instituting drug testing upon applicants as a condition of employment will deter any so-called "recreational" drug use and discourage those applicants who are drug dependent from applying for law enforcement positions.⁵ In addition, illegal drug users who submit law enforcement

⁴ During 1981 through 1982, 1,202 police officer trainees participated in these courses. Of these 1,202, 69 or almost 6 percent were between the ages of 18 and 20; 328 or 27 percent were between the ages of 21 and 23. Four hundred and nineteen trainees were between the ages of 24 and 27. Police Training Commission, State of New Jersey, Division of Criminal Justice, 20th Annual Activities Report (1981-1982). Because the figure 419 represents a four year age span, and includes 26 and 27 year olds, the subcommittee determined that there were approximately 210 trainees or almost 18 percent within the 24 and 25 age group category by dividing 419 by two. Because the figures for trainees steadily decreased as ages increased it is almost certain that more than one-half of the 419 police trainees in this category were between 24 and 25. Thus, 210 is, in all probability, lower than the actual number of 24 and 25 year old trainees. The total percentage of trainees between the ages of 18 and 25 is, therefore, 51 percent.

⁵ The U.S. Armed Forces instituted a drug testing program in 1980. At that time, 27% of some 20,000 military personnel surveyed admitted that they had used illegal drugs during the previous 30 days. In a confidential survey conducted in 1985 when the drug testing program was fully in place, this proportion dropped to 9%. Time, September 15, 1986, at p. 71.

applications will be identified before they begin their career. The public will, therefore, be assured that law enforcement officials charged with the responsibility of enforcing drug laws are not using illicit drugs. The Council accordingly recommends that testing designed to detect illegal drug use be instituted upon applicants for law enforcement positions that involve firearms carrying privileges and the responsibility to enforce the criminal laws of the State of New Jersey as well as police academy trainees.⁶ Such drug testing should be widely publicized to ensure maximum deterrence.

The Council has learned that certain drugs are retained in a person's system for as little as two to three days. Allowing an applicant or police academy trainee to delay or refuse to undergo drug testing would, therefore, render a testing program meaningless and ineffective. The Council accordingly recommends

⁶ Although these recommendations and accompanying methods and procedures (see Appendices #1 and #2) are directed solely toward those applicants for law enforcement positions who will carry firearms and have the responsibility to enforce the criminal laws of the State of New Jersey as well as those veteran officers with these privileges and responsibilities, this Council is not suggesting that other law enforcement officers, such as assistant prosecutors and deputy attorneys general be excluded from a drug testing program. Rather, the Council recognizes that because each group has distinct concerns, any decisions with respect to their drug testing should be tailored to their specific concerns. The Council also recognizes that a law enforcement agency may be required to provide rehabilitation to a civilian with a drug addiction problem. Clowes v. Terminix International, Inc., 7 N.J.A.R. 206 (1984). These recommendations, therefore, do not encompass civilian drug testing. Each law enforcement agency should have the discretion to determine which civilian positions, depending upon their sensitivity, require pre-employment drug testing.

that an applicant who refuses to be tested for illegal drug use be rejected for employment; a police academy trainee who refuses to be tested should be dismissed from both the academy and his law enforcement position.

The Council considered whether an applicant who refuses to be tested or who renders a positive urine sample for illegal drug use should be permanently barred from a law enforcement career. It noted that an applicant who admits to having previously experimented with drugs in an employment application is not automatically barred from becoming a law enforcement officer. The Council believes that some youthful applicants who are initially denied law enforcement positions because of illegal drug use will ultimately decide to stop using drugs. These applicants should not be statutorily and permanently precluded from a law enforcement position because of a mistake made at such a young age. Unfortunately, our youth have grown up in a society in which drug use, particularly marijuana use, has become commonplace. Although law enforcement agencies can never tolerate drug use among their officers, the Council believes that youthful applicants who demonstrate that they are rehabilitated should not be permanently barred from law enforcement positions as a matter of law. The Council accordingly recommends that for two years, an applicant's refusal to submit to testing for illegal drug use or a positive test result must act as a per se bar from law enforcement employment. After two years, this per se bar will be removed and prospective

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employers should have the discretion to appoint previously rejected applicants.

In order to ensure the effectiveness of pre-employment drug testing, the Council recommends that (1) all sanctions be uniformly applied; (2) an applicant's and academy trainee's positive test result be retained in a central registry maintained by the State Police; however, the applicant's or academy trainee's name should not be sent to the central registry when he merely refuses to be tested;⁷ (3) standard law enforcement applications be revised to include the questions, "Have you ever been rejected or dismissed by a law enforcement agency as a result of refusing to supply a urine sample for laboratory testing designed to detect illegal drug use?"; and, "Have you ever been rejected or dismissed by a law enforcement agency as a result of obtaining a positive test with respect to illegal drug use?"

The Council has been informed that in some recent cases academy trainees who produced a positive result for illegal drug use have not been dismissed from employment by their departments. Instead, some departments have exercised discretion to retain the trainee as a law enforcement officer, seeking his readmission to

⁷ The applicant's name, address, social security number, FBI, SBI and date of birth should be retained by the New Jersey State Police Records and Identification Section in a confidential file to be accessed only during regular background investigations of law enforcement applicants or upon court order. However, the applicant's or academy trainee's name should not be sent to the central registry when he merely refuses to be tested.

another academy. The Council firmly believes that the public perception in the integrity of law enforcement officers is undermined by this sort of discretion. Departments should not be able to exercise their discretion to retain an academy trainee who refuses to be tested for illegal drug use or who is found to use illegal drugs. The Council accordingly recommends that an academy trainee who renders a positive test be dismissed from the academy and his law enforcement position. In the case of a positive drug test, the trainee's name must be forwarded to the central registry established by the State Police. These sanctions should be consistently imposed.

Recommendations:

1. All applicants for new appointments to law enforcement positions which involve firearms carrying privileges and the responsibility to enforce the criminal laws of the State of New Jersey as well as police academy trainees should be required to undergo urinalysis to detect possible unlawful drug use. This drug testing should be widely publicized to ensure maximum deterrence.
2. An applicant who refuses to be tested for illegal drug use must be rejected for employment.

3. An academy trainee who refuses to be tested for illegal drug use must be dismissed from both the academy and his law enforcement position.
4. An applicant's refusal to submit to testing for illegal drug use or a positive test result should act as a per se bar from law enforcement employment for at least two years. After two years, this per se bar will be removed and future consideration for law enforcement employment will be at the discretion of the prospective employer.
5. An applicant's and a trainee's positive test result should, however, be retained in a central registry maintained by the State Police. Access to this information should be restricted to law enforcement agencies or court ordered disclosure.
6. Standard law enforcement application forms should be revised to include the questions, "Have you ever been rejected or dismissed by a law enforcement agency as a result of refusing to supply a urine sample for laboratory testing designed to detect illegal drug use?"; or, "Have you ever been rejected or dismissed from a law enforcement agency as a result of obtaining a positive test with respect to illegal drug use?"

7. An academy trainee who renders a positive test result for illegal drug use shall be dismissed from the academy and his law enforcement position. The trainee's name must be forwarded to the central registry established by the State Police. These sanctions must be consistently imposed.

II. DRUG TESTING OF VETERAN LAW ENFORCEMENT OFFICERS

The Criminal Justice Advisory Council recognizes that the law with respect to the constitutionality of random unannounced drug testing of permanently employed officers is not settled. Two lower New Jersey courts are divided on the issue: one court upheld such testing; the other declared it an unreasonable search and seizure and, therefore, unconstitutional.⁸ Neither the New Jersey Appellate Division nor the New Jersey Supreme Court has spoken on the issue. Courts in other jurisdictions, to this date, have declared random drug testing of law enforcement officers unconstitutional. Testing premised upon reasonable suspicion⁹ that an officer is using drugs, or as part of a regularly scheduled medical examination, however, have been upheld.

⁸ The Fraternal Order of Police, Newark Lodge No. 12 v. Newark, Docket No. L-095001-85E. (upholding random drug testing of Narcotics Bureau members); Allen and Clemente v. County of Passaic, et al, Docket No. L-19263-86 PW. (disallowing random drug testing) These opinions have not yet been approved for publication.

⁹ McDonnell v. Hunter, 612 F. Supp. 1122 (D.C. Iowa 1985) (barring Iowa from performing blood and urine tests unless "reasonable suspicion" that officers were smuggling drugs exists); City of Palm Bay v. Bauman, 475 So. 2d 1322 (Fla. App. 5 Dist. 1985) (barring random drug testing of policemen and firefighters unless "reasonable suspicion" exists to support belief of drug use). See also Allen v. City of Marietta, 601 F. Supp. 482 (N.D. Ga. 1985) (upholding firing of municipal electrical utility workers who tested positive for marijuana after undercover informant identified them as drug users which resulted in their being tested). Caruso v. Wood, Index No. 12632/86, slip op. at 3-6 (N.Y. Sup. Ct. July 1, 1986) (disallowing random testing of officers while approving "reasonable suspicion"). However, in (Footnote Continued)

The Council further notes that reliable data with respect to the percentage of law enforcement officers who use drugs is non-existent.¹⁰ Random drug testing of law enforcement officers, therefore, cannot be justified by conclusive evidence of their widespread illicit drug use. In addition, the Council's recommendation concerning mandatory pre-employment drug testing is designed to ultimately reduce the number of officers who use illegal drugs. It will eliminate drug use by those beginning their law enforcement career and inform the public that drug use by law enforcement officers will not be tolerated. Random drug testing, in our opinion, significantly diminishes morale and ultimately invades the privacy of the overwhelming number of officers who do not use drugs in order to identify those few who do. Furthermore, random testing has proven to be an enormously expensive and disruptive means of uncovering unlawful drug use among a small percentage of officers.¹¹ The Council believes that objective indications of drug use will adequately identify those

Shoemaker v. Handel the Third Circuit Court of Appeals recently upheld New Jersey's program of random post-race drug testing urinalysis of race horse jockeys and harness drivers. This opinion is still in slip opinion format.

¹⁰ Data provided by the Police Training Commission indicate that of the 1,158 police academy trainees tested for illegal drug use, only 23 (2%) yielded positive results.

¹¹ The estimated cost of an annual statewide drug screening program which includes confirmation testing and involves applicants seriously being considered for employment, police academy (Footnote Continued)

law enforcement officers who use illegal drugs. Specific objective factors such as absenteeism, deterioration of work habits, chronic lateness, and confidential information as to illegal drug use constitute reasonable objective bases or reasonable suspicion¹² to suspect that urinalysis will produce evidence of illegal drug use. The Council for all of the above reasons, accordingly recommends that currently employed law enforcement officers who possess firearms carrying privileges and the duty to enforce the criminal laws of the State of New Jersey be tested for drug use when there is individualized reasonable suspicion to believe that an officer is using illegal drugs.¹³

In addition, reasonable suspicion may also be established when an officer renders a positive urine sample for illegal drug use during a bona fide medical examination and the officer may accordingly be subjected to a second urinalysis screening and confirmation testing.

trainees and all veteran officers, would exceed \$1,230,000. This estimate does not include salaries or litigation costs.

¹² Individualized reasonable suspicion requires that officials demonstrate that a reasonable objective basis exists to suspect that urinalysis will produce evidence of illegal drug use in that particular officer.

¹³ This recommendation should not be construed to prohibit a regularly scheduled and announced medical examination of all officers which includes urinalysis.

The Council believes that an officer who renders a confirmed positive result for drug use cannot thereafter function effectively as a sworn law enforcement officer. For example, he could be successfully cross-examined about his illegal drug use. This ineffectiveness cannot be cured through rehabilitation. The Council accordingly recommends that veteran law enforcement officers who render positive results for illegal drug use be dismissed after a full and impartial hearing. The current discretionary discipline powers of the employing agency should not extend to law enforcement officers who use illegal drugs. These sanctions should be consistently imposed.

The Council, as noted in Chapter I, recognizes that an officer may refuse or delay submitting to urinalysis in an attempt to flush illegal drugs from his system. It accordingly recommends that those officers who refuse to submit a urine sample subsequent to a lawful request be dismissed after they challenge the legality and reasonableness of the request at a full and impartial hearing.

Mandatory dismissal, while harsh, must be imposed in the above two instances. The Council, however, in recognition of the severity of the penalty, recommends that all veteran officers who refuse to submit a urine sample subsequent to a request premised upon individualized reasonable suspicion or who render positive confirmed results be provided with a fair and impartial

hearing regardless of whether a hearing is provided under current department, contract or civil service procedures.¹⁴

Veteran officers dismissed as a result of producing a positive test for illegal drug use or refusing to submit to drug testing should not be hired by another law enforcement agency. The Council accordingly recommends that a veteran officer's positive test result be retained in a central registry maintained by the State Police.¹⁵

In order to facilitate drug testing of veteran officers premised on individualized reasonable suspicion, the Council recommends that all police departments adopt rules and regulations which include the following:

1. Notice shall be provided that any police officer who refuses to submit to a request for a urine sample

¹⁴ Although the Council firmly believes that an officer who has been identified as a drug user cannot effectively perform the duties of a law enforcement officer nor maintain public confidence and, therefore, must be dismissed from the police force, it nonetheless recognizes that police officers do not currently face mandatory dismissal for other forms of official misconduct. In some instances, the law currently allows officers who are guilty of serious misconduct to retain their jobs. The Council accordingly strongly recommends that the Legislature review the entire disciplinary process which in certain instances allows a law enforcement officer who is guilty of serious misconduct to remain employed or to successfully seek re-employment.

¹⁵ This registry should be accessed only during regular background investigations of law enforcement applicants or a court order.

premised upon individualized reasonable suspicion of illegal drug use or who renders a positive result for illegal drug use will be dismissed from the police force upon final adjudication.

2. Any police officer who believes a reasonable objective basis exists to suspect that another officer is using illegal drugs must immediately report those facts and circumstances to the chief executive officer of the department.
3. Any police officer who is prescribed medication or who is ingesting over-the-counter medication which impairs his ability to function effectively must inform his superiors of the type of medication and prescribed dosages.

Recommendations:

1. A veteran law enforcement officer shall be tested for drug use when there is individualized reasonable suspicion to believe that he is using illegal drugs. Officials must demonstrate that a reasonable objective basis exists to suspect that urinalysis will produce evidence of illegal drug use.

2. A veteran law enforcement officer who refuses to submit a urine sample subsequent to a request premised upon individualized reasonable suspicion that the officer is using illegal drugs shall be dismissed after he challenges the legality and reasonableness of the request at a full and impartial hearing.
3. A veteran law enforcement officer who produces positive test results for unlawful drug use shall be dismissed after a full and impartial hearing. The discretionary discipline powers of the employing agency shall not extend to law enforcement officers who produce positive results for unlawful drug use.
4. A veteran officer who refuses to undergo urinalysis subsequent to a request based upon individualized reasonable suspicion or who renders positive confirmed results should be given a full and impartial hearing, irrespective of whether a hearing is required under current department, contract or civil service procedures.
5. A veteran officer's positive test result should be retained in a central registry maintained by the State Police.
6. Police department rules and regulations shall include the following:

- a. Notice that any police officer who refuses to submit to a request for a urine sample premised upon individualized reasonable suspicion or who renders a positive result will be dismissed from the police force upon final adjudication.
- b. Any police officer who believes he has a reasonable suspicion that another officer is using illegal drugs must immediately report those facts and circumstances to the chief executive officer of the department.
- c. Any police officer who is prescribed medication or who is ingesting over-the-counter medication which impairs his ability to function effectively must inform his superiors of the type of medication and prescribed dosages.

III. DRUG TESTING METHODS

The Criminal Justice Advisory Council heard testimony regarding the following drug detection tests: urinalysis including initial drug screening, thin layer chromatography and gas chromatography/mass spectrometry; saliva; and neurological. After considering each of these tests, the Council notes that the saliva and existing neurological tests do not detect drug residuals in a subject's system, but merely measure whether or not an individual is impaired at the time of testing. Law enforcement agencies are not merely concerned with whether their officers are impaired during the course of their duties; rather, they must be certain that their officers are not using illicit drugs. The Council therefore, favors a drug detection test which detects residual drugs in a subject's system rather than merely his impairment at testing time. The Council accordingly recommends that urinalysis be the only method of drug testing for law enforcement officers.

The Council recognizes that the due process clause of the United States Constitution and its New Jersey counterpart mandate that an individual may not suffer punitive action as a result of inaccurate scientific procedures. The Council considered information which indicated that the most accurate and cost effective urinalysis available consists of subjecting an individual's urine to an initial drug screening. If the urine sample yields a positive result for drug use through drug screening, the positive

result, according to expert testimony, must be confirmed. The Council concurs with this expert recommendation and notes that gas chromatography/mass spectrometry has been recognized by authorities as nearly 100% reliable¹⁶. To protect an applicant from being denied a law enforcement position, a police academy trainee's career from being terminated, or a veteran police officer from being dismissed on the basis of an inaccurate scientific procedure, the Council recommends that urine samples obtained from law enforcement applicants, trainees or veteran officers be subjected to an initial drug screening. Furthermore, the Council recommends that every sample which yields a positive result for the presence of drugs be confirmed through gas chromatography/mass spectrometry.¹⁷

The Council recognizes that asking a law enforcement agency to rely upon private laboratories to conduct urinalysis could be cost prohibitive to the public as well as to many agencies. In addition, a private laboratory is more likely to disrupt the chain

¹⁶ In order to ensure that law enforcement applicants and trainees are not penalized as a result of a positive drug test resulting from duly prescribed or legitimate over-the-counter medications, they should complete a medical questionnaire which clearly describes the types of medication ingested and the date and dosage amount of last dosage. In-service officers will be required to inform their superiors when they ingest a prescribed medication or over-the-counter medication which impair their ability to function effectively.

¹⁷ As new procedures are developed and proven to be more reliable and efficient, alternate methods of confirmation testing may be implemented.

of custody than a forensic laboratory. Furthermore, to ensure that identical testing standards and procedural safeguards are imposed consistently throughout the state, the Council believes that testing should be conducted by a single laboratory. If one central organization conducts the testing, the program's cost can be easily estimated. As a result, one legislative appropriation would be required. The Council, for all of the above reasons, recommends that law enforcement applicants', trainees' and officers' urinalysis drug screening and confirmation testing be conducted at the State Police Laboratory at Sea Girt.

Recommendations:

1. Urine samples obtained from law enforcement applicants, academy trainees or veteran officers should be subjected to an initial drug screening. Samples which yield a positive result for the presence of drugs must be confirmed by gas chromatography/mass spectrometry.
2. All urinalysis drug and confirmation testing of law enforcement applicants, academy trainees and veteran officers must be conducted at the State Police Laboratory at Sea Girt.

IV. DRUG TESTING PROCEDURES

The Criminal Justice Advisory Council sought to ensure the reliability of the drug testing methods designed for law enforcement applicants, trainees and veteran officers by developing necessary safeguards to guarantee against inaccurate test results.

As a result, the Council has developed clearly defined and standardized procedures for urine sample collection and dissemination of test results. These procedures are included in this report as Appendices 1 and 2.

Recommendations:

1. Clearly defined and standardized procedures for urine sample collection and dissemination should be promulgated for implementation by the Attorney General. (See Appendices 1 and 2).

V. PROGRAM IMPLEMENTATION

The Criminal Justice Advisory Council believes that its recommendations pertaining to the drug testing of law enforcement applicants, academy trainees and veteran officers should be implemented through legislation initiated by the Attorney General for the following reasons:¹⁸

1. Employers should not have the discretion to appoint an applicant or retain a police academy trainee or veteran officer who refuses to submit to testing or renders a positive result for illegal drug use.
2. Mandatory testing will impose a financial burden upon the municipalities, and its implementation should, therefore, be subsidized by the state.
3. Law enforcement applicants, police academy trainees and veteran officers must be assured that the drug testing program's procedural safeguards are imposed consistently throughout the state.

¹⁸ It is the Council's opinion that such legislation should not encompass testing civilian employees of law enforcement agencies for drug use. The Council recognizes that the agency may be required to provide rehabilitation to a civilian with a drug addiction problem, Clowes v. Terminex International, Inc., 7 N.J.A.R. 206 (1984), and accordingly believes that each law enforcement agency should have the discretion to determine which civilian positions, depending upon their sensitivity, require pre-employment drug testing.

4. Under current law, departments may have a legal duty to initiate criminal action against applicants and trainees who produce positive results. Legislation should clearly limit the sanctions arising from mandatory testing to those outlined in this report.
5. Police officers' appointment criteria are legislatively mandated; a new requirement with respect to pre-employment testing should also be legislated.
6. CAP waivers may be necessary to implement the program. Such CAP waivers would cover expenses incurred on the local level, such as the costs of delivering the urine specimens to the laboratory and plastic bottles.

The Council recommends that the legislation include the following:

1. Drug testing shall be required of all applicants for new appointments to all sworn law enforcement positions.¹⁹

¹⁹ This recommendation does not apply to transfers and promotions.

2. Drug testing shall be required of all trainees attending police training academies.
3. Drug testing shall be required of veteran officers when individualized reasonable suspicion exists to suspect illegal drug use. Officials must demonstrate that a reasonable, objective basis exists to suspect that urinalysis will produce evidence of illegal drug use.
4. The State Police Laboratory Network shall conduct both initial screening and confirmation testing.
5. If an applicant/trainee refuses to be tested, the applicant will not be offered employment and the trainee will be dismissed from both the academy and his law enforcement position.
6. An applicant who produces a positive result for illegal drug use shall be rejected from consideration for employment. This sanction shall be consistently imposed.
7. An academy trainee who produces a positive test for illegal drug use shall be dismissed from the academy and his law enforcement position.
8. For two years, an applicant's positive test result for illegal drug use will act as a per se bar from law

enforcement employment. After two years, this per se bar will be removed.

9. An applicant's or trainee's positive test result will be retained in a central registry maintained by the State Police. The applicant's or trainee's name, address, social security number, FBI, SBI and date of birth must be retained by the New Jersey State Police Records and Identification Section in a confidential file to be accessed only during the regular background investigations of law enforcement applicants.
10. A veteran officer who refuses to be tested shall be dismissed after he challenges the legality and reasonableness of the request at a full and impartial hearing.
11. A veteran officer who produces a positive result for illegal drug use shall be dismissed after a full and impartial hearing. The officer's name shall be placed in the central registry maintained by the New Jersey State Police Records and Identification Section. These sanctions must be imposed consistently upon every law enforcement officer who produces positive results for illegal drug use.

16. The Attorney General shall promulgate rules and regulations governing the implementation of adequate procedural safeguards.

The Council recognizes that the introduction and ultimate passage of legislation is inevitably time consuming and accordingly recommends that prior to the introduction and passage of this legislation, the Attorney General encourage all law enforcement agencies to conduct pre-employment urinalysis drug testing, as well as the Police Training Commission to mandate urinalysis drug testing at all police academies to detect illegal drug use. In addition, when law enforcement agencies have individualized reasonable suspicion to believe that a veteran officer is using illegal drugs, that officer should be subjected to drug testing. The Attorney General should require that the following procedural safeguards designed by this Council be implemented whenever a department or academy institutes drug testing:

Recommendations:

1. Drug testing of law enforcement applicants, academy trainees and veteran officers should be imposed through legislation. This legislation should include the following:

- a. Drug testing shall be required of all applicants for new appointments to all sworn law enforcement positions.
- b. Drug testing shall be required of all trainees attending Police Training academies.
- c. Drug testing shall be required of veteran officers when individualized reasonable suspicion exists to suspect illegal drug use. Officials must demonstrate that a reasonable, objective basis exists to suspect that urinalysis will produce evidence of illegal drug use.
- d. The State Police Laboratory Network shall conduct both initial screening and confirmation testing.
- e. If an applicant/trainee refuses to be tested, the applicant will not be offered employment and the trainee will be dismissed from both the academy and his law enforcement position.
- f. An applicant who produces a positive result for illegal drug use shall be rejected from consideration for employment. This sanction shall be consistently imposed.

- g. An academy trainee who produces a positive result for illegal drug use shall be dismissed from the academy and his law enforcement position.
- h. For two years, an applicant's positive test result for illegal drug use will act as a per se bar from law enforcement employment. After two years, this per se bar will be removed. A positive test result should, however, be retained in a central registry maintained by the State Police. The applicant's name, address, social security number, FBI, SBI and date of birth must be retained by the New Jersey State Police Records and Identification Section in a confidential file to be accessed only during the regular background investigations of law enforcement applicants.
- i. A veteran officer who refuses to be tested shall be dismissed after he challenges the legality and reasonableness of the request at a full and impartial hearing.
- j. A veteran officer who produces a positive result for illegal drug use shall be dismissed after a full and impartial hearing. The officer's name shall be placed in the central registry maintained by the New Jersey State Police Records and

Identification Section. These sanctions shall be imposed consistently upon every law enforcement officer who tests positive for drug use.

k. The Attorney General shall promulgate rules and regulations governing the implementation of adequate procedural safeguards.

2. Prior to the introduction and passage of this legislation, the Attorney General should encourage all law enforcement agencies to conduct pre-employment drug testing as well as the Police Training Commission to mandate urinalysis drug testing at all police academies to detect illegal drug use. When a law enforcement agency has individualized reasonable suspicion to believe that a veteran officer is using illegal drugs, that officer should be subjected to drug testing. The Attorney General should require those departments and academies which institute pre-employment drug testing to follow the procedural safeguards designed by this Council.

ATTACHMENT #1

METHODS AND PROCEDURES FOR DRUG SCREENING
APPLICANTS FOR SWORN LAW ENFORCEMENT POSITIONS & TRAINEES

I. Methods and Procedures

The following procedures apply to the acquisition and testing of urine samples obtained from applicants for²⁰ sworn law enforcement positions²¹ and law enforcement trainees²¹. These procedures will be provided to every law enforcement agency in New Jersey thirty (30) days prior to the implementation of a statewide drug screening program, so that affected agencies are afforded adequate time to provide for compliance with these procedures. In addition, these agencies will be provided a thirty (30) day notice prior to the implementation of any changes to the methods and procedures outlined herein.

II. Notification of Drug Screening Requirement

Notification that drug screening through urinalysis is mandatory during pre-employment and again during training will be included in all advertisements and announcements of law enforcement positions. This notification will also indicate that a negative result is a condition of employment both before and during the probationary appointment.

An applicant for a sworn law enforcement position will be requested to sign a waiver (Attachment A) consenting to the sampling and testing of urine during the employment screening process. This waiver will include notification that a positive confirmation of the presence of illegal drugs in the applicant's urine will result in:

- A. Rejection for employment.
- B. Inclusion of the applicant's positive drug result in a central registry maintained by the Division of State Police to be accessed only through court order or as part of a confidential background investigation for future law enforcement employment.

²⁰ Drug screening through urinalysis of applicants will be conducted during a routine stage of the pre-employment process, i.e., physical fitness test, oral interview, medical, etc.

²¹ Unannounced drug screening for law enforcement academy trainees will occur as a group during the pre-service training course.

- C. A bar from obtaining sworn law enforcement employment for a period of two years from the date of a positive confirmation test.

This waiver will also include information that failing to provide the sample will result in rejection for employment.

A trainee for a sworn law enforcement position will sign a waiver (Attachment B) consenting to the periodic unannounced sampling and testing of urine during attendance at a law enforcement academy. This waiver will include notification that a positive confirmation result for the presence of drugs in the trainee's urine will result in:

- A. Dismissal from the academy and from the police department.
- B. Inclusion of the trainee's positive drug result in a central registry maintained by the Division of State Police to be accessed only upon court order or as part of a confidential background investigation for future law enforcement employment.

This waiver will also include notification that failing to provide the sample will result in dismissal from the academy.

Although criminal proceedings would not ordinarily be justified in the case of a positive drug test obtained as a result of mandatory, unannounced testing; the Chief Executive Officer of the Department may report positive drug test results to the county prosecutor in appropriate circumstances.

III. Laboratory Method

The New Jersey State Police Laboratory in Sea Girt, New Jersey will be the sole facility for both the initial screening and confirmation analysis of urine. Currently, the enzyme multiplied immunoassay test (EMIT) and thin layer chromatography (TLC) are used as initial drug screening procedures. Gas chromatography/mass spectrometry is used to confirm all positive results of initial drug screening. As new procedures are developed and proven to be more reliable and efficient, alternate methods of screening and/or confirmation testing may be adopted.

IV. Preliminary Acquisition Procedures

Prior to the submission of a urine sample, the applicant/trainee will complete a medical questionnaire which shall clearly describe all drugs, both prescription and non-prescription, ingested during the past 30 days. (Attachment C)

V. Specimen Acquisition Procedure

Applicants for sworn law enforcement positions will be required to submit a urine sample at a time during the pre-

employment stage when the applicant is seriously being considered for appointment. Trainees will be asked to submit a sample during academy attendance.

A staff member of the appointing authority or academy will serve as the official monitor, and as such will be responsible for ensuring that all required forms, such as waivers, laboratory request forms and medical questionnaires have been thoroughly and accurately completed by the applicant/trainee. Prior to the submission of the sample, both the staff member and the applicant/trainee will inspect the specimen bottle for indications of pre-void tampering.

Generally, the applicant/trainee will submit the urine sample in the presence of the official monitor. On those rare occasions where the applicant/trainee is not able to provide a sample in the presence of the official monitor, the appointing authority or academy may choose to permit the applicant/trainee to provide a sample without the witness, so long as the applicant/trainee removes his clothing in the presence of the official monitor prior to entering a room where he/she has no access to water or any other additive.

The official monitor shall always be of the same sex as the applicant/trainee being tested. If there are no female staff members available from within the appointing agency/academy who can serve as the official monitor for female applicants/trainees, the appointing authority/academy may request that a female member of a neighboring agency or the prosecutor's office serve as the official monitor.

Urine samples will be processed in accordance with accepted chain of evidence procedures. Throughout the urine acquisition process, the identity of the applicant/trainee shall be preserved through social security number - no forms forwarded to the laboratory will contain the applicant's/trainee's name.

The applicant/trainee will complete the information requested on the specimen bottle label and the laboratory chain of request form. After the official monitor has inspected the information for accuracy, the applicant/trainee will void at least (50) ml. of urine into the specimen bottle. The applicant/trainee will then secure the cap of the specimen bottle and initial and wrap evidence tape along the top of the bottle beginning on one side of the bottle, along the cap and down the other side. The applicant/trainee will place the specimen bottle and the original copy of the laboratory chain of custody form in a plastic evidence bag and initial and seal the bag with evidence tape prior to surrendering the specimen to the official monitor. The applicant/trainee and the appointing agency/academy shall also maintain a copy of the laboratory chain of custody form.

After ascertaining that all forms have been completed accurately by the applicant/trainee and serving as a witness to the void, the

official monitor shall take possession of the sample and place it in a controlled access refrigerated storage area until it is delivered to the State Police Laboratory at Sea Girt. This delivery shall occur within 24 hours of acquisition.

VI. Drug Screen Results

The State Police Laboratory at Sea Girt will orally notify the appointing authority/academy of the results of the urinalysis, whether negative or positive. The laboratory will only report those samples as positive which have been confirmed to be positive for the presence of drugs. The laboratory will follow up all oral notifications with written reports. All applicants/trainees who are found positive for drugs will be orally notified by the appointing authority/academy of the positive confirmation result as soon after the oral notification from the laboratory as possible. A copy of the laboratory report may be provided to the applicant/trainee by the appointing authority/academy if he requests it.

ATTACHMENT A
DRUG SCREENING THROUGH URINALYSIS
APPLICANT CONSENT

I, _____, understand that as part of the pre-employment process, the _____ will conduct a comprehensive background investigation in an effort to determine my suitability to fill the position for which I have applied. I further understand that as part of the pre-employment process, I will be required to submit to and perform certain medical and physical examinations. In accordance with the efforts of the _____ to select only those most qualified for law enforcement, I do hereby consent to the sampling and submission for testing of my urine for the purpose of drug screening. I understand that a negative result is a condition of employment.

I also understand that refusing to supply the required samples or producing a positively confirmed test result for the presence of illegal drugs will result in the rejection of my application for employment. I understand that in the case of a positive result, my name will be forwarded to a central registry maintained by the Division of State Police and will be made available only upon court order or as part of a background investigation for a law enforcement position. I understand that a confirmed positive test result indicating the presence of drugs will bar me from securing future law enforcement employment for a period of two years. I understand that after this two year period, a positive test result may be considered in evaluating my fitness for future law enforcement employment.

I understand that the results of the urinalysis will be provided to me as soon as possible after receipt by the _____ Police Department.

I hereby acknowledge receipt of a copy of the methods and procedures for drug screening applicants and trainees for sworn law enforcement positions.

Signature of Witness

Signature of Applicant

Date

Date

ATTACHMENT B

DRUG SCREENING THROUGH URINALYSIS

TRAINEE CONSENT

I, _____, understand that I will be required to submit a urine sample at some unannounced time during my attendance at the _____ Academy. I also understand that a negative result is a condition of continued attendance at the academy and hereby consent to the sampling and submission for testing of my urine for the purpose of drug screening.

I also understand that refusing to supply the required sample or producing a positively confirmed test result for the presence of drugs will result in my dismissal from the academy. I also understand that in the case of a positive test result, my name will be forwarded to a central registry maintained by the State Police and will be made available only upon court order or as part of a background investigation for a law enforcement position.

I understand that the results of the urinalysis will be provided to me as soon as possible after receipt by the _____ Academy.

I hereby acknowledge receipt of a copy of the methods and procedures for drug screening candidates and trainees for sworn law enforcement positions.

Signature of Witness

Signature of Trainee

DATE

DATE

ATTACHMENT C
DRUG SCREENING
MEDICATION INFORMATION

In order to ensure the accuracy of established urine screening and confirmation procedures, I am providing the following information

- A. During the past 30 days I have taken the following prescription medications:

Name of Medication	Prescribing Physician	Date Last Taken
--------------------	-----------------------	-----------------

- | | | |
|----|--|--|
| 1. | | |
| 2. | | |
| 3. | | |

If you do not know the exact name of medication, indicate illnesses for which medication was prescribed in space designed for name of medication.

- B. During the past 30 days, I have taken the following non-prescription medications (cough medicine, cold tablets, aspirin, etc.)

Non-Prescription Medication	Date Last Taken
-----------------------------	-----------------

- | | |
|----|--|
| 1. | |
| 2. | |
| 3. | |

Signature of Witness

Applicant/Trainee
Signature

DATE

DATE

ATTACHMENT #2

METHODS AND PROCEDURES FOR DRUG SCREENING
VETERAN LAW ENFORCEMENT OFFICERS

I. Methods and Procedures

The following procedures apply to the acquisition and testing of urine samples obtained from veteran law enforcement officers. These procedures will be provided to every law enforcement agency in New Jersey thirty (30) days prior to the implementation of a statewide drug screening program, so that affected agencies are afforded adequate time to provide for compliance with these procedures. In addition, these agencies will be provided a thirty (30) day notice prior to the implementation of any changes to the methods and procedures outlined herein.

Urine samples shall be demanded from a veteran law enforcement officer when there is individualized reasonable suspicion to believe that the officer is using illegal drugs. Urine samples shall not be demanded from a veteran officer without the approval of the chief executive officer of the department or someone acting in that capacity during his absence.

II. Notification of Drug Screening

Notification that drug screening through urinalysis will be conducted when there is individualized reasonable suspicion to believe that an officer is using drugs will be included in all police department rules and regulations. In addition, every police department will also provide notice through department rules and regulations that any police officer who has reasonable suspicion to believe that a fellow officer is using illegal drugs must immediately report that fact to the Chief Executive Officer of that department or his designee. Finally, existing police department rules and regulations will be further expanded to provide notice that any officer who is confirmed positive for illegal drug use will be:

- A. Dismissed from the police department;
- B. Included in a central registry maintained by the Division of State Police to be accessed only through court order or as part of a confidential background investigation for future law enforcement employment;
- C. Reported to the county prosecutor.

In addition, notification will also be provided that any officer who refuses to provide a urine sample upon a lawful request made upon individualized reasonable suspicion, will also be dismissed.

III. Laboratory Method

The New Jersey State Police Laboratory in Sea Girt, New Jersey will be the sole facility for both the initial screening and confirmation analysis of urine. Currently, the enzyme multiplied immunoassay test (EMIT) and thin layer chromatography (TLC) are used as initial drug screening procedures. Gas chromatography/mass spectrometry is used to confirm all positive results of initial drug screening procedures. As new procedures are developed and proven to be more reliable and efficient, alternate methods of screening and/or confirmation testing may be adopted.

IV. Preliminary Acquisition Procedures

Prior to the submission of a urine sample, the veteran officer may complete a medical questionnaire which shall clearly describe all drugs, both prescription and non-prescription, ingested during the past 30 days.

V. Specimen Acquisition Procedure

Veteran law enforcement officers will be required to submit a urine sample when there is individualized reasonable suspicion to believe that an officer is using illegal drugs.

At the time that the urine sample is provided, the officer will have the option to submit two samples. Both samples will be acquired according to the procedures outlined herein. One will be forwarded to the State Police Laboratory for testing; the remaining sample will be stored in a frozen state within the department according to departmental procedures regarding chain of custody and evidence storage procedures. This sample will be made accessible to the officer or his attorney.

The department/agency shall be responsible for acquiring urine specimens from veteran law enforcement officers and shall designate an individual to serve as the official monitor. The officer may also choose to name another witness to the sample acquisition.

Prior to requesting that a veteran officer submit a urine sample, the department shall document the basis for reasonable suspicion and prepare a confidential report.

The official monitor shall be responsible for ensuring that all forms have been thoroughly and accurately completed by the officer. Prior to the submission of the sample, both the official monitor and the officer will inspect the specimen bottle for indications of pre-void tampering.

Generally, the officer will submit the urine sample in the presence of the official monitor. On those rare occasions where the officer is not able to provide a sample in the presence of the official monitor, the monitor will permit the officer to

provide an unwitnessed sample, so long as the officer removes his clothing in the presence of the official monitor prior to entering a room where he/she has no access to water or any other additive.

The official monitor shall always be of the same sex as the officer being tested. If there are no female members available from within the agency to serve as the official monitor for female officers, the department may request that a female member of a neighboring agency or the prosecutor's office serve as the official monitor.

Urine samples will be processed in accordance with accepted chain of evidence procedures and every effort will be made to ensure that the identity of the officer being tested remains confidential. Throughout the urine acquisition process, the identity of the officer shall be preserved through social security number - no forms forwarded to the laboratory will contain the officer's name.

The officer will complete the information requested on the specimen bottle label and the laboratory chain of request form. After the official monitor has inspected the information for accuracy, the officer will void at least (50) ml. of urine into the specimen bottle. The officer will then secure the cap of the specimen bottle and initial and wrap evidence tape along the top of the bottle, along the cap and down the other side. The officer will place the specimen bottle and the original copy of the laboratory chain of custody form in a plastic evidence bag and initial and seal the bag with evidence tape prior to surrendering the specimen to the official monitor. The officer and agency shall also maintain a copy of the laboratory chain of custody form.

After ascertaining that all forms have been completed accurately by the officer and serving as a witness to the void, the official monitor shall take possession of the sample and place it in a controlled access refrigerated storage area until it is delivered to the State Police Laboratory at Sea Girt. This delivery shall occur within 24 hours of acquisition.

VI. Drug Screen Results

The State Police Laboratory at Sea Girt will orally notify the Police Chief or Police Director immediately upon completion of analysis as to the results, whether positive or negative. The laboratory will report only those samples as positive which have been confirmed to be positive for the presence of drugs. The State Police Laboratory will follow up all oral notifications with written reports. All veteran officers who are screened and confirmed to be positive for the presence of illegal drugs will be notified by the police chief or director as soon after oral notification is received from the laboratory as possible. A copy of the laboratory report will be provided to the officer by the department upon his request.



State of New Jersey

DEPARTMENT OF PERSONNEL
OFFICE OF THE ASSISTANT COMMISSIONER

EUGENE J. McCAFFREY SR.
COMMISSIONER

CN 312
TRENTON, N.J. 08625

PETER J. CALDER
ASSISTANT
COMMISSIONER

April 9, 1987

TELEPHONE 609-984-2729

The Honorable Raymond Lesniak
Chairman, Senate Labor, Industry
and Professions Committee
State House Annex
CN 068
Trenton, New Jersey 08625

Re: S-2565; S-2826; A-2850 (ACS)

Dear Senator Lesniak:

The following are the comments of the Department of Personnel on the above three bills.

Our Department has previously submitted comments on A-2850 when that bill was before the Assembly Labor Committee. The Assembly Committee Substitute that was subsequently released by that Committee addressed some of the concerns we expressed. However, the bill now before your Committee remains problematic in one key area:

Section 3(g)(1) of that bill requires a public employer, but not a private employer, to grant a leave of absence to any employee whose sample shows the presence of an illegal drug. The State of New Jersey, as well as local governments operating under Title 11A, are authorized to grant leaves of absence to employees for valid reasons, including treatment of physical illness, mental illness, and alcohol and drug abuse. However, the public employer's ability to leave open a position, and the length of time that position is left open, are limited by the particular agency's needs to provide public services. While we understand the intent of the bill to emphasize treatment, this must be balanced against the public employer's responsibility to maintain governmental functions. Further, inappropriate measures against employees are subject to appeal in the merit system. A determination to deny a leave of absence can be challenged by an employee under existing administrative mechanisms, including an appeal before the Merit System Board. Moreover, this provision would mandate more favorable treatment for employees who abuse drugs than for other public employees with medical or alcohol problems.

New Jersey is an Equal Opportunity Employer operating under the Merit System.

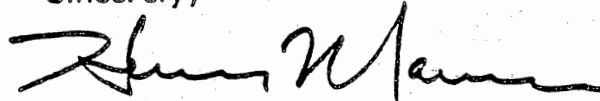
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Therefore, we believe a statutory requirement for mandatory leaves of absence, if any, should not apply to merit system employers operating under Title 11A. In this regard, we prefer the approach found in S-2826. In particular, section 3(e) of that bill recognizes the option of granting leaves of absence for rehabilitation purposes, but does not mandate such matters.

We also wish to comment on section 1(g) of S-2565, which mandates arbitration of all drug testing disputes involving police officers and firefighters. Currently, employees in counties and municipalities operating under Title 11A have a right to a hearing before the Merit System Board if they are subject to disciplinary action following a drug test. Accordingly, we suggest that any provision calling for arbitration include language excluding the arbitration of any issues which may be reviewed by the Merit System Board.

Thank you for the opportunity to comment on these legislative proposals. We respectfully request that the Committee consider our concerns with respect to any bill or combination of bills acted upon. We will be glad to provide any additional information requested or answer any questions from Committee members and staff.

Sincerely,



Henry Maurer
Legislative Specialist

c: Senator Jackman
Senator O'Connor
Senator Cardinale
Senator DiFrancesco
Dale Davis, Committee Aide



NEW JERSEY STATE
CHAMBER OF COMMERCE
GOVERNMENTAL RELATIONS OFFICE
315 WEST STATE ST.
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TESTIMONY OF THE
NEW JERSEY STATE CHAMBER OF COMMERCE
BEFORE THE
SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE
ON THE SUBJECT OF
WORKPLACE DRUG TESTING STANDARDS LEGISLATION

April 9, 1987

Good morning Mr. Chairman and members of the Committee. I am Patrick J. Witmer, Director of Legislative Affairs for the New Jersey State Chamber of Commerce.

The State Chamber appreciates this opportunity to address legislation concerning the establishment of a uniform standard for the use of drug abuse tests in New Jersey.

It is an unfortunate fact of life that so many employers in New Jersey have found that drug testing is needed to combat the problem of drug abuse at the workplace. But employers have made this decision with the overwhelming support of the public and our State's workforce.

The Newark Star-Ledger reported on October 26, 1986 that "Nearly 80 percent of Jersey's residents believe illegal drug abuse is a 'very serious' problem and a substantial majority favors mandatory drug testing of all workers according to the latest Star-Ledger/Eagleton Poll...Additionally, the poll showed that among residents currently employed, three out of four said they would be willing to be tested for drug use by their employer..."

152X

These findings coincide with the results of a survey conducted by the New Jersey State AFL/CIO. In January, 1987 the State AFL/CIO announced that their poll of over 1,400 union members chosen at random across the State indicated that more than two-thirds (68.7%) "support drug testing in the workplace if uniform testing regulations are established and union workers are protected from arbitrary actions by employers." Eighty percent of the respondents from North Jersey responded favorably to this question. In addition, about one-third of those surveyed said drug abuse is the most important workplace issue today.

It is no wonder that there is so much support for workplace drug testing. According to the National Institute of Drug Abuse, employees with drugs in their systems are one-third less productive and three times as likely to injure themselves or another person while on the job. The Institute's estimates indicate the enormity of the problem: 65 percent of those persons entering the full-time work force for the first time have experience in illegal drug use. Six million Americans use cocaine on a regular basis, and 23 million Americans use marijuana on a regular basis. The annual cost to the business community of drug abuse is \$60 billion, \$35 billion of which is in lost productivity.

The National Institute of Drug Abuse also found that substance abuse by employees harms businesses because of (1) decreased productivity, (2) increased absenteeism, (3) increased severity and occurrence of accidents and harmful exposures to toxic substances, (4) increased medical claims, and (5) increased employee theft from companies in order to support drug and alcohol dependency.

Some groups which oppose drug testing of any kind have argued that a drug test amounts to the kind of search and seizure prohibited by the Fourth Amendment to the Constitution. That amendment makes people secure in their persons from "unreasonable"

searches and seizures from the government. Not only is there a clear distinction between the government and private business, but there is certainly nothing unreasonable about the ground rules provided by A-2850 and S-2826 for drug testing in private employment.

The New Jersey State Chamber of Commerce does not oppose the establishment of uniform, reasonable drug testing standards for all workers in New Jersey. If a legislative standard is imposed, it should include a requirement for employers using drug tests to: provide a written drug testing policy in advance of any testing, utilize testing techniques and labs approved by the Department of Health, issue a confirmation test after the initial screening before any disciplinary action is taken against an employee, and provide guidelines for when and under what conditions testing may occur.

The State Chamber will strongly oppose any standard for administering employee drug tests which interferes with the right of employers to strive for a productive, drug-free workplace.

At a conference in New Brunswick on October 15, 1986 Governor Thomas H. Kean said "Until now, our efforts to stop the flow of drugs have not worked. We have made more arrests and confiscated more drugs than ever before. And yet, the flow of drug has increased."

One program that is working and is benefiting employers, workers and the public is the use of drug testing policies practiced within reasonable legal parameters. The State Chamber looks forward to working with the members of this Committee as you examine the value and effectiveness of these programs.

Thank you.

TESTIMONY OF VINCENT TRIVELLI
COMMUNICATIONS WORKERS OF AMERICA
BEFORE THE NEW JERSEY STATE LEGISLATURE
SENATE LABOR, INDUSTRY, PROFESSION COMMITTEE

APRIL 9, 1987

Chairman Lesniak, and Members of the Committee, I want to thank you for permitting the Communications Workers of America, AFL-CIO to testify concerning the issue of employee drug testing in the workplace. My name is Vincent Trivelli. I am the Legislative and Political Action Coordinator for the Communications Workers of America, (CWA), in the State of New Jersey. Today I am testifying on behalf of the 65,000 citizens of New Jersey who are represented by the CWA. Our members are both public and private sector employees, and have a deep interest in the issue before the Committee.

The CWA is opposed to the use of drug tests in the workplace. We are opposed for three basic reasons. The tests are inaccurate, invasive of personal privacy and do not provide any information about the job performance or impairment of the individual forced to take the test.

The CWA by taking this position in no way condones the use of illegal drugs. We stand ready to work with you in order to design and implement drug abuse counselling and education programs. We will not, however, allow the basic rights of our members, or any employees to be trampled in the hysteria surrounding the drug crises.

We are not alone in this position. I call to your attention the "Report of the Maine Commission to Examine Chemical Testing of Employees" dated December 31, 1986. This Commission, established by the 112th Legislature of the State of Maine was made up of members very much like you and me. They were Legislators, union members, attorneys, business people and counselors. They spent a number of months investigating the issue of drug testing in the workplace. The majority of the Commission concluded that based on the best evidence that they could find, that the "use of substance abuse testing is not justified in the Maine workplace." They came to this conclusion for very much the same reasons that CWA has. We contend that the Maine workplace is not much different than the New Jersey workplace, and that such testing cannot be justified here either.

Testing Accuracy

There have been reams of studies and data concerning the accuracy or lack thereof of all forms of drug testing. We believe that a fair reading of the materials indicates that the first level or primary

screening testing methods such as the enzyme-immunoassay test (sold under the brand name of EMIT), the radio-immunoassay test (sold under the brand name of Abuscreen) and chromatography thin-layer test are cheap, quick and highly inaccurate.

The secondary, or so-called confirmatory, testing method that is most widely discussed is the gas chromatography/mass spectrometry (GC/MS) test. This test is claimed to have an accuracy rate of between 97 to 99%. However, this claim of accuracy is made concerning tests conducted under perfect circumstances. The fact of the matter is that employment related tests are never performed under perfect circumstances. Such things as temperature, pressure and operator error and training can and do result in false negative or positive readings.

The Center for Disease Control performed a study of the ability of private testing laboratories to provide accurate drug tests. The results of the study are overwhelming. Error rates for false positive tests ranged as high as 66% and as high as 100% for false negatives. That is; the laboratories (which by the way were used by methadone treatment centers) were in many cases more often wrong than right. The College of American Pathologists performed a similar nation-wide study and found 358 out of 500 laboratories found drugs in urine that were not in fact present. To subject our citizens to those sorts of odds with their jobs and reputations on the line is unthinkable.

In addition, the Committee should note that even if a test is 99% accurate, that leaves 1,000 out of every 100,000 people tested with inaccurate results. The resulting devastation of lives alone makes the risks outweigh any perceived gain.

Job Performance

Before we get too far away from the question of accuracy, we must ask what the results of these tests are telling us. It is the contention of CWA that the only legitimate question that employers have regarding their employees in this area is whether or not the employee(s) can perform the work assigned. If the employee cannot perform the work either through inability or some form of impairment, employers remove that individual from the job. If the employer demands a drug test of that employee or any other employee, the

experts tell us that he/she has no more information regarding the ability of the employee to perform the work after the test than he/she did before the test. The tests do not provide any indication regarding the impairment of the individual at the time the test was given. Expert after expert has testified to that fact.

For example, John P. Morgan, Medical Professor and Director of the Pharmacology Program of the City University of New York Medical School has stated, "Essentially no drugs susceptible to testing appear unchanged in human urine. The drugs appear as inactive metabolites. These metabolites result from chemical changes which generally promote excretion of drugs (and other substances) into urine. This means that urine detection systems, even those using screening plus sophisticated confirmation tests performed by highly skilled operators, cannot comment on whether a positive test correlates with behavior. Urine testing simply cannot be used to illuminate issues of impairment or intoxication. Indeed, because of human variability in generation of drug metabolites and urine flow, it is likely that urine levels of inactive drug metabolites never be used to comment tellingly on whether the subject was drug impaired when the sample was collected." With regard to blood samples he goes on to say that except for alcohol, "there is no specific blood level of drugs that is widely accepted as an indicator of impairment."

Mr. Chairman, the inability of these drug-tests to provide information regarding impairment is fact. All of the rhetoric as if an employee comes to work and is objectively unable to perform his job, then take the employee off the job and refer them to an employment assistance program which can help them overcome whatever is causing the impairment, in a confidential manner, on the other hand if the employee comes to work unimpaired and is performing the duties of the job then the employer should leave the employee alone. Neither we believe, employee should be subjected to a drug test. As stated by the Maine Commission, "The Majority finds that a diligent employer should be able to protect his/her (~~and~~) legitimate interests without resorting to overly intrusive testing methods by simply requiring proper work performance from his/her employees. The employer can determine all that he/she needs to know by looking at the employee's record and simply asking, "Is this employee adequately performing

his/her job?' If the answer is yes, the employer's interest satisfied. If the answer is no, the employer does not need to forcibly probe into an employee's private life to protect his/her legitimate interest. He/she can talk with the employee and let him/her know that his/her performance is unsatisfactory. He/she can refer him to an employee assistance program..."

There are, of course, any number of causes for the impairment of employees or employers. These can include such things as marital problems, financial problems, or job related stress. CWA argues that the use of Employee Assistance Programs by employers and employees on a confidential basis is the appropriate response to such problems.

The Right of Privacy

Citizens of this country are endowed with certain rights, the right of privacy to be among the most cherished. I have reviewed a number of the recent court cases in the area of drug testing, and I realize that even where the Constitution should apply - in public employment - that this right has been eroded. That does not diminish our belief that to subject people to drug testing, especially urine testing, which by its very nature is profoundly demeaning, intrudes upon their basic rights of privacy. In addition, by permitting employers to pry into the most private areas of their employees' lives, you will be allowing them to attempt to discover such things as pregnancy, physical conditions, such as heart problems or diabetes, or emotional problems for which prescription medications have been used in treatment. All of these, we believe, are private matters to which the employer has no business.

In addition, if we are to argue that the use of drugs in any manner - even if it does not impair job performance - renders an employee into some sort of a suspect class whose members are more likely to be unable to perform their jobs, and therefore, the drug use falls within the purview of the employer then we must be prepared to accept the results of that reasoning on other aspects of our lives. As there not employers who might say that one's political beliefs, sexual preference or life style also render a person more likely to be unable to perform his or her duties. Does anyone here believe that we should permit an employer to tread where the laws and the

Constitution have prevented the government from going. By p mitt
the inquiry into the urine or blood of citizens of this State by
employers we are surely beginning the step down that road.

With regard to Assembly Bill #2850, the CWA is particularly
concerned. This bill would place the New Jersey State Government
seal of approval on random and routine drug testing. It is a bill
that through the use of its six exemptions, its low standard of
reasonable suspicion, its lack of universal rehabilitation, and
its lack of employee rights fails to represent any form of serious
thought about the issue of drug testing and must be rejected.

We believe that the Senate must take up a bill which bans the
use of drug testing in New Jersey workplaces. Without taking this
step, private employers will be permitted to institute drug testing
programs without any limitations, and public employers will be per
mitted to establish programs according to the dictates of the cour

Mr. Chairman, we know that we have not taken the easy or
politically expedient position. The public hysteria concerning th
drug crises - a crises that the data does not support - has create
a climate under which Legislators are called on to do something,
anything about drugs. We believe, however, that when one looks at
the truth behind the tests that the only conclusion can be to
ban them from use.

Thank you.



New Jersey
Business & Industry
Association

102 West State Street • Trenton, New Jersey 08608 • 609-393-7707

April 14, 1987

Mr. Dale Davis
Office of Legislative Services
State House Annex
CN 068
Trenton, NJ 08625

RE: A-2850 Acs

Dear Mr. Davis:

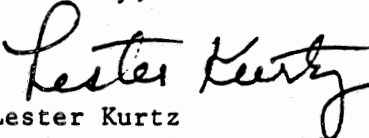
To supplement my oral testimony, presented at the public hearing held on April 9, 1987, I am enclosing a written copy of my testimony for your consideration.

In addition, on the issue of rehabilitation, while we oppose legislation mandating that all health insurance policies provide coverage for the treatment of drug abuse, NJBIA is in support of an amendment to the New Jersey Temporary Disability Insurance Law to provide limited temporary disability benefits to an individual who has entered a rehabilitation program requiring hospitalization.

Although I distributed an excerpt from a research study conducted by Rutgers University Center for Urban Policy Research concerning mandated drug abuse benefits at the public hearing, I am enclosing another copy for your consideration. It is significant to note that, based on the data collected, the study concluded that "the presence of mandates is not significantly related to the level of the drug abuse problem in these states."

Thank you again for giving NJBIA the opportunity to testify at this public hearing.

Sincerely,


Lester Kurtz
Assistant Vice President

so
Enclosures



New Jersey
Business & Industry
Association

102 West State Street • Trenton, New Jersey 08608 • 609-393-7707

STATEMENT OF THE

NEW JERSEY BUSINESS AND INDUSTRY ASSOCIATION

TO THE

NEW JERSEY SENATE

COMMITTEE ON LABOR, INDUSTRY & PROFESSIONS

ON

ASSEMBLY BILL 2850 ACS

April 9, 1987

162X

New Jersey Business and Industry Association, the largest association of employers in the state, takes this opportunity to express its SUPPORT for Assembly Bill 2850 Acs (Littell) in its present form. This bill authorizes the Department of Labor to establish rules and regulations creating a uniform standard for drug abuse testing. This bill would permit an employer to administer a drug abuse test to any employee or applicant for employment provided he adheres to certain statutory standards.

Business Supports

NJBIA supports a uniform standard for drug abuse testing. We favor uniform guidelines for the taking of blood or urine samples; the methodology and procedure used to evaluate the contents of samples. Business would welcome the opportunity to provide input into the establishment of the criteria for the drug testing program.

NJBIA supports A-2850 Acs because drugs:

- o Are Pervasive In Workplace.
- o Reduce Productivity.
- o Cost Lives.
- o Are Used At All Levels.

Pervasive in Workplace

The use of illegal drugs has reached epidemic proportions in this country. It has affected all age and socio-economic groups. Illegal drugs have become so pervasive in the workplace that they are used in almost every industry by blue and white collar workers alike. Their presence on the job is sapping the energy, honesty and reliability of the American labor force.

A measure of the inroads drugs have made on the workplace is seen in the President's Commission on Organized Crimes's proposal of March 1986, asking all U.S. companies to consider testing their employees for drug use. The commission noted that "drug trafficking is the most serious organized-crime problem in the world today" and that government and private companies can play a role in curbing the demand for drugs.

In 1985, in a typical example, reported by the Research Triangle Institute, a computer operator high on marijuana failed to load a crucial tape into an American Airline computer reservation system. The system was out of service for eight hours, costing the company some \$19 million.

Reduce Productivity

Other studies have found that drug abusers are far less productive than their co-workers. They miss ten times as many workdays and are three times as likely to injure themselves or someone else. Addicts with expensive habits are also more likely to steal cash from a company safe, products from a warehouse, equipment from a factory or secrets from a defense contractor.

The costs of drug abuse on the job are staggering. Consequences range from accidents and injuries to theft, bad decisions and ruined lives. Impaired workers involved in industries such as public transportation, trucking and continuous chemical operations, for example, could commit acts that result in injuries to the general public, co-workers, and also possible extensive property damage.

Cost Lives

Concern is greatest, of course, in industries where mistakes can cost lives. In the last ten years, about 50 train accidents have been attributed to drug or alcohol impaired workers. Resulting in 37 deaths, 80 injuries and \$34 million worth of property was destroyed. In 1983, at Newark Airport, a cargo flight skidded off the runway killing two crewmen. An autopsy showed that the pilot had been smoking marijuana, possibly while flying.

Federal experts estimate that between 10 and 23 percent of all U.S. workers use dangerous drugs on the job. Marijuana is the most common drug in the workplace, and the use of cocaine is increasing, because the intense high it generates often gives users the false feeling that they can do their jobs better and faster. Moreover, cocaine is easy to hide. In many offices, drugs are easy to obtain as paper clips. Some dealers provide messenger services right to their customer's desk or workplace.

Used At All Levels

Dangerous drugs can be found at every level of industry, from the shop floor to the executive suite. Drugs are also used by a multitude of blue collar workers to relieve the deadening boredom of menial jobs. Employers with large blue-collar work forces have discovered that drug dealers offer virtually an alternative cafeteria service in their plants.

Once companies acknowledge and confront the drug threat, their first task is to establish a firm and fair policy. Usually, they dismiss workers caught taking or selling drugs on the job, while offering assistance to users who voluntarily admit their problem.

New Employee Protective Rights & Benefits

An analysis of A-2850 Acs, as currently written, discloses a host of new employee benefits which offer protection to employees. They include the following:

- a) Employees are entitled to be covered under a published uniform policy;
- b) Employees are entitled to receive at least 30 days advance notice of a drug test policy;
- c) Employees are entitled to a confirmed drug test before an employer can take disciplinary action;
- d) Employees are given the right to challenge the results of a confirmed positive drug test;

- e) Employees can only be required to undergo a drug test under limited and defined circumstances as defined in the law and employers policy;
- f) Employees are entitled to have the results of a drug test kept confidential; and,
- g) Employees are entitled to receive a written notice of a confirmed positive drug test.

Business Against

Although NJBIA supports A-2850 Acs as currently written, we would be OPPOSED to any law or amendment which, in any way, restricts an employer's right and obligation to determine when a job applicant or employee may be requested to submit to a drug test. We feel that there should be no limitation beyond the standards contained in A-2850 Acs on an employer's selection of employees to be tested. Drug abusers do not always exhibit visible evidence of erratic behavior. Business seeks a drug free workplace to protect all working people and the public and to increase the productivity of our economy. One such amendment we are OPPOSED to is mandatory health insurance benefits for drug abuse treatment (rehabilitation).

Rehabilitation

In a recent research study (April, 1986) conducted by the Center for Urban Policy Research, Princeton they found that in those states with mandated health benefits for drug abuse treatment there was an increase in health care costs without providing an equal or offsetting benefit to business or society.

The study showed that States with Drug Abuse Treatment Mandates:

1. Experience higher facility expenditures per employee;
2. show higher insurance costs per employee and have the highest level of insurance contributions towards total costs;
3. have the lowest level of drug abuse in their population even before the mandates were passed; and
4. the presence of mandated benefits for drug abuse treatment is not significantly related to the level of drug abuse problem.

The estimated cost to an employer for employee drug abuse treatment can exceed \$30,000 for 33 days of hospitalization, which includes 5 days detoxification and 28 days inpatient hospitalization. While proponents of rehabilitation indicated that insurance premiums for this added benefit could cost approximately \$6.00 per year per employee. A relatively small price to pay for this type of protection.

Employers do not accept this estimate because they recall similar claims when the legislature mandated benefits for alcoholism treatment in 1978. As a result of this law, compliance has cost employers

in New Jersey nearly \$200 million since its passage and the cost continues to climb, an experience reflected in other states.

Conclusion

The corporate campaign against drugs may do more, however, than create safer, more productive workplaces. It may also begin to stem the plague of drug use in the United States. As more companies require job applicants to prove that they are drug free, it will become increasingly difficult to use drugs and make a living. Thus the economic deterrent may succeed, where the legal deterrent has failed.

While it is still too early to measure the success of the corporate war against drugs, some companies already cite impressive results. If companies can help employees kick the drug habit, the effort will pay dividends to business -- and society -- that can not be measured in dollars and cents. Enactment of A-2850 Acs would support an employer's efforts to secure a drug free workplace, and also to the President's call for a "drug free workplace for all Americans" as part of a program in a "National crusade against drugs."

NJBIA submits that because drug use by workers can result in shoddy, unsafe products and accidents in the workplace, individual rights must be subordinated to the broader welfare of fellow employees, customers and the public. We strongly urge that you SUPPORT A-2850 Acs.

*W.F. Bassinara
funding as*

MANDATED HEALTH CARE BENEFITS:
THE COST OF INSURANCE COVERAGE OF ALCOHOL
DRUG ABUSE AND MENTAL HEALTH TREATMENT

Principal Investigators

George Sternlieb
W. Patrick Beaton

Sponsoring Agency

New Jersey Business Group
on Health

Research Assistants

Lap Q. Nguyen
Yvonne Chilik

Research Institution

Rutgers University
Center for Urban Policy Research

Date

1 April 1986

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CHAPTER 5

DRUG ABUSE: PREVALENCE TREATMENT AND COSTS

INTRODUCTION

Drug abuse is considered to be the continued use of any drug in spite of problems with health, relationships with families and friends, and in spite of problems on the job or with the law (Dougherty, 1984). The range of substances treated under this topic include cocaine, heroin and other opiates, marijuana, hallucinogens, stimulants, and sedatives and hypnotics. Estimation of the extent of drug abuse varies with the measurement instrument. Household surveys by the National Institute of Drug Abuse estimate that nationally, at any given time, over 4 million individuals are at risk of abusing drugs. Epidemiological catchment area studies form perhaps the best current estimate of the extent of the problem at the local level. In three metropolitan areas for which data has been reported: New Haven, Baltimore and St. Louis; 2.1 percent of the populations are being treated for drug abuse or drug dependence (Myers et al., 1983).

The total cost nationwide of direct treatment for drug abuse has been estimated by the Research Triangle Institute as exceeding one billion dollars (Harwood, et. al., 1984). Expenditures made by treatment agencies reporting the National Institute of Drug Abuse total approximately a half billion dollars (NIDA Statistical Series F, 1982). The difference between the two estimates can be attributed to services rendered in private office practice and clinics that are treating drug abuse as a secondary enterprise and thus not reporting to NIDA.

The funding for drug abuse treatment as reported to NIDA is for the most part derived from various levels of government. Federal government contributes roughly 35 percent to the total with state and local government

matching this value. The insurance sector contributed \$95 million out of the total of \$486 million in total expenditures or roughly 20 percent of the total for 1980. The previous analysis of alcoholism mandates suggests that the growth of state mandates for the coverage of drug treatment services will create the opportunity to both expand this figure as well as shift part of the governmental burden to the private sector.

The type of person likely to experience the need for drug treatment services will directly affect the liability of the insurance carriers. The insurance companies acting as advisors to this study, have indicated that the abuse of street drugs has not been a significant factor generating health insurance claims; the abuse of prescription drugs, tranquilizers and the growth in the use of cocaine and crack within the general population poses a greater concern to the carriers. Individuals covered by group or individual health benefit policies are more likely to be in the latter group.

The abuse of drugs by the general population, while not new, is an area of research that has generated few economic analyses. This apparent disinterest by scholars is part of a broader social trend. The political willingness and technical ability to treat the wide array of drug abuse problems is thought by most practitioners working in the field to be insufficient to deal with the problem. In addition, each new wave of addictive drugs be they formally illicit drugs or new "designer drugs," yet to be declared illegal by statute, requires a reexamination of treatment techniques. The measurement of the problem is hindered by the universal lack of objective data. Federal budget cutbacks forced the National Institute of Drug Abuse to terminate the Client-Oriented-Data Acquisition Process (CODAP). This program was the only locally-oriented nationwide data collection effort designed to quantify the extent of the problem. Similarly, the NDATUS system used in this and the previous chapter, to perform

intensity of service and cost analyses, has been cutback to the extent that its use as a financial analysis tool terminates with the 1982 survey. Suffice it to say that no comprehensive economic analysis on the current state of affairs in the area of drug abuse can be performed without first recreating a nationwide drug abuse treatment data base.

Drug Abuse by Region

The regions of the country have been shown to vary significantly in terms of the extent and aggregate costs of alcohol abuse. The severity of drug abuse and the costs of its treatment also vary by region. Exhibit 5.1 displays two indicators of drug abuse. The extent to which the drug abuse problem exists in a region is measured by the number of patients undergoing treatment in a treatment facility registered by the National Institute of Drug Abuse (NIDA). The second characteristic is an indicator of the level of exposure to claims liability experienced by health insurance carriers. This index is the percent of total patient admissions to treatment facilities brought about by the use of cocaine, tranquilizers or other sedatives. The final index represents the percent of the states within a region that have passed a health insurance mandate that mandates the coverage of drug abuse treatment.

EXHIBIT 5.1

DRUG ABUSE AND INSURANCE MANDATES BY REGION, 1982

Region	Patients Per 100,000 Employees	Percent Patients in Treat- ment for Abuse of Cocaine, Tranquilizers, and Other Sedatives	Percent of States with Insurance Mandates
NE	194	13.8	0
S	108	12.9	0
W	141	12.5	0
NC	82	10.2	42%

1. National Drug and Alcoholism Treatment Utilization Survey, NIDA, 1982.
2. Client Oriented Data Acquisition Process, NIDA, 1979.
3. Blue Cross-Blue Shield Association, 1985.

The region shown to possess the highest level of treatment at N facilities is the Northeast. At 194 patients per one hundred thousand ployees, the Northeast has roughly double the problem faced by the lowest ranging regions; the South and the North Central. The concentrat of patients in treatment as a result of cocaine, tranquilizer and ot nedative use follows the same pattern as does th: preceding index. Northeast has the highest percentage of patients in treatment due to abuse of insurance sensitive drugs with a level of 13.8 percent; the Nor Central Region has the lowest such percentage at 10.2 percent.

North Central Region

The states of the North Central Region possess the lowest concentr tion of drug abuse patients in the nation and support the highest number states with some form of mandated insurance benefit. Exhibit 5.2 displa the indicators of the extent of drug abuse among the states of the region

EXHIBIT 5.2

UTILIZATION OF DRUG ABUSE TREATMENT FACILITIES AND DEGREE OF INSURANCE SENSITIVE DRUG USE BY PATIENTS IN STATES WITHIN THE NORTH CENTRAL REGION

State	Number of Patients Per 100,000 Employees	Percent of Patients Receiving Treatment Due to the Primary Use of Cocaine Tranquilizers and Sedatives	Year of Insurance Mandate
MI	162.54	6.8	--
OH	155.10	10.7	--
IL	98.55	7.8	--
ND	94.95	3.8	--
WI	82.09	15.1	1975
NE	79.16	9.5	1976
KS	78.13	8.3	--
MO	63.81	13.20	1978
MN	50.63	11.90	1980
SD	45.81	16.90	1976
IN	44.22	7.2	--
IA	30.76	11.20	--

Source: See Exhibit 5.1.

Note: -- no mandate.

The highest levels of drug abuse treatment occur in the highly industrialized states of Michigan and Ohio. Both states have over 150 drug abuse patients per 100,000 employees. At the opposite extreme are the farm states Indiana and Iowa each with approximately one-fifth the concentration of drug use. The highest concentrations in the abuse of insurance sensitive drugs occurs in South Dakota and Wisconsin each with over 15 percent. While not statistically significant under traditional standards, the two indices are negatively correlated with each other with a coefficient of (-0.37) .

The year during which an insurance mandate was passed to cover drug abuse treatment is shown in the final column of Exhibit 5.2. Five states possess insurance mandates that require reimbursement of drug abuse treatment. All five states require the coverage of inpatient services; while, only Kansas, Minnesota, and Wisconsin require the coverage of outpatient services. Average inpatient benefit minimums are 30 days of treatment. Only Missouri stipulates the use of efficiency promoting devices such as benefit maximums, deductibles and coinsurance.

The average values for the two drug abuse indices within states with and without mandates are shown in Exhibit 5.3. Treatment levels are shown to be somewhat higher in states with no mandate than in states with mandates; however, the percentage of patients entered for treatment due to the use of insurance sensitive drugs is significantly higher in states with mandates than those without. That is, while the passage of mandates within the states of the North Central region does not appear to be related to the level of the drug abuse problem it is strongly related to the use of insurance sensitive drugs.

EXHIBIT 5.3

AVERAGE LEVELS OF DRUG ABUSE TREATMENT AND INSURANCE SENSITIVE DRUG USE IN NORTH CENTRAL STATES MANDATING AND NOT MANDATING INSURANCE COVERAGE

	Average Number of Patients Per 100,000 Employees	Average Percentage of Patients Treated for Cocaine Tranquillizer and Sedative Abuse
Mandate	73.92	13.32
No Mandate	88.02	7.97
Difference in Means		5.35
Standard Error of Difference	27.00	1.75
t Score	-.52	3.05*

* t test is significantly different from zero at the 0.01 level.

Northeast Region

The states of the Northeast Region possess both the highest levels drug abuse treatment per employee and the highest percentages of patients seeking treatment for the primary use of what we have termed insurance sensitive drugs such as cocaine. Exhibit 5.4 displays the indicators of the extent of drug abuse among these states.

EXHIBIT 5.4

UTILIZATION OF DRUG ABUSE TREATMENT FACILITIES AND DEGREE OF COCAINE, ET.AL. USE BY PATIENTS IN STATES WITHIN THE NORTHEAST REGION*

State	Number of Patients Per 100,000 Employees	Percent of Patients Receiving Treatment Due to the Primary Use of Cocaine Tranquillizers and Sedatives
NY	633.94	8.3%
NJ	229.62	4.7
CT	198.66	9.2
RI	196.30	17.4
PA	153.96	6.2
VT	114.17	18.2
MA	104.82	12.1
NH	68.14	21.1
ME	47.66	26.9

*No Insurance mandates requiring drug abuse coverage have been passed in this region.

The highest level of drug abuse treatment per employee occurs within New York at 634 patients per 100,000 employees; New Jersey is second at less than half the number of patients per employee. New York is unique with the highest level of drug abuse treatment in the nation having a value over twice that of the second and third ranking states: Maryland and New Mexico. The states with the lowest levels of treatment per employee are New Hampshire and Maine. With values approximating 50 patients per 100,000 employees, these states are of a comparable rank to the lowest treatment level states in the other regions of the country.

The highest concentrations of persons who have entered treatment primarily for the abuse of insurance sensitive drugs are found in Maine and New Hampshire. Both states have over 20 percent of their drug abuse patients entering treatment due to cocaine, tranquilizer or sedative abuse; this places the two states among the top four in the nation on this dimension of drug abuse. Finally, it must be noted that the two indicators of drug abuse are negatively correlated with a coefficient of (-0.51) . To the extent that the use of insurance-sensitive drugs places carriers at a greater degree of liability, then New Hampshire and Maine should be states of relatively high insurance payments and pressure for insurance mandates. Neither state had a drug abuse mandate as of 1982, the year of the data base; however, Maine has implemented a mandate as of 1983. As is shown in Exhibit 5.3, no state within the Northeast region had an insurance coverage mandate as of 1982.

The South

The South has shown to have the second lowest level of drug abuse treatment and insurance-sensitive drug use in the nation. However, within this region, there are states with levels of severity on both of the drug abuse dimensions that rank with the nation's highest. Exhibit 5.5 displays these indicators as well as the year of introduction of drug abuse treatment insurance coverage mandates.

EXHIBIT 5.5

UTILIZATION OF DRUG ABUSE TREATMENT FACILITIES AND DEGREE OF COCAINE ET.AL. USE BY PATIENTS IN STATES WITHIN THE SOUTHERN REGION*

State	Number of Patients Per 100,000 Employees	Percent of Patients Receiving Treatment Due To Primary Use Of Cocaine Tranquilizers and Sedatives
MD	313	5.9
LA	247	6.5
FL	133	29.8
DE	124	9.1
VA	108	6.5
TX	106	5.5
GA	105	14.9
KY	105	13.4
WV	95	22.5
SC	70	10.5
AL	69	18.9
TN	63	7.8
MS	61	18.2
AR	54	16.9
NC	40	14.1
OK	27	5.2

*No insurance mandates requiring drug abuse coverage have been passed in this region.

The highest levels of drug abuse treatment occur in Maryland and Louisiana; these states rank among the top four such states in the country. Both states had in excess of 200 patients undergoing treatment per 100,000 employees. At the opposite extreme are North Carolina and Oklahoma with forty or fewer patients on the index. The treatment for the use of insurance sensitive drugs ranges from a high in Florida at 29.8 percent to a low of 5.2 percent in Oklahoma. As with the other regions surveyed, the two drug abuse indices show a slight negative correlation (-0.24); the correlation is not statistically significant; however, the persistence across regions of this negative relationship suggests the existence of a fundamental pattern in the drug abuse phenomenon.

The year during which an insurance mandate was passed is shown in the final column of Exhibit 5.5. As in the case of the Northeast region, no state has enacted a mandated coverage statute.

The West

The states of the Western Region possess the second highest concentration of drug abuse patients in the nation and the third highest concentration of cocaine, tranquilizer, and sedative abuse. Exhibit 5.6 displays the range of values on two drug abuse indicators as well as the year during which a drug abuse treatment mandate was enacted.

Drug abuse treatment is highest in two southwestern states: New Mexico and Arizona. Both states have well over 250 persons in treatment for every 100,000 employees. The lowest concentrations of drug abuse treatment are found in Alaska and Idaho with 72 and 31 patients per 100,000 employees respectively. The abuse of insurance sensitive drugs ranges from a high in Alaska and Wyoming to lows in Hawaii and Colorado. A persistent negative

EXHIBIT 5.6

UTILIZATION OF DRUG ABUSE TREATMENT FACILITIES AND DEGREE OF COCAINE
ET.AL. USE BY PATIENTS IN STATES WITHN THE WESTERN REGION

State	Number of Patients Per 100,000 Employees	Percent of Patients Receiving Treatment Due To Primary Use Of Cocaine Tranquillizers and Sedatives	Year of Insur- ance Mandate
NM	308	8.9	--
AZ	262	9.0	--
CA	190	6.5	--
UT	178	10.0	--
NV	165	13.9	1983
WY	132	20.2	--
CO	130	5.1	--
WA	127	13.1	--
OR	91	16.7	1983
MT	80	12.2	--
HI	74	5.1	--
AK	72	28.3	--
ID	31	13.6	--

-- No mandate exists.

correlation again emerges between these two indicators. As in previous cases, the correlation between individuals in treatment and the burden potentially faced by insurance carriers is (-0.37); however, it is not statistically significant at commonly used levels of significance.

The year during which an insurance mandate was passed to cover drug abuse treatment is shown in the final column of Exhibit 5.6. Two states currently possess insurance mandates: Nevada and Oregon. Both states mandate coverage for inpatient and outpatient care. Nevada sets both inpatient and outpatient maximum annual benefits; no copayment provisions are specified in the law. As indicated previously, Oregon combines drug abuse with alcoholism and mental health treatment in its maximum required annual benefit levels; in addition it requires that copayments be the same as for any medical outpatient treatment or medical inpatient treatment. Since the year of the benefit statutes follows the treatment and expenditure data neither of these states will be included in the cost analysis to follow.

REGIONAL EXPENDITURES FOR DRUG ABUSE

Aggregate Study

The resources dedicated to the treatment of patients suffering from drug abuse are represented by expenditures made by treatment agencies. As indicated in the chapter on alcohol abuse treatment, the NDATUS data base used to perform these analyses does not exhaust the universe of drug abuse treatment. Only those facilities that have been placed in the National Institute of Drug Abuse inventory and receiving Federal Aid for this purpose are included. Private office treatment as well as hospital care will not for the most part be included. The range of expenditures for the four Census regions is displayed in Exhibit 5.7.

EXHIBIT 5.7

EXPENDITURES FOR DRUG ABUSE TREATMENT: AVERAGE EXPENDITURES PER EMPLOYEE PER STATE BY REGION: 1982

Region	Total Annual Expenditures Per Employee	Insurance Expenditures Per Employee	Insurance Expendi- tures as a % of Total	Patients Per 100,000 Employees	Percent of States with Insurance Cover- age Mandates
NE	\$6.36	\$0.55	8.6%	194	0%
W	4.08	0.12	2.9	141	0
NC	3.01	0.55	18.2	82	42
S	2.88	0.36	12.5	108	0

Source: National Drug and Alcoholism Treatment Utilization Survey, NIDA, 1982.

Highest in terms of total spending for drug abuse treatment per employed worker in the state is the Northeast Region. At over six dollars per employee, the Northeast spends 30 percent more than its nearest rival, the West. The lowest expenditure level is shown to be the South which spends less than three dollars on a per employee basis. The insurance burden forms a sharply different pattern. The Northeast is tied with the North Central region at \$0.55 per employee; however, when the relative

burden faced by the insurance carriers is compared, the North Central is the highest with over 18 percent of total expenditures being derived from insurance carriers. Given that the North Central Region is unique in possessing states that mandate the coverage of Drug Abuse treatment, the degree of the insurance burden strongly suggests that mandates do make a difference in the spending levels. To examine this hypothesis, a difference of means analysis will now be performed on the states of the North Central Region.

Expenditure Differences Due to Mandates

The states of the North Central Region are unique in that they are the only ones possessing mandates to cover drug abuse treatment costs. Out of the 12 states of the region, 5 possess such mandates. Exhibit 5.8 displays the level of insurance and total drug abuse treatment expenditures per employed worker by state as well as the mandate status for each state in the region.

EXHIBIT 5.8

AVERAGE DRUG ABUSE TREATMENT FACILITY EXPENDITURES BY STATE AND INSURANCE FUNDS BY STATE FOR THE NORTH CENTRAL REGION, 1982

State	Year of Drug Abuse Coverage Mandate	Total Facility Expenditures Per Employee	Insurance Expenditures Per Employee	Insurance Burden as a Percent of Total
WI	1976	\$4.49	\$1.58	35.1%
KS	1978	4.16	1.26	30.3
MI		5.69	.76	13.3
MN	1976	2.74	.44	16.1
OH		4.64	.35	7.5
IA		2.64	.34	12.8
SD		1.85	.27	14.5
ND	1975	1.20	.26	21.7
IL		2.98	.13	4.3
IN		1.89	.12	6.3
MO	1980	1.71	.00	0.0
NE		2.10	.00	0.0

-- No mandate exists

Source: NDATUS, 1982.

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Three of the four highest expenditure level states are shown to have insurance mandates. Only Michigan, a state influenced by union contracts with the automobile industry, exceeds the expenditure levels of states that have insurance mandates. The two states with the highest insurance expenditures: Wisconsin and Kansas, both exceed a dollar per employee. When expenditures are converted into the relative burden experienced by insurance carriers within a state, each state with an insurance mandate, excluding Missouri which enacted its mandate in 1980, places a higher burden upon the insurance carriers than states without mandates.

A simple difference of means analysis will quantify the cost per employee attributable to the existence of a mandate. The analysis is displayed in Exhibit 5.9.

EXHIBIT 5.9

AVERAGE EXPENDITURE LEVELS BY DRUG ABUSE TREATMENT FACILITIES PER EMPLOYED WORKER IN STATE, FOR STATES WITH AND WITHOUT DRUG ABUSE TREATMENT

Insurance Legislation	Insurance Expenditures Per Employed Worker	Total Facility Expenditures Per Employed Worker
Mandate	.89	3.15
No Mandate	.25	2.94
Difference of Means	.64	.21
Standard Error of the Difference	.26	.91
t score	2.41*	.23

*Significant at .05 level, one-tailed test.

Both total facility expenditures and insurance expenditures are higher on a per employee basis in states with mandates than in those without. The difference is 0.64 dollars per employee per year. The difference is significant at the 0.05 level. While total expenditures are 21 cents

per employee greater in states with mandates than in those without, the difference is not significantly different from zero. This suggests that the existence of insurance mandates, rather than expanding total expenditure for drug abuse treatment, merely replaces revenues from other sources.

Insurance Carriers Estimates of Premium Costs of Mandates

The expenditure data analyzed for the North Central region was taken from the expenditure budgets of drug abuse treatment facilities. The inventory of such facilities, as has been indicated, is not exhaustive of all sites providing drug abuse treatment and billing insurance carriers. Therefore, the difference of means analysis is biased in its results. The actual impact of a mandate will be larger than the results in Exhibit 5.9 suggest.

Estimates of the marginal cost of a new policy condition provided by insurance carriers yield an alternative estimate of the impact of the mandate. In a survey of insurance carriers offering group health benefit coverage, the carriers were asked to estimate the value of the marginal premium for several types of benefits to be added to a group policy in the New York metropolitan area for 1985. The results represent the additional cost for adding a totally new benefit to a preexisting policy. From the point of view of a mandated benefit, the marginal premium estimate will be biased on the high side in that carriers provide an undetermined level of drug abuse coverage under existing policies.

Exhibit 5.10 displays estimates of the marginal premium costs made by the actuarial departments of several insurance carriers. The small number of cases limits the range of the analysis. Where policy conditions are stipulated, the carriers have roughly comparable limitations. The additional annual premium change to providers of drug abuse treatment benefit

is found to range from \$1.56 to \$6.26 and have an average of \$3.17 per employee per year. This wide range in the actuarial estimates is due to the great uncertainty currently associated both with the rate of increase in utilization as well as the cost of treatment. When compared to the results derived from the 1982 provider cost data, the carrier's current estimated cost is over three times greater.

EXHIBIT 5.10

PREMIUM COST TO PROVIDERS OF GROUP HEALTH INSURANCE BENEFITS
FOR DRUG ABUSE TREATMENT, 1986

Conditions of Policy	Insurance Carrier A	Insurance Carrier B	Insurance Carrier C
Deductible	\$ 200	\$100	\$100
Coinurance			
Inpatient	80%	80%	80%
Outpatient			
Maximum annual patient payment	\$1,000	none	\$1,100
Annual Maximum Benefit			
Inpatient	30 days		
Outpatient	30 visits		
Lifetime Maximum Benefit	none	none	none
Mandate Premium Cost	\$ 1.56	\$6.26	\$1.68

Source: Survey of Insurance Carriers, CUPR, 1985.

SUMMARY

High quality nationwide data documenting the level, degree of severity and costs associated with drug abuse treatment is currently nonexistent. At best, such data as does exist is four or more years old. The rapidly evolving nature of the drug abuse problem renders the available data highly uncertain for currently meaningful analytical studies.

The local area studies that do exist suggest that approximately 2 percent of the population have drug abuse-dependence problems. While 5 million individuals are estimated to be suffering from this class of sickness, no index is available to show a distribution severity of illness and most appropriate treatment. As a consequence, little in the way of the quantification of the supply and demand for drug abuse treatment can be made.

The cost of treating drug abuse patients was, as of 1980, predominately borne by federal and state government. The private insurance sector was responsible for less than 20 percent of these expenditures. In the years following 1980, however, major shifts have occurred in the nature of drug abuse. Where the abuse of street drugs left the insurance sector largely unaffected, by 1983 the rapid growth in the use of cocaine and crack within the general population greatly increased the potential liability of insurance carriers and employer-sponsored health care plans. The growth in state legislation mandating the coverage of drug abuse treatment will further shift the financial burden to the private insurance sector.

There are great differences among the regions of the nation in the level of the problem (as of 1982) and the decision to mandate insurance coverage. The states of the Northeast region possess the largest number of patients receiving treatment, and the largest concentration of drug abusers

covered by health care plans. Given this level of the problem, no states in the Northeast have legislation mandating coverage. Alternatively, the North Central states, possessing both the lowest level of drug abuse and the smallest potential for insurance liability, have such mandates in half of their states. However, within the region, the existence of mandates does not appear to be statistically related to the level of the drug abuse problem.

The existence of insurance mandated coverage of drug abuse treatment does appear to add to the expenditures made by drug abuse treatment facilities. Using the states of the North Central region as the basis for the analysis, states with mandates have treatment centers that spend approximately \$3.15 for each full time employee in the state; whereas, states with no mandates spend at the rate of \$2.94 per worker. The difference in insurance liability is even greater. In states with mandates, insurance carriers reimburse treatment facilities at a rate of 89 cents for each worker; while, in states with no mandate, the reimbursement rate is only 25 cents. Where total expenditures rise on the average only 21 cents corresponding to the existence of a mandate, insurance costs increase by 64 cents. Thus, as with the case of alcohol treatment costs, the existence of mandates shifts the burden for the payment of these illnesses from the public sector to the private health insurance sector. Current insurance carrier actuarial estimates show that the marginal premium for a new drug abuse treatment policy rider will cost the group insurance provider approximately \$3.16 per employee per year.

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POSITION STATEMENT

ACS for A-2850 (Littell/Foy)

DRUG TESTING IN THE WORKPLACE

The New Jersey School Boards Association supports with amendments the ACS for A-2850. This bill would establish uniform standards for pre-employment and employment drug tests and to that end contain detailed requirements on when employers can administer drug tests to employees and applicants and when disciplinary action can be taken against employees.

NJSBA strongly requests the following amendments to A-2850:

1. Most importantly, NJSBA seeks to eliminate the provisions in the bill that would allow employers to negotiate with employees to prohibit or permit drug tests. These provisions could undermine a board's managerial prerogative to examine teachers who are having performance problems or exhibiting unusual behavior. These provisions would consequently interfere with the board's ability to protect students against unsuitable or dangerous teachers.

While it is true that a board would not be required to agree to such provisions, negotiating if and when drugs tests are to be administered dilutes the purpose of this act--to provide uniform standards for drug testing.

2. NJSBA does not support authorized testing of job applicants by public employees.

However, NJSBA supports the ACS for A-2850 with amendments for several reasons:

1. NJSBA supports state standards for the administration and screening of drug abuse tests. These standards would provide useful guidance for boards of education and would eliminate the risks of improper screening and invalid results. In addition, standards would reduce the likelihood of multiple suits on issues of drug testing that could occur if each board administered its own test.

2. NJSBA supports the standard of reasonable suspicion with respect to employees as proposed in this bill.
3. NJSBA approves of the establishment of an Advisory Committee on Drug Testing and requests representation on this committee.
4. NJSBA supports random and routine drug testing as part of an employee assistance program.
5. NJSBA supports with amendment the procedural safeguards afforded employees for the right to a temporary leave of absence to enter a detoxification program. The amendment would require accumulated sick leave to be used for the employee's temporary leave of absence. If this sick leave is then depleted, the remainder of the temporary leave of absence would not be paid by the public employer.
6. NJSBA supports as a term or condition of employment the identification of the practices to be used in the administration of tests.

NJSBA urges you to consider our recommendations. In that way, A-2850 will provide uniform standards for drug testing.



POSITION STATEMENT
A-2850

NJEA opposes A-2850.

In recent weeks, NJEA representatives have attended various hearings concerning drug testing. We have reviewed the testimony of public and private employee and employer representatives, law-enforcement officials, legal counsel, drug testing experts, education leaders, and other interested parties.

While we commend the efforts of the prime sponsors to protect the rights of employees, we feel A-2850 will create more problems than it will solve. Thousands of dollars of taxpayers' money will be spent in litigation over the provisions of this bill.

We oppose A-2850 for many reasons, including:

- . There is a threat to the invasion of privacy protection in the Constitution of the United States.
- . The unreliability of drug tests which is confirmed by the requirement for confirmatory tests is dangerous. In the meantime, employees may be suspended without pay. Restoring pay and benefits after the fact does not make an employee whole. There is no compensation for the trauma, economic hardship, or humiliation inflicted.
- . There is an absence of public clamor for drug testing of school employees under any circumstances.
- . Confidentiality is impossible in a school environment. Release of the results to other personnel of the employer on a need-to-know basis could include, in numerous districts, supervisors, board of education members, and other school personnel. Careers could be ruined by the mere fact a test was ordered regardless of the results.
- . The provision which allows employees to disclose to the employer which prescription or non-prescription medication is being used is intrusive and violates the privacy of the employee. Persons with disorders such as epilepsy may face harassment or discrimination.

(Over)

- The provision for collective bargaining agreements forces employee organizations to bargain from a position of weakness. The right to test would be established. Members would be forced to negotiate a protection they already should enjoy under the Constitution.

Education Daily recently reported that a ten-member panel of the nation's top educators and lawmakers, including Ernest Boyer of the Carnegie Foundation; Frank Newman, president of the Education Commission of the States; Governor Michael Dukakis of Massachusetts; and others, agree that "drug use is a major problem in society and among school children that will be remedied only by improved education and community efforts, not by drug testing programs."

NJEA recommends that an advisory committee be established similar to that found in the provisions of the bill in section 17, page 11, prior to legislative action on A-2850 or any similar bill requiring drug testing programs. Drug testing of school employees has far-reaching ramifications. A mandatory drug testing program, under any circumstances, will affect the lives, jobs and reputations of thousands of dedicated school employees.

Three Assembly committee meetings have produced a 12-page Committee Substitute for a four-page bill. While some questions have been answered, many more have been raised and left unsolved. We believe the Legislature is moving too rapidly on an issue of this magnitude.

We urge members of the Senate Labor Committee to oppose A-2850.

DTC:RJP:mn
4/6/87

**NEW JERSEY STATE LEGISLATURE
SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE**

Hearing on Drug Testing in Employment

April 9, 1987

TESTIMONY OF THE LEGAL ACTION CENTER

**Jon Bauer
Staff Attorney**

My name is Jon Bauer. I am a staff attorney with the Legal Action Center, a public interest law firm that has specialized for more than a decade in issues involving alcoholism and substance abuse. The Center has worked in New Jersey, New York and other states to address the problems caused by workplace substance abuse, providing legal assistance, information and advice on these issues to drug and alcohol treatment programs, employee assistance programs, government agencies, businesses, unions and individuals.

The Legal Action Center has drafted proposed legislation to regulate the use of drug testing in employment. The goal of our legislative proposal (a copy of which is attached) is to authorize employers to take effective steps against the health and safety hazards caused by impairment in the workplace, while protecting employees against unnecessary intrusions into their privacy and the danger of inaccurate test results. Our proposal also seeks to encourage employers to provide employees having substance abuse problems with an opportunity to obtain treatment.

The "Preemployment and Employment Drug Testing Standards Act" recently passed by the New Jersey Assembly has similar objectives. In our view, however, the Assembly's bill is severely flawed because it authorizes testing even when an employer has no reasonable basis for believing that a particular individual is impaired by or is using drugs on

the job. The legislation passed by the Assembly would permit drug testing in many situations where testing is unnecessary and unreasonably invasive of the rights of New Jersey citizens. For this reason, we urge that substantial changes in the legislation be made before the Senate passes a bill on this issue.

The Assembly bill also includes some very good provisions establishing minimum standards for drug testing, which should be retained in any Senate legislation. The Legal Action Center strongly supports the bill's requirements that positive tests be confirmed by gas chromatography with mass spectrometry (the most accurate technique currently available), that the Commissioner of Health establish and enforce standards for all technical aspects of drug tests, that positive samples be preserved to permit retesting by the employee, that employers distribute a written policy statement before conducting any tests and that the confidentiality of test results be guaranteed.

The Assembly bill, however, permits testing in both the private and public sectors in far too many circumstances. The Fourth Amendment to the United States Constitution has been interpreted by the courts to prohibit public employers from engaging in drug testing unless the employer has, at a minimum, a reasonable suspicion based on objective facts

and inferences drawn from those facts that a particular person is using drugs. The Assembly bill goes beyond this constitutional limitation by permitting testing in the public sector not only when the employer has a reasonable suspicion that an employee's job performance is being affected by drug use, but also whenever performance "could reasonably be expected to be affected by the influence of a drug." The latter ground is so vague and broad that it could be used to justify testing every public employee. The bill also violates the Constitution by providing that if an employee's sample produces a confirmed positive test result, it will be presumed that the employer had reasonable suspicion to test. Courts have consistently held that a search cannot be justified by its results; there must be reasonable suspicion at the outset.

The Assembly bill gives private employers virtually unfettered discretion to require employees or applicants to submit to drug tests. While the Fourth Amendment only applies to governmental action, we believe that any legislation regulating drug testing should hold public and private employers to the same standard: testing should only be permitted on the basis of reasonable suspicion. The Fourth Amendment reflects values that are fundamental to all persons in our society regardless of whether they work in the public

or private sector. Drug testing requires individuals to expose ordinarily private bodily functions to the scrutiny of others. Authorizing drug tests on a random or routine basis where no suspicion of drug use exists, as in the Assembly bill, is an unwarranted infringement of personal dignity.

Moreover, testing on a random or routine basis is not necessary to maintain a safe and efficient workplace. Good supervision is all that is needed to ensure that any employee displaying job performance deficiencies is either disciplined or referred to an employee assistance program for help. Drug testing may be useful to corroborate a suspicion that a particular employee is under the influence of drugs on the job, but a positive test, standing alone, is not probative of impairment because the tests cannot determine how recently a substance was used.

The administration of drug tests on a random or routine basis will also produce unavoidable errors causing many innocent persons to be wrongfully stigmatized as drug users. Even if tests are confirmed by gas chromatography with mass spectrometry (GC/MS), as required by the Assembly bill, many opportunities for human and mechanical error will remain. Errors may occur if samples are mislabelled or contaminated, if equipment is not properly cleaned between

tests, if the temperature, pressure and storage conditions of the urine samples are not rigidly controlled. When drug testing is used on a population in which the vast majority of individuals have not used drugs (as is the case when employees or applicants are tested without prior suspicion of drug use), a distressingly large proportion of the positive test results will be false positives.

One of the good features of the Assembly bill is its requirement that public employers provide a temporary leave of absence to an employee whose sample reveals the presence of an illegal drug so that the employee can obtain treatment. This is a sensible and effective response to the problem of workplace substance abuse. Permitting employees who successfully overcome their substance abuse problems to return to work provides a strong incentive for employees who are abusing drugs to confront their problems and seek treatment. Employers will benefit by retaining the services of experienced workers instead of having to replace them with new employees who will require expensive training. The Assembly bill, however, does not require private employers to provide the same treatment option. We believe that it should.

As I mentioned, the Legal Action Center has drafted proposed legislation on drug testing. A copy of our bill

is attached so that you can examine an alternative approach to this complex issue. I have also attached a copy of a policy and information statement on workplace drug testing prepared by the Legal Action Center which discusses some of the legal and practical issues.

Thank you for your attention to our views on this issue.

DRUG TESTING LEGISLATION

Section 1: Policy

It is the policy of the State to implement effective measures to eliminate alcohol and substance abuse that threatens health and safety in the workplace and to protect all employees against unreasonable invasions of personal privacy and deprivation of rights arising from suspicion of alcohol or drug abuse. It is also the policy of the State to encourage rehabilitation of employees who are accurately identified as alcohol or substance abusers so that they may continue or resume employment. Accordingly, this legislation permits employers to use reliable drug testing procedures to screen certain job applicants who have been offered employment and employees who are suspected either of being impaired due to alcohol and substance abuse or of abusing alcohol or drugs on the job, and prohibits employers from taking adverse employment actions against any applicant or employee solely on the basis of drug or alcohol test results. This legislation further requires employers to allow employees whose job performance is affected by substance abuse to obtain rehabilitation.

Section 2: Definitions

When used in this article:

A. "Drug testing procedure" means the taking of and analyzing body fluids or materials from the body for the purpose of detecting the presence of alcohol or controlled substances.

B. "Controlled substance" means a substance as defined in [applicable section of state or federal law]

C. "Alcohol abuse" means alcoholism or alcohol abuse as those terms are defined in [applicable section of state or federal law]

D. "Drug abuse" means drug addiction or drug abuse as those terms are defined in [applicable section of state or federal law]

E. "Employer" means any private, public or governmental bureau, department, agency, person corporation, partnership, or association located or doing business within the geographic boundaries of the State of _____ who employs four (4) or more persons.

F. "Employment agency" means that term as defined in [applicable section of state or federal law]

G. "Employee" means any person who is rendering services within the State of _____ for compensation to any employer located and/or doing business within the geographic boundaries of the State of _____.

H. "Applicant" means any person who is offering services for compensation to any employer located and/or doing business within the geographic boundaries of the State of _____.

I. "Licensed laboratory" means a laboratory that has met the requirements established in [applicable section of state or federal law].

Section 3: Limitations on Drug Testing for Employees

A(1). Except as provided in paragraph 2 of this section, no employer may demand, require or request that any employee take or submit to drug testing procedures as a condition of continued employment, promotion or receipt of any employment benefit.

(2). An employer may require a specific employee to submit to a drug testing procedure if:

(a) the employer has a reasonable suspicion based on specific objective facts or reasonable inferences drawn from such facts that the particular employee is either abusing alcohol or controlled substances on the job in violation of established rules or is impaired by reason of alcohol or substance abuse in the performance of job duties and responsibilities; and

(b) prior to administering the test procedure, the employer has provided the particular employee with a written statement describing the objective facts and inferences that are grounds for the test and a copy of the employer's written policy, as described in section 5(A)(1); and

(c) the employer has an alcohol and substance abuse education program that provides to all supervisory personnel and employees education and training on the dangers of alcohol and substance abuse and offers referral to, or provides, treatment services.

Section 4: Limitations on Drug Testing for Applicants

A(1). Except as provided in paragraph 2 of this section, no employer or employment agency may either (1) demand, require or request that applicants for employment take or submit to a drug testing procedure or (2) make as a condition of employment a negative result on a drug testing procedure.

(2). An employer or employment agency may require a specific applicant who has been given a conditional offer of employment to submit to a drug testing procedure as part of a required medical examination if:

(a) the position conditionally offered to the applicant is of such nature that impairment from alcohol or substance abuse would cause a direct and immediate threat to the safety of the public or other employees; and

(b) the employer has a reasonable suspicion based on specific objective facts or inferences drawn from such facts that the particular applicant is currently abusing alcohol and substances and such abuse will substantially impair performance of the particular job duties and responsibilities; and

(c) prior to administering the test procedure, the employer has provided the particular applicant with a written statement describing the objective facts and inferences that are the grounds for the test and has provided a copy of the employer's policy, as described in section 5(A)(1).

Section 5: Administration of Drug Testing Procedures

A. An employer who administers drug testing procedures pursuant to Sections 3 or 4 must comply with all the following requirements:

(1) the employer shall provide all persons tested with a written policy that identifies the circumstances under which persons may be required to submit to drug testing procedures, the particular test procedures, the controlled substances and/or alcohol that will be screened and the consequences of a positive test result. The employer's policy must incorporate all provisions of this article;

(2) the employer shall use only a licensed laboratory to test body fluids or materials for alcohol or controlled substances;

(3) The employer shall establish a chain of custody procedure for both sample collection and testing that will verify the identity of each sample and test result;

(4) the employer must:

(a) simultaneously collect two samples in separate containers; and

(b) confirm any sample that tests positive by testing the second sample by gas chromatography with mass spectrometry or an equivalent scientifically accepted method that provides quantitative data about the detected drug or drug metabolites; and

(c) provide the person tested with an opportunity, at his or her option and expense, to have a blood sample drawn at the time the urine sample is provided, and preserved in such a way

that it can be later tested for the presence of alcohol or controlled substances;

(5) A laboratory may report to an employer that a urine sample is positive only if both the initial test and confirmation test are positive for the particular controlled substance and/or alcohol;

(6) The employer shall provide the person tested with a report of the drug test result that includes the following information:

(a) the type of test conducted for both initial screening and confirmation; and

(b) the results of each test; and

(c) the detection level, meaning the cut-off or measure used to distinguish positive and negative samples, on both the initial screening and confirmation procedures; and

(d) any other information provided by the laboratory to the employer concerning that person's test;

(7) In the event of a negative test result, the employer shall destroy within 30 days all records, reports and other documents in its possession related to the test and shall not thereafter make reference to the test in any employment related proceedings.

(8) The employer shall ensure that all positive samples are preserved in a condition that will permit accurate retesting for a period of not less than ninety (90) days after the person tested receives the result. The employer shall provide each person who has a positive test result with an opportunity to have the pre-

served sample retested at an independent laboratory selected by and at the expense of the person tested.

Section 6: Consequences of a Positive Test Result

A. All applicants and employees shall have an opportunity to present evidence rebutting the employer's right to test and the significance and accuracy of the test result.

B. Except as provided in paragraph C of this section, an employer may take disciplinary action against an employee whose test result is positive if that employee has been afforded a reasonable opportunity to obtain treatment, and thereafter the employee remains unable to perform the functions of his or her job or occupation in a reasonable manner, or his or her continued employment would constitute a direct threat to the safety of others. An employee shall be permitted to select the particular treatment program in which he or she will participate. The employer shall, whenever necessary for treatment and reasonably possible, permit an employee to: (1) have a part time or modified work schedule; (2) be temporarily reassigned to an appropriate job; and (3) use administrative, sick or vacation leave and leave without pay to obtain treatment.

C. An employer may suspend from active duty an employee whose alcohol or substance abuse problem poses a direct threat to the safety of others until such employee has participated in treatment and is able to resume safely his or her duties.

D. An employer may take disciplinary action against an employee who has a positive test result if, after being afforded a reasonable opportunity for treatment, such individual is unable to perform the functions of the job or occupation in a reasonable manner or his or her continued employment would constitute a direct threat to property or the safety of others.

E. Nothing contained in this subdivision shall be construed to prevent the discipline of any employee who has violated an established rule prohibiting the sale, possession or use of alcohol or controlled substances on the job.

Section 7: Confidentiality

A. Employers, employment agencies, laboratories and the agents thereof who receive or have access to information about drug test results or alcohol or substance abuse treatment shall keep all information confidential. Release of such information shall be solely pursuant to a written consent form signed voluntarily by the applicant or employee, except where such release is compelled by legal process. The consent form must contain, at a minimum, the following information:

- (1) the person who is authorized to obtain the information;
- (2) the purpose of disclosure;
- (3) the precise information to be disclosed; and
- (4) the duration of the consent.

Section 8: Violations of the Act

A. A person alleging a violation of this act shall have a cause of action in any court of appropriate jurisdiction for injunctive relief and damages.

B. Any employer, employment agency or laboratory found in violation of this act may be liable for:

(1) actual damages for economic, bodily or psychological harm sustained as a result of such failure;

(2) punitive damages as allowed by a court or jury; and

(3) the costs of the action together with reasonable attorney's fees.

C. In addition to any other penalties provided herein or by any other law, any employer, employment agency, laboratory and agent thereof who releases information in violation of the confidentiality provisions of section 7 shall be assessed a civil penalty in an amount not less than one thousand dollars (\$1000) and not more than five thousand dollars (\$5000), as determined by the court, to be paid to the subject of the test procedure and shall be liable for the costs of the action together with reasonable attorneys' fees.

Section 9: Relation to Employer's Collective Bargaining Agreement, Contract or Policy

Nothing in this Act shall supersede any collective bargaining agreement in effect on the effective date of the Act. Any collective bargaining agreement commencing on or after the effective

date of this Act, or any employment contract or company policy, may authorize drug testing practices provided that such practices are consistent with the provisions of sections 2 through 8 of this Act.

Section 10: Relation to _____ Civil Service Law

Nothing in this Act shall diminish the rights of employees granted or established pursuant to the Civil Service Law.

Section 11: Severability

If any provision of this article or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

Section 12: Effective Date

This statute shall become effective on January 1, 1988.

2/5/87

April 20, 1987

Senator Raymond Lesniak, Chairman
New Jersey State Legislature
Senate Labor, Industry and Professions Committee
State House Annex, CN-068
Trenton, New Jersey 08625

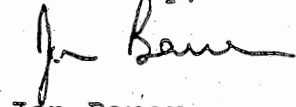
Dear Senator Lesniak:

I would like to thank you and all of the members of Labor, Industry and Professions Committee for listening to the views of the Legal Action Center at the public hearing on drug testing held on April 9, 1987. I hope that my testimony on this issue was helpful.

I am enclosing two statements on drug testing that have been prepared by the Legal Action Center. These explain in detail why we are opposed to any random or routine drug testing in employment and give examples of individuals who have unfairly been denied employment opportunities because of inaccurate drug test results. I would appreciate it if you would make these a part of the record of the hearing, along with the written testimony that I submitted to the Committee on April 9th.

If there is any additional information that I can provide that would be helpful to the Committee, please let me know.

Sincerely,



Jon Bauer
Staff Attorney

Enclosures

cc: Senator Jackman
Senator O'Connor
Senator Cardinale
Senator DiFrancesco
Dale Davis, Committee Aide

LEGAL ACTION CENTER

INACCURATE DRUG TESTING: A FEW EXAMPLES

Recent news reports that drug tests conducted on employees involved in the Amtrak-Conrail accident may have to be thrown out due to improper testing procedures have once again focussed public attention on the inaccuracy inherent in urine testing for drugs. Studies by the General Accounting Office, Centers for Disease Control and College of American Pathologists have documented high error rates by laboratories. These factors demonstrate that urine testing is simply not a sufficiently accurate procedure on which to base a drug abuse-free workplace substance abuse policy.

Indeed, the numerous problems that can lead to "false positives" -- from mislabelling and other breaks in the "chain of custody" to contamination of the sample to failure to use state of the art technology to sloppy laboratory procedures -- have led such reputable organizations as Harvard Medical School and the Journal of the American Medical Association to oppose large-scale random drug testing (see articles attached). Furthermore, the American Medical Association has opposed the use of drug testing as a requirement for certification of airplane pilots, stating among other things that the tests might result in more false positives than true positives.

The Legal Action Center has been receiving a number of calls from people fired from or denied jobs strictly on the basis of a urinalysis test that may well have been inaccurate.

Some examples typical of the experiences we hear about follow

DH, a 25 year old black woman and single mother, was on welfare until she was hired as a corrections officer. A drug test she was ordered to take came up positive for cocaine, in spite of the fact that an independent test DH had done that same day came back negative. DH was terminated without any right of appeal. She is once again unemployed.

DM is a 36 year old white man who was fired from his job as a maintenance man because a urine test came back positive for marijuana. DM also had the foresight to have an independent test done the same day, and that second test came back negative. Despite this conflicting information and a good work history, DM is on unpaid suspension pending arbitration.

MF, a 35 year old black man, had worked for four years as a peace officer when he applied for a job as a court officer. When MF went for his pre-employment physical, he was required to provide a urine sample. A few minutes later, he was told he had to provide a second sample because the first was erroneously labelled as belonging to another applicant with the same last name - a woman. After all this confusion, his test came back positive for marijuana. MF denied using any illegal drugs; this claim was supported by his employment history and his volunteer work with several youth organizations that have strong anti-drug stances. Despite his strong background and recommendations, MF's offer of employment was rescinded.

JD is a Military Policeman in one of the Armed Forces. He and a number of other MP's were required to submit to a random drug test. The day after the test, all of the persons tested were called back to the site of the test and informed that there had been a mistake -- no one had remembered to tell them to write their names on the labels of the jars to avoid mixing up the samples. Instead of the MP's giving another sample, however, they were each handed a sample that they were informed was their own, and told to sign their names. They did; JD's result came back positive for marijuana despite his contention that he does not use any drugs.

LEGAL ACTION CENTER

The Case Against Random Drug Testing

SUMMARY

The national debate about drug abuse in the workplace has focused on one of the most controversial and least effective tools for dealing with the problem -- random drug testing. Random testing means mandatory periodic testing of all members of the workforce. It usually occurs once or twice a year, without regard to job performance, or suspicion of drug use.

Random drug testing does not work. It is not an effective way to identify impaired employees, even in safety-related jobs. That is the consensus of the drug abuse prevention and treatment field, which has the greatest experience in this area and the least enthusiasm for the practice. The reasons why random drug testing is not a useful weapon in the war against drug abuse are many, and are described in the section immediately following this summary.

Not only is random drug testing ineffective, it is often a barrier to the elimination of drug abuse in the workplace. Drug testing may give an employer a false sense of security, and prevent the implementation of the one methodology that we know does effectively reduce drug abuse - comprehensive employee assistance programs designed to educate the workforce about alcohol and drug abuse and

refer those who need it to appropriate treatment. Random drug testing is also very harmful to morale and the relationship between management and labor.

Random drug testing is expensive, ineffective and often even counter-productive. Employee assistance programs are cost-effective, and they work. The only possible conclusion we can draw from these two facts is that employers should establish EAPs, and stay away from random drug testing.

Random drug testing is not an effective way to identify impaired employees.

There are a variety of reasons why random testing does not work. First, urine testing is so expensive that most employers can afford to test all employees at most once or twice a year. Employees often know when the test will occur and most drug abusers can stay clean for the few days it takes to beat the test. Even if a drug abusing employee does not know when the test will be required, he or she might be clean at the time of the test. Either way, the rest of the year employees with drug problems will feel free to use drugs.

Second, urine tests are not reliable because they are often inaccurate. (Indeed, there are recent indications that faulty procedures might render worthless the tests conducted after the highly publicized Amtrak train accident). This means that some drug abusers will escape detection. It also means that employees who are not abusing drugs will be falsely accused and unfairly forced into treatment or disciplined. This latter problem is particularly acute in workplaces where the overwhelming majority of employees do not abuse drugs. In such worksites, the number of false positive drug test results may equal or exceed the number

of true positive results, even with the most widely used tests.¹

Moreover, a single positive drug test result -- even if accurate -- does not provide the information employers and the public need to know to ensure safety in critical industries. Since a urine test cannot determine the amount of drug ingested or the time it was taken, a positive result cannot determine impaired performance. At its annual meeting in December of 1986, the American Medical Association adopted a statement on drug testing that reads in part: "The results do not give any indication of the pattern of drug use..., whether the individual abuses or is dependent on a drug, or whether an individual is impaired physically or mentally by the use of the drug."

An accurate positive result reveals only past drug use that may or may not affect performance. Given the nature of random testing, this means that employees who occasionally use drugs at home may be "caught" while those whose drug use at work endangers safety may escape detection. In other words, the net is both too large and too small. Random urine testing penalizes people whose behavior is not affecting safety while it allows impaired employees to remain on the job posing a threat to their fellow workers and the public. To be truly effective as a deterrent, an

employer would have to test all employees two or three times a week. Indeed, it is worthy of some note that urine testing does not address at all the single most abused drug in our society -- alcohol. And alcohol abuse is by far the more serious problem at the workplace.

Random drug testing is simply not the responsible way to proceed to rid the workplace of drugs. Drug abuse prevention and treatment professionals agree that a single positive drug test result -- even if accurate -- is an insufficient basis on which to conclude that an individual is a drug user or abuser. No competent physician would base his diagnosis of any illness on the results of a single laboratory test. A positive drug test result, like any other medical test, is useful only to confirm a clinical impression that an abuse problem may exist. In other words, a drug test is useful to determine whether an employee who has exhibited declining work performance and increased absenteeism may have a drug abuse problem. While a positive drug test may be a tip off that a condition which is not apparent actually exists, a qualified physician would take action based on that result only if it were consistent with the individual's history and clinical evidence of a drug abuse problem. If a discrepancy exists between the drug

test result and the other evidence, the test result must be questioned.

Yet most employers who randomly test employees who exhibit no signs of abuse ignore this fundamental principle of medicine. Instead, solely on the basis of a single test result, they jump to the conclusion that a drug problem exists even though other evidence points to the contrary conclusion.

On the other hand, there are tests that can detect impaired performance. Coordination tests and other simulated tests can directly determine the ability to perform tasks. The Los Angeles Police Department, for example is currently using a systematic battery of coordination, behavior and vision tests to determine whether persons arrested for impaired driving are under the influence of drugs and, if so, to identify the specific drug the person has used. The National Highway Traffic Safety Administration, after conducting two studies of the LAPD's drug recognition program, concluded that the procedure provides trained officers with the ability to accurately recognize the symptoms of many drugs, and that a blood test confirmed the existence of the particular drug in virtually all cases.² And scientists routinely use simulated driving and flying courses in experi-

ments to study an individual's performance during and after drug ingestion.

Coordination and simulated task tests, which directly measure impairment, can be applied in the workplace. Simulated tests are certainly more useful than drug tests because they detect not only drug-impaired performance, but also impairment that is attributable to problems other than drug abuse. Given that it is possible to test directly for impairment, it is senseless and ineffective to use a procedure that tests for only one condition -- drug abuse -- (that an employer has no evidence exists) and that provides no basis for firm conclusions about impairment.

Random testing is counter-productive in the fight against drug abuse in the workplace.

Random drug testing is not just an ineffective tool for identifying substance abusers in the workplace or creating a safe work environment. It is also counter-productive to the goal of identifying and treating drug abusers.

First it seriously undermines the employer's natural lines of defense -- his supervisors and his own observation of employee performance and attitude. Experts in the field of alcohol and drug abuse prevention and treatment have determined, after years of experience, that the best way to

identify substance abusers in the workplace is to have an informed workforce that knows the signs of an employee who may have a substance abuse problem and is prepared to act on those signals by confronting the individual and referring him or her for assessment by a qualified professional and, if necessary, treatment. Traditionally, supervisors and co-workers have been very reluctant to intervene and refer individuals for treatment even in the face of overwhelming evidence of trouble. Implementation of a drug testing program increases this reluctance because it encourages supervisors and co-workers to pass the buck and rely solely on drug testing to identify abusers.

A random drug testing may also give the employer a false sense of security that lulls him into ignoring the most reliable evidence of substance abuse -- a decline in personal appearance, work performance and attitude.

Finally, drug testing creates a confrontational work environment that discourages troubled employees from seeking treatment voluntarily. Random testing is based in large part on the premise that employees will not voluntarily seek treatment for a substance abuse problem and, therefore, must be caught "red-handed." This premise is dead wrong. Persons who understand the disease of drug abuse know that troubled employees will come forward for treatment if they

are assured that they can obtain treatment in a confidential setting and will not be disciplined or terminated simply because they have an abuse problem. By implementing a drug testing program, however, the employer sends the message that it is only interested in catching abusers, not treating them. In this confrontational environment, the troubled employee will not identify his problem for fear of losing his job or being stigmatized.

There are more effective ways to deal with drug abuse in the workplace.

Just as there is a consensus in the drug abuse prevention and treatment fields that urine testing is ineffective and counter-productive, there is also virtual unanimity that effective techniques do exist for combatting drug abuse in the workplace. Comprehensive education and treatment programs that explain the dangers of substance abuse, train supervisors and peers to refer troubled employees and provide appropriate treatment are clearly what is needed. With such Employee Assistance Programs (EAP), troubled employees are far more likely to come forward willingly for treatment or be referred by supervisors or co-workers. Invasive surveillance procedures are not necessary. EAP's not only have a well-established track record for success in treating employees and enabling them to return to work,

but they also have the benefit of being available every day of the year rather than on a random or sporadic basis.

The experience of EAP's in safety-sensitive industries demonstrates their success in attracting and treating troubled employees. For example, the Association of Flight Attendants (AFA) established an EAP in 1980 that was based on peer referral. The peer model, which relies on co-workers encouraging colleagues who exhibit potential problem behavior to seek help, is particularly appropriate in industries, like the airline industry, in which employees have erratic work schedules and are largely unsupervised. From 1983 to 1985, over half of the AFA's EAP cases were self-referrals and over one-third were peer referrals from flying partners, union representatives and EAP committee members. The remaining cases were supervisor referrals.³

The Air Line Pilots Association (ALPA) also established a peer-model EAP in 1974 to deal primarily with alcohol abusing pilots. One of the primary goals of the program was to change the counterproductive aspect of the Federal Aviation Administration's (FAA) regulations which required FAA declaration of a pilot's alcoholism problem and resulted in the permanent loss of the pilot's license. Such regulation actually inhibited the identification of alcoholic pilots, thereby creating a dangerous health and work situa-

tion. Indeed, prior to 1974, when the program was established, no pilot voluntarily sought or was referred by co-workers for treatment.

The FAA ultimately decided to recognize alcoholism as a treatable disease, to encourage rehabilitation and to restore the licenses of rehabilitated pilots. This regulatory change in conjunction with ALPA's education and intervention program resulted in a successful EAP. In the six year period after ALPA instituted its education and intervention program and the FAA agreed to recognize alcoholism as a treatable disease and to restore the licenses of rehabilitated pilots, over 700 cases were handled, and 85% of those individuals achieved long-term recovery and total abstinence from alcohol.⁴

ALPA's experience demonstrates that persons with substance abuse problems can be identified without random testing if the employer demonstrates a commitment to offering treatment, not taking punitive employment actions. Unfortunately, ALPA's enlightenment in the area of alcoholism has had no effect on the problem of drug abuse among pilots. Because the punitive measures that once existed for alcoholic pilots are still in effect for drug abusing pilots, ALPA's EAP has treated virtually no exclusively drug abuse cases since 1974. ALPA has concluded that "persons using illicit

substances will not dare come forward until and unless there is a constructive rehabilitative program which will deal fairly but effectively with the problem."⁵

The federal government's experience with EAP's also demonstrates that troubled employees will seek treatment if provided with an effective opportunity for rehabilitation. In 1985, 68% of the federal employees who sought counseling for alcohol, drug or emotional problems (37,119 persons) were voluntary or self-referrals, and 32% or 17,587 persons were involuntary or supervisory referrals. Treatment proved extremely successful: 80% of approximately 14,000 employees who were in an alcoholism treatment program in 1985 were restored to their jobs as fully functional workers, and 75% of approximately 2800 employees in drug treatment programs were restored to their jobs.⁶

Similarly, the EAP of one financial institution, the Royal Bank of Canada, has dealt with over 3,000 employees in its four years of nationwide operation and 79% of those persons were self-referrals. The Bank has treated over 700 persons with alcohol or drug problems and has reached such individuals through education and training, not drug testing.⁷

In a recent survey by the American Management Association, corporations across the country identified EAP's as

the most effective tool for dealing with substance abuse problems in the workplace. The AMA concluded on the basis of in-depth interviews that "smart supervisors (people who know how to spot possible impairment and intervene), backed by an aggressive program aimed at stopping abuse and providing rehabilitation, are by far the most important agents in the drive for a drug-free workplace." Incidence-of-referral data from 500 corporations demonstrated that in all corporations, regardless of whether they conducted drug tests, a training and educational initiative resulted in a significant increase in referrals. Among companies that did not test, the referral rate was more than double if an educational initiative was present, and the rehabilitative referral rate tripled in companies engaged in drug testing. This data also demonstrates that a substance abuse education and intervention program, standing alone, is as effective in identifying troubled employees as a drug testing program.⁸

Several studies have also examined the cost effectiveness of treatment. According to twelve separate studies, troubled employees after treatment show a reduction of 26 to 69 percent in total medical care utilization; a reduction of 38 to 47 percent in the number of sick days used; and a reduction of 33 to 48 percent in the sickness and accident benefits used. Many employers estimate that they recover

\$5 for every \$1 invested in their employee assistance program, and the airline industry has estimated that it recovers \$14 for every \$1 invested.⁹ These results demonstrate that EAP's are not only effective in treating both alcohol and drug abuse problems, but are also cost effective.

1. G. Lundberg, Mandatory Unindicated Urine Drug Screening: Still Chemical McCarthyism, 256 JAMA 3003, Dec. 5, 1986.

2. Richard Compton, (National Highway Traffic Safety Administration) Field Evaluation of the Los Angeles Police Department Drug Detection Procedure, February 1986; and George Bigelow (National Highway Traffic Safety Administration) Identifying Types of Drug Intoxication: Laboratory Evaluation of a Subject-Examination Procedure (May 1985).

3. B. Feuer, Innovations in Employee Assistance Programs: A Case Study At the Association of Flight Attendants.

4. ALPA, An Employee Assistance Program for Professional Pilots (An Eight Year Review). March 1982.

5. Airline Pilots Association, Comments on Advanced Notice of Proposed Rulemaking Number 86-20, Control of Drug and Alcohol Use for Personnel Engaged in Commercial and General Aviation Activities (Docket N. 25148), February 24, 1987.

6. Office of Personnel Management, Federal Employee Counseling Program summary of Data for Fiscal Year 1985.

7. Telephone Conversation with Don Baran, Manager of Royal Bank of Canada's Employee Assistance Program.

8. American Management Association, Drug Abuse, the Workplace Issues, 1987.

9. ALMACA, In Focus citing K. Jones and T. Vischi, U.S. Department of Health and Human Services, 1979.

JOINT STATEMENT OF JACK ARSENEAULT, ESQ.
AND JACK M. SABATINO, ESQ.

TO: SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE,
NEW JERSEY STATE LEGISLATURE

FROM: JACK ARSENEAULT, ESQ. AND JACK M. SABATINO, ESQ.

DATE: MARCH 24, 1987

RE: DRUG TESTING LEGISLATION (A-2850; S-2565; S-2826)

We are private attorneys who have represented individuals in a number of major urine testing cases in New Jersey. Specifically, we jointly served as class counsel on behalf of all inmates in the New Jersey state prison system in a 1983 federal class action entitled Denike v. Fauver, Civil No. 83-2737(DRD). The Denike case resulted in a settlement* with the State Department of Corrections that eliminated the prior abusive practice of standardless, random urine testing of inmates. That settlement established strict procedures for (i) administering drug tests, (ii) ensuring proper chain-of-custody of urine samples, (iii) confirming positive test results by reliable means, and (iv) providing due process to inmates before disciplinary sanctions could be imposed.

We also served as co-counsel for 18 plaintiff firefighters in Capua v. City of Plainfield, 643 F. Supp. 1507 (D.N.J. 1986), a recent federal court decision which has become a leading precedent in the field. In Capua, Federal District Court Judge H. Lee

*A copy of the court-approved Stipulation of Settlement in the Denike case is attached for comparative purposes as Exhibit A to this Statement.

Sarokin struck down as unconstitutional surprise urine testing--conducted without any individualized reasonable suspicion or independent evidence--that the firefighters tested had been impaired in the performance of their duties because of drug use.

We submit this statement to the Committee in our capacity as private citizens, having had some first-hand experience with the legal and practical aspects of urinalysis testing as a means to detect a person's ingestion of controlled dangerous substances.

The general message that we wish to convey to the Committee is our strong belief that A-2850 (or any other proposed urine testing legislation) should not be adopted by the Legislature without strict, unqualified language that prohibits urine testing of any employees--public or private--in the absence of individualized reasonable suspicion. In lieu of the definition set forth in §5(a) and §6(a) of A-2850, the legislation should define "individualized reasonable suspicion" as a reasonable belief, based upon objective facts, that a particular employee has been impaired while in the performance of his job functions because of the effects of illegally-ingested controlled dangerous substances.

We strongly oppose A-2850 in the form that it narrowly passed the Assembly for several reasons. We principally object to the broadly-worded statutory exceptions in A-2850 to the general reasonable suspicion standard the statute establishes in §5(b)(2). Those exceptions would permit random testing of private employees for a "compelling interest" (defined in §2(a)) or in a "high-risk occupation" (defined in §2(i)). These proposed exceptions have

the literal capacity to be invoked to authorize testing in most, if not all, private occupations. For example, a building contractor could potentially require every carpenter, mason, architect, electrician, plumber and laborer working for him on a construction site to submit to random urine tests, in the name of a "compelling interest" to protect other employees and/or the public.

Unlike some, we do not believe that the defects of A-2850 can be solved by "tightening up" the exceptions to the reasonable suspicion standard with so-called narrower wording. On the contrary, we believe that any exceptions in the statute to the widely-accepted, court-approved standard of reasonable suspicion would be both unwise and unnecessary. The proposed exceptions are unwise because they would subject innocent persons--without any reasonable basis to believe that they use illegal drugs in the workplace--to an invasion of their privacy, and to hinge their job security upon the results of tests that are not absolutely accurate or reliable as indicia of on-the-job impairment. The exceptions are unnecessary because there exist a vast number of effective conventional means to detect on-the-job impairment resulting from illegal drug use (e.g., observations of supervisors or co-workers, absenteeism and time records, objective measurements of employee output) without resorting to mass surveillance of all workers through carte blanche standardless testing.

We also disagree, on a policy level, with A-2850's distinction between private sector employees (§5) and public sector employees (§6). We recognize that the drafters of the Bill have lim-

ited to private employees its stated exceptions to the general testing standard of reasonable-suspicion in deference to legal cases declaring unconstitutional the urine monitoring of government employees without reasonable suspicion. Those legal cases derive, of course, from the "state action" requirements that trigger the constitutional protections of the Bill of Rights.

However, we respectfully submit that the Legislature should afford equal protection against standardless drug testing to both private and public employees alike. There is no rational reason why a person's ability to protect his privacy and reputation should turn on whether he gets his paycheck from the Government or from a business. The intrusion on each is the same. Taxi drivers employed by private cab companies should be afforded by this State no less protection from indiscriminately-imposed drug testing than bus drivers who work for public transit companies.

Indeed, the irony of the present state of the law in New Jersey is that inmates in our state penal institutions currently have more legal rights to be free from random, standardless drug testing than do law-abiding citizens in the private workplace. The standards adopted for inmates in the Denike case illustrate this incongruity, for they prohibit mass testing of inmates without reasonable suspicion except after unsupervised furloughs, as part of an officer's written order to test a functional unit, or as a disciplinary sanction for past drug or alcohol-related infractions.

*See Exhibit A at pp.3-4, ¶5.

We urge the Legislature to redress this social imbalance: private workers should not have less rights than incarcerated criminals to protect their privacy and reputations!

In addition to advocating an across-the-board standard of individualized reasonable suspicion without qualification, we also urge the Legislature to amend A-2850 to include the following:

- ° affirmative safeguards and procedures to require the proper chain-of-custody of urine samples prior to the release of the test results;
- ° affirmative safeguards and procedures to ensure proper calibration and operation of laboratory equipment used in testing samples;
- ° affirmative safeguards and procedures to ensure proper training, supervision and quality control of laboratory technicians conducting the tests;
- ° prohibitions on employers taking adverse actions against employees who have tested positive due to a demonstrable likelihood of innocuous "passive ingestion" of controlled dangerous substances (e.g., undercover narcotics officers who inhale marijuana smoke while in the presence of criminal suspects they are investigating);
- ° prohibitions on adverse actions against employees who have tested positive at minimal levels non-indicative of actual on-the-job impairment.

We offer these constructive suggestions because we sincerely believe that a legislative remedy can and should be fashioned to permit drug testing of certain employees--while at the same time scrupulously protecting the personal and constitutional rights of the vast majority of New Jersey private citizens who do not perform

their jobs while under the influence of controlled dangerous substances. We welcome the opportunity to provide the Committee or any other members of the Legislature with whatever assistance that we can provide to aid in accomplishing that goal.



TEAMSTERS LOCAL 877

Exxon Oil Workers

Affiliated with

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

411A North Wood Ave.
Linden, N.J. 07036

Stanley Nowicki
President

925-6707

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August Z
Secretary Treas

April 9, 1987

Text of testimony of Walter J. Blusewicz, Recording Secretary and Membership Committee Chairman of International Brotherhood of Teamsters Local 877, Exxon Oil Workers, Bayway Refinery.

As given before the Senate Labor, Industry and Professional Committees public hearing on April 9, 1987 at Union County Administration Building, Elizabeth New Jersey.

IT'S A PLEASURE TO BE HERE THIS AFTERNOON. I'M ESPECIALLY PLEASED TO SPEAK ON SUCH AN IMPORTANT TOPIC.

THE SUBJECT OF DRUG ABUSE IN GENERAL AND DRUG TESTING IN PARTICULAR, IS MUCH ON THE MINDS OF THE AMERICAN PUBLIC. AS INDICATED BY THE OCTOBER 1986 EAGLETON POLL THAT "A CLEAR MAJORITY OF NEW JERSEYANS SUPPORT THE IDEA OF MANDATORY DRUG TESTING IN THE WORKPLACE."

THE DILEMMA FOR ANY PUBLIC FIGURE SERVING AT THE WHIM OF THE VOTER IS THORNY, TO FOLLOW THE TENOR OF THE TIME, OR TO PROVIDE DIRECTION, PERHAPS AGAINST THE FLOW OF PUBLIC OPINION.

NOT THAT WE IN LABOR HAVE BEEN UNTOUCHED BY THIS PROBLEM. WE'RE NO DIFFERENT FROM THE REST OF SOCIETY IN THAT REGARD.

BUT WHERE WE PART COMPANY WITH THE ADMINISTRATION IN WASHINGTON AND SOME OF THOSE IN THIS STATE'S LEGISLATURE IS OVER THE QUESTION OF MANDATORY DRUG TESTING AS A SOLUTION TO THE PROBLEM.

WE BELIEVE THAT SUCH DRUG TESTING IS A KNEE-JERK, SIMPLISTIC RESPONSE TO A COMPLEX PROBLEM. IT COMES FROM PEOPLE WHO WANT TO DO SOMETHING RATHER THAN NOTHING, BUT ARE UNWILLING OR UNABLE TO COME UP WITH CREATIVE, REALISTIC SOLUTIONS.

AT EXXON'S BAYWAY REFINERY AND CHEM PLANT, WE OF TEAMSTERS LOCAL 877 STARTED OVER TEN YEARS AGO TO INSTITUTE A PROGRAM THAT STRESSED REHABILITATION, NOT PUNISHMENT, FOR ANYONE FOUND TO BE AN ALCOHOL OR DRUG ABUSER. APPROXIMATELY A YEAR AND A HALF AGO WE WERE SUCCESSFUL, JOINTLY WITH THE COMPANY, IN STARTING AN EMPLOYEE ASSISTANCE PROGRAM THAT OFFERED NOT ONLY ALCOHOL AND DRUG COUNSELING, BUT ALSO MARRIAGE, FINANCIAL, STRESS CONTROL AND MANY OTHER TYPES OF ASSISTANCE. THE SMALL AMOUNT OF PEOPLE WITH SUBSTANCE ABUSE PROBLEMS LESS THAN 1%, WHO ENTERED THIS PROGRAM, DID SO WITH THE FULL KNOWLEDGE THAT ALL INFORMATION WOULD BE HELD IN THE STRICTEST MEDICAL CONFIDENTIALITY, RECEIVE PROTECTION UNDER THE FEDERAL REHABILITATION ACT OF 1974 AND NEW JERSEY STATE HANDICAP LAWS.

STARTING IN LATE SPRING OF LAST YEAR, WITH RONALD REAGAN AND HIS FIRST LADY WISHING THEM GODSPEED, STATE, COUNTY AND CITY OFFICIALS, ALONG WITH PRIVATE BUSINESSES ACROSS THE STATE SEIZED UPON DRUG TESTING OF WORKERS IN THE MUCH VAUNTED "WAR ON DRUGS."

EXXON CORPORATION, BEING THE BUSINESS AND INDUSTRY LEADER THAT THEY ARE, COULD NOT ALLOW THEMSELVES TO BE LEFT AT THE STARTING GATE. THEY INFORMED US IN DECEMBER OF LAST YEAR OF A PROPOSED DRUG TESTING PROGRAM. THE MAIN THRUST OF THEIR PROGRAM WAS TO IMPROVE SAFETY AND PRODUCTIVITY. AS PART OF THE POLICY ANY PERSON REFUSING TO TAKE A DRUG TEST, OR HAVING A POSITIVE TEST RESULTS, WOULD BE SUBJECT TO TERMINATION.

THE GROUND RULES REQUIRING A DRUG TEST IS "REASONABLE SUSPICION," THE DEFINITION OF THIS IS GIVEN AS BEING OBSERVED IN AN UNFIT CONDITION, BEING INVOLVED IN AN INCIDENT AFFECTING PERSON OR PROPERTY, EXCESSIVE ABSENTEEISM, LATENESS, MOOD SWINGS, THE LIST GOES ON AND ON. NOT SURPRISINGLY THIS IS THE SAME LANGUAGE USED IN A-2850, THE POTENTIAL OF ABUSE OF SUCH A LOOSE STANDARD IS OBVIOUSLY OVERWHELMING. AN INVESTIGATION BY LOCAL 877, OF OUR OWN AND COMPANY RECORDS, HAVE NOT REVEALED A SINGLE INCIDENT CAUSED AS A DIRECT RESULTS OF SUBSTANCE ABUSE.

ALSO THE CONSENT FORM THE COMPANY REQUIRES THE EMPLOYEE TO SIGN WITH THE DRUG TEST, ALLOWS TEST RESULTS TO BE DISCUSSED WITH ANYONE IN MANAGEMENT, IN EFFECT NEGATING ANY PROTECTION THE EMPLOYEE HAS AND ULTIMATELY RELEASES THE COMPANY FROM ANY LIABILITY IF THIS INFORMATION IS RELEASED TO OUTSIDE SOURCES.

WE, OF LOCAL 877, ARE OPPOSED TO MANDATORY DRUG TESTING. THE STRONGEST ARGUMENT THAT EMPLOYERS HAVE IS SAFETY FOLLOWED BY PRODUCTIVITY. MANAGEMENT HAS ALWAYS HAD THE ABILITY TO JUDGE A PERSONS JOB PERFORMANCE, AND HAVE REMOVED PEOPLE FROM THEIR WORKPLACE THOSE WHO PERFORMED POORLY OR UNSAFELY. AND THESE ACTIONS HAVE BEEN UPHELD NUMEROUS TIMES IN THE GRIEVANCE AND ARBITRATION PROCEDURE. WHY NOW DO THEY NEED A DRUG TEST TO MAKE THIS DETERMINATION? HAS THE LEVEL OF SUPERVISION SO DETERIORATED IN THIS COUNTRY, THAT WE MUST NOW HAVE "BETTER DISCIPLINE THROUGH CHEMISTRY?"

EVEN DURING PROHIBITION, FEDERAL AND STATE AUTHORITIES DID NOT GO AFTER THE DRINKER, BUT INSTEAD ALLOCATED MONIES TO FIGHT THE SMUGGLER AND BOOTLEGGER.

WHAT HAS WASHINGTON DONE? CUT FUNDING BY 506.7 MILLION DOLLARS, TO IMPORTANT SOCIAL PROGRAMS, PROGRAMS THAT DEAL DIRECTLY WITH SUBSTANCE ABUSE EDUCATION AND REHABILITATION. AS A MATTE

OF FACT, IN THE NEWS JUST THE OTHER DAY, WAS A REPORT THAT THE CIA, IN RETURN FOR ASSISTANCE TO THE CONTRAS, ALLOWED A PLANE LOADED WITH COCAINE AND MARIJUANA, UNRESTRICTED CLEARANCE INTO THE CONTINENTAL UNITED STATES.

WHAT HAS THE STATE OF NEW JERSEY DONE? MARLBORO AND RUNNELLS HOSPITALS ARE POSSIBLY THE ONLY REMAINING SUBSTANCE ABUSE TREATMENT CENTERS IN THIS STATE, THAT ACCEPTED THE UNEMPLOYED, THE POOR, THOSE WHO CHANCES OF PAYMENT ARE VERY SLIM, OR ACCEPTS PEOPLE ON A SLIDING PAYMENT SCALE. THIS STATE AND COUNTY HAS CUT FUNIS TO THESE TREATMENT CENTERS TO SUCH AN EXTENT, THAT THEY MIGHT NOW HAVE TO CLOSE. THIS SHAME IS EVEN HARDER TO SWALLOW, WHEN ONE REALIZES THAT RUNNELL'S HOSPITAL, ALCOHOLIC RECOVERY UNIT, DURING THE MID 1970'S IMPROVISED TREATMENTS AND SET STANDARDS FOR SUBSTANCE ABUSE CENTERS ACROSS THE COUNTRY, IDEAS THAT HAVE ONLY BEEN SLIGHTLY IMPROVED UPON IN TODAY'S TREATMENT CENTERS. WHERE WILL THOSE TERMINATED FROM GAINFUL EMPLOYMENT GO FOR TREATMENT? WHAT WILL THE FAMILIES OF THOSE TERMINATED DO? NOT TO MENTION THE CUTS IN LOW-COST HOUSING, EDUCATION AND JOB TRAINING. SURELY THERE IS SOME RELATIONSHIP BETWEEN DRUG ABUSE AND THE RISING POVERTY LEVEL IN OUR NATION. THE CUTS IN THE BUDGETS OF FEDERAL, STATE AND LOCAL GOVERNMENTS WERE MADE TO REDUCE TAXES. WHERE IS THE MONEY COMING FROM TO FEED, PROVIDE MEDICAL CARE, AND CLOTHE THE FAMILIES OF THOSE TERMINATED? WHERE IS THE MONEY COMING FROM TO EVEN PAY FOR THE TESTING OF PUBLIC EMPLOYEES.

TAX MONEY, THAT IS THE ONLY WAY THESE, PROGRAMS CAN BE FUNDED.

WHY HAVE SO MANY EMPLOYERS INVOLVED THEMSELVES WITH THE "WAR ON DRUGS?" HAVE THEY SUDDENLY BECOME SO PATRIOTIC THAT THEY MUST TAKE SOME OF THEIR PROFITS AND DIVERT THEM TO SO JUST A CAUSE? I SERIOUSLY DOUBT THEIR PUBLIC STATEMENTS. IN ALL MY EXPERIENCES IN LABOR, WE HAVE HAD TO FIGHT TOOTH AND NAIL FOR ANY BENEFIT TO OUR MEMBERS. I FEEL THEIR MOTIVE GOES MUCH DEEPER THAN THAT. THERE MUST BE SOME TYPE OF MONETARY GAIN FOR THESE COMPANIES, PERHAPS IN LOWER INSURANCE COST, SUCH AS IS GIVEN TO THOSE WHO PROVIDE DEFENSIVE DRIVING COURSES, OR INSTALL SPRINKLER SYSTEMS. I ALSO THINK THEIR APPROACH TO THIS COMPLEX PROBLEM IS JUST TO

TERMINATE THE EMPLOYEE AND LET SOMEONE ELSE WORRY ABOUT IT, AFTER ALL THEY ALSO HAVE PRE-EMPLOYMENT SCREENING.

AND WITH TREATMENT CENTERS SO UNDER FUNDED AND OVER CROWDED, THESE PEOPLE AND THEIR FAMILIES WILL END UP ON THE WELFARE ROLES, MORE TAX MONEY BEING SPENT.

PRIVATE EMPLOYERS NEED ONLY INCLUDE THE COSTS IN THEIR PRODUCTS, PLUS AS AN ADDED BENEFIT THEY'LL RECEIVE A TAX BREAK CLAIMING THEM AS OPERATING EXPENSES.

NO MATTER HOW YOU LOOK AT IT, WE'LL ALL PAY IN THE END, EITHER IN HIGHER TAXES, OR FOR THE GOODS AND SERVICES WE RECEIVE FROM THE PRIVATE SECTOR.

I WILL NOT GO INTO THE UNRELIABILITY OF THE URINE TEST, NOR ITS INABILITY TO PROVE IMPAIRMENT, I FEEL THAT SHOULD BE LEFT TO THE UNBIASED SCIENTIFIC FIELD, NOT THE DRUG TESTING COMPANIES OR THOSE WHO STAND TO GAIN BY PROVIDING THAT TYPE SERVICE.

I'M SURE SOME OF YOU ARE THINKING, ALL RIGHT, THAT'S ALL WELL AND GOOD, BUT WHAT ARE WE SUPPOSED TO DO ABOUT THE DRUG PROBLEMS? IGNORE IT AND HOPE IT WILL GO AWAY?

OBVIOUSLY NOT. MANY SOUND PROPOSALS HAVE BEEN INTRODUCED BY THE LABOR MOVEMENT WHICH ARE AIMED AT CURBING PEOPLE'S RIGHTS.

LABOR HAS LONG PROMOTED DRUG PREVENTION, REHABILITATION AND PROGRAMS IN WHICH UNION VOLUNTEERS LEARN HOW TO CONDUCT COUNSELING AND REFERRALS FOR THOSE WITH DRUG PROBLEMS. ALL THIS IS DONE WITHOUT USING TAX DOLLARS, BUT UNFORTUNATELY HAS NOT RECEIVED THE SAME MEDIA COVERAGE AS DRUG TESTING.

WE WANT TO PROTECT INNOCENT PEOPLE. BUT AT THE SAME TIME, WE DO NOT WANT TO IGNORE THOSE WHO HAVE A REAL PROBLEM.

IN CONCLUSION, I WANT TO EMPHASIZE THAT WE IN THE LABOR MOVEMENT SUPPORT PREVENTION, EDUCATION AND TREATMENT FOR THOSE PEOPLE WHO HAVE DRUG AND ALCOHOL PROBLEMS, NOT PUNISHMENT AND HUMILIATION FOR ALL.

ENC.

EXXON'S TESTING GUIDELINES

EXXON'S INFORMED CONSENT FORM

WORKPLACE DRUG TESTING AND THE FEDERAL BUDGET FY 1988

Dac

BAYWAY REFINERY AND CHEMICAL PLANT

ALCOHOL & CONTROLLED SUBSTANCE ABUSE PREVENTION GUIDELINES

BACKGROUND

Due to the growing concern regarding alcohol and controlled substance abuse and its potentially negative impact on our ability to provide a safe and efficient work environment, the following information is provided in order to communicate to all employees the Companies' position with regard to substance abuse.

Employees who suspect they may have a dependency problem are encouraged to seek diagnosis and to follow through with prescribed treatment. The Employee Health Advisory Program and the Medical Department are available to advise and assist employees in securing medical treatment.

SITE POLICY

The unauthorized use, possession, sale or distribution of alcohol, controlled substances, or controlled substances' paraphernalia on Company premises including parking areas, or outside Company premises on Company business is prohibited. Reporting for work under the influence of alcohol or controlled substances is also prohibited.

EMPLOYMENT

Pre-employment physical assessments will include a drug test. Positive results on the test will cause an applicant to be rejected from further employment consideration.

SEARCHES

Entry onto Company property constitutes consent to and recognition of the right of the Company and its authorized agents to search persons, automobiles, and other property while entering, leaving, or on Company property. Personal inspections will include asking the employee to empty his/her pockets, purse, bag, lunchbox, etc. No physical contact with the employee will be made.

To ensure compliance with this policy, management may, at its discretion, conduct unannounced alcohol and drug searches. These searches will include, but are not limited to: buildings, Company and private vehicles, field areas, parking lots, equipment, lockers, toolboxes, and desks.

ALCOHOL AND DRUG TESTING

Testing of employees for alcohol and controlled substances will be used where there is reasonable suspicion of a violation of this policy. For example, an employee on Company business or Company property may be asked to submit to alcohol or drug testing if he/she is observed to be in an unfit condition, or if he/she is involved in an incident affecting person or property.

Positive test results may be used by the Company in support of its assessment that an employee was unable to perform his/her assigned duties in a safe and efficient manner.

REFUSAL TO COOPERATE

Employees who refuse to cooperate with search/testing procedures will not be forced to comply. However, failure to cooperate with search requests or refusal to submit to required medical evaluations which may include tests will result in a presumption of a violation of this policy.

MEDICATION (PRESCRIPTION AND NON-PRESCRIPTION)

It is an employee's responsibility to inform the Medical Department of any medication (over the counter or prescribed) which he/she is taking which may require the identification of work restrictions. If an employee does not comply with this requirement, a physician's prescription will not be an acceptable excuse for the use or possession of a controlled substance.

PERFORMANCE

When an employee's unsatisfactory performance is believed to be the result of an alcohol or drug dependency, Medical Department advice should be sought and every effort should be made to encourage the employee to seek help through EAP or Medical. Any employee who follows prescribed medical treatment will receive disability benefits in accordance with the provisions of the existing benefit plans. This will not, however, result in any special regulations, privileges, or exemptions from normal job performance requirements. If an employee refuses rehabilitation or fails to respond to treatment or is unable to consistently meet standards of effective work performance, the Company will take appropriate action which may include termination.

No employee will be disciplined solely as the result of a request for help in overcoming an alcohol or drug dependency, or due to their involvement in a rehabilitation effort. Management reserves the right, however, to request an employee to cooperate with the Medical Department for the purpose of evaluating and monitoring his or her rehabilitation. This may include requiring the employee to provide the Medical Department with acceptable and verifiable proof that he/she is following through with prescribed treatment, and submission to periodic medical evaluations which may include an alcohol and drug test. Failure to cooperate with the Medical Department's request for information, refusal to submit to required tests, or subsequent positive results from a drug and alcohol test, may result in the employee's immediate termination.

DISCIPLINE

Violations of this policy will result in disciplinary action, up to and including discharge. If any employee violates this policy, disciplinary action will be taken and such action cannot be avoided by a request for treatment or rehabilitation at that time.

VEHICLE USE

At no time will an employee observed to be in an unfit condition be allowed to operate a Company vehicle, and every effort should be made to discourage the employee from driving a personal vehicle. Transportation, at Company expense, should be provided to employees who are sent home. If the employee refuses assistance and insists upon driving, area police will be notified of the Company's assessment that he/she is unfit. Employees who accept transportation home will be transported back to the plant, at Company expense, to obtain his or her vehicle.

CONTRACTORS' EMPLOYEES/VISITORS

Contract personnel, vendors, or other visitors found to be in violation of this policy, will be expelled from Company premises and will be denied future entry.

The establishment of these Alcohol & Controlled Substance Abuse Prevention Guidelines is not considered to modify existing Company policies/procedures or the rights and obligations as set forth in any existing collective bargaining agreements between the Companies and the Unions representing employees at the Bayway site.

ALCOHOL AND CONTROLLED SUBSTANCE TESTING

INFORMED CONSENT FORM

I agree to cooperate with the Company's request to provide a urine/blood specimen. I understand that the chemical analysis will be conducted by a laboratory selected by the Company.

The purpose of these tests is to determine or rule out the presence of controlled substances and/or alcohol in my body system. I understand that these test results will not be considered confidential medical information by the Medical Department and may be discussed with and/or made available to Company management.

I have taken the following medications, drugs, or vitamins in the last two weeks:

Employee Signature

Supervisor Signature

Date

Date

NOTE: If employee refuses to sign this Informed Consent Form or to submit to the required tests, a brief description of that refusal and the reason(s) why (if known) should be recorded below, and signed by the supervisor and a witness to the employee's refusal.

Witness Signature (if needed)

Date

266X

Center For Fair Employment
1425 Walnut Street
Philadelphia, PA 19102
(215) 563-1388

WORKPLACE DRUG TESTING and the FEDERAL BUDGET FY 88¹

Following are several example of cuts sought in the FY 88 budget that have an impact on workplace drug testing:

<u>PROGRAM</u>	<u>STATUS OF PROGRAM²</u>
Alcohol, Drug Abuse & Mental Health ³	(-13%)
Family Social Services	(-19%)
Guaranteed Student Loans	(-23%)
Health Education & Training ⁴	(-87%)
Higher Education Programs	(-40%)
Legal Services ⁵	(-88%)
Student Financial Aid	(-29%)

¹Figures were derived from a review of the FY 88 Budget prepared by the OMB Watch on January 5, 1987. See OMB Watch's memo titled FY 88 BUDGET IRRESPONSIBLE AND UNIMAGINATIVE. The address of OMB WATCH is 2001 O Street NW Washington DC 20036.

²The figures used represent cuts in funding over the prior year when adjusted for inflation.

³The President's proposal would reduce direct services to individuals with drug, alcohol or mental health problems by 98.3 Million dollars. (FY 1987 allocates 639.3 Million. FY allocates 541.3 Million.)

⁴The Presidents Budget calls for a 142.5 Million Dollar reduction in this category.

⁵The President's budget calls for a cut of 265.9 Million with termination of all funding by FY 1992.

Nancy Miller

I have been employed as an Employee Assistance Professional in New Jersey for the past 6 years, having worked in the field of alcoholism for the previous 8 years. It is this perspective, being in the trenches with alcoholics, drug abusers, their families, their employers, their unions and their treatment programs that I wish to offer to this body today.

Regarding 2850, I must take issue with the following provisions:

1. Public safety and security cannot be used as a reason for this bill because of the omission of alcohol from the "drug test" - an employee under the influence of alcohol can be as great if not a greater risk to safety as employees using other mood-altering substances. The legal or illegal status of a drug has nothing to do with its potential danger to the workplace if impairment is the issue. Further, alcohol is the gateway drug and almost 100 percent of people who use illegal substances began their use with legal beverage alcohol. If you want illegal drugs out of the workplace, you must also deal with legal drugs in a consistent manner. The current double standard about alcohol use is directly responsible for the current proliferation of illegal substances in the society, which has now naturally permeated the workplace.

2. "High risk" occupation as defined in the bill scapegoats transportation workers, while ignoring physicians, lawyers, airplane designers, and the multitude of other critical occupations that are not under scrutiny. A sober bus driver driving a poorly designed bus does not make me feel more secure, especially if after the accident my physician may make an error in my treatment due to a hangover or demerol fix.

3. The repeated reference to a leave of absence for employees needing rehabilitation implies loss of medical disability status which employees are entitled to when receiving treatment for an illness. Like it or not, drug addiction as alcoholism is an illness and normal medical practice in the workplace should be used as the standard for for treating afflicted employees.

5. Ethical EAP's with Labor-Management Committees encourage self-referrals for drug and alcohol problems, reducing job problems and eliminating complex administrative and legal issues. They have a proven track record of success and violate no laws, civil rights or basic philosophies operating in the workplace, private or public, high-risk, etc. Why not make Employee Assistance Programs mandatory for any company or organization who feels a "compelling interest to drug test" ?

6. Initial research indicates that the presence of random drug testing in a workplace can do serious damage to morale, increases stress for management as well as labor, often discourages proper documentation of impaired workers because of the fear of the fallout from the humiliating testing procedure and even discourages self-referrals in EAPs because the overall trust in the company is affected. If EAP's can surface impaired workers, why institute procedures to drive them further underground, which seems to be the problem this bill intended to address in the first place?

Harold Gibson
City of Portland
THE PROBLEM

270X, DETENTION
AND SAFETY

To test or not to test -- Is that the question? As one who has been a public servant for more than 30 years, my qualified response to such an inquiry is very firm. Those who choose, by conscious decision, to embark on public service as a career, place themselves in a gold fish bowl for all the public to view. In so doing, much of what would normally be private, privileged information, becomes of necessity public knowledge. It is, therefore, my opinion that testing of public safety personnel for the presence of controlled dangerous substances (illegal drugs), should be placed in a special category of state action.

The aforementioned viewpoint immediately can be challenged based on the interpretation of the guarantees established in the Constitution. It should be note, however, that the interpretations vary from court to court and jurisdiction to jurisdiction, but more on the court decisions later.

There has been, in the past two years, a great out-pouring of information pro and con on the issue of drug testing. Most of those who oppose testing in any form and under any conditions argue that the tests violate the individual's rights as guaranteed under the Fourth and Fifth Amendments to the United States Constitution. Others argue that even if testing is to be permitted, no person should be penalized for the use of drugs during their leisure time while not performing any service to the

public. In other words, it should be an acceptable practice for public servants, and indeed anyone else, to smoke marijuana, snort cocaine, or smoke "crack", on their own time. I submit that to take that view is to ignore the far reaching implications of such a policy. What acceptance of such a policy leads to is exacerbation of the problem. Whenever we, as adults, take to accepting a practice which is detrimental to our existence, our young people soon follow suit. According to Senator Bill Bradley (D-NJ), in information provided to New Jersey's urban mayors, "New Jersey youth are no exception (to survey results of high schools throughout the country): 61% reported using marijuana at some time -- 53% in the last year, 35% in the last month. At the same time, the October 1986 NJCM Newsletter published by the New Jersey Conference of Mayors stated "State officials estimate that upwards of 3500 state employees now have drug habits, with the estimate dubbed conservative". We continue to argue the question of whether to test or not to test, the problem continues to grow as a malignant piece of shit.

TEST'S RELIABILITY --

Major argument in addition to the legal issues raised is the reliability of the test(s). I would be the first to make the premise that no one should be accused of drug use on faulty inconclusive information. Having been on the other end of a negative court opinion after performing

unannounced drug tests on the sworn personnel of both the police and fire divisions of the City of Plainfield, N.J., I can say without reservation, the tests used were conclusive. At this point, it is important to note that the reliability of the tests never became an issue because the decision was predicated on constitutional issues.

The real culprit in determining test results is the process employed in confirming positive findings on a given urine sample. The City of Plainfield employed a firm whose test results were obtained by Roche Bio-chemical Laboratories in Raritan, N.J. According to a statement issued by Mark L. Powell, director of Pharmaceutical and toxicological testing at Roche, "We can't afford to take chances because people's careers are at stake." The confirmatory test employed by Roche, and used in the Plainfield testing, is a process known as gas chromatography coupled with mass spectrometry (GC-MS). In his statement, Powell went on to say, "The GC-MS) test is, no doubt, the most widely accepted in both the legal and scientific fields. It's the only one I'd bring into court. I know of no scientifically documented case of a positive GC-MS test that has been proven to be incorrect

While there are numerous other factors bearing on the accuracy of final test results such as procedural issues including chain of custody arguments, the primary question to be answered is whether or not there is a drug content in the sample and what that substance is.

LEGALITY OF TESTING --

The legal issues raised by the conduct of drug testing have not been settled to date. The opinions vary depending upon which decision one wishes to support. In ruling against the City of Plainfield's test results, U. S. District Judge H. Lee Sarokin of Newark wrote "If we choose to violate the rights of the innocent in order to discover the guilty, then we will have transformed our country into a police state... In order to win the war against drugs, we must not sacrifice the life of the Constitution in the battle." There were many persons who called me in response to this decision asking my feelings about losing this court battle. My response was, and still is, I was not the loser, the people of my city were the losers. Public safety personnel in particular must recognize that they, by a conscious decision to become police officers or firefighters, accept the responsibility of making the environment safer for the local citizen. It is significant that in the case of *Shoemaker v. Handel*, 795 F.2d 1136, the 3d U. S. Circuit of Appeals -- in whose jurisdiction Judge Sarokin sits -- permitted drug and breathalyzer testing of professional jockeys, racing officials, grooms and horse trainers in order to maintain the integrity of state-regulated horse racing.

U. S. District Judge Pierre N. Leval of New York cited the *Shoemaker* case in dismissing a suit brought by an FBI agent who had been tested for drugs. Judge Leval ruled that the agent "had a diminished expectation of privacy in light of his position

as an agent." It is my view that this argument applies to public safety personnel at all levels of government.

In those cases where drug testing has been upheld, one significant requirement needed to be satisfied. That is, the enactment and prior notice of a written policy explaining how and under what circumstances drug testing would be conducted. A review of several written policies on the subject from throughout the country disclosed that most have a pre-condition to testing which holds that there must be "reasonable suspicion" established that the subject is likely using a controlled dangerous substance. This prerequisite basically precludes so-called "random" drug testing. We must be careful to distinguish "reasonable suspicion" from the requirements of a search warrant in a criminal proceeding which is "probable cause". Drug testing in the workplace is not and should not be the basis for filing criminal action against any employee.

The legal questions raised by the many cases presently in litigation have not reached any final answers. The U. S. Justice Department is currently in the process of seeking some definite rulings from the United States Supreme Court through the filing of an amicus brief supporting a Boston Police Department plan to test its employees. The Department of Justice has additionally considered filing an amicus brief in a Long Island school district case. The final answer has not been determined to date.

My argument in favor of the testing of public safety personnel is rooted in the legal framework of the public's right to know as balanced against the individual's right to privacy. Historically, the courts have held that where there is a compelling state interest in the outcome, the individual's rights can be subverted in obtaining a result. I submit that the public should not have to wait until a police officer displays unusual conduct or a firefighter operating a \$300,000 fire apparatus has an accident en route to a fire scene before a drug test is administered. The cases on record involving questions of constitutionality have been decided on a basis of reasonableness. I do not find that there is any substantial intrusion upon individual rights in a drug testing scenario. Contrary to Judge Sarokin's opinion, the giving of a urine sample does not equate to a strip search. For those who argue that giving a urine sample under the observation of a second party amounts to an invasion of privacy, I wonder if they have ever used a public restroom while travelling any of the nation's highways. Under the conditions existing in such locations, we are observed not by one other party, but by several others of the same sex.

CONCLUSION --

The question should not be to test or not to test. The results of failure to test are surfacing on a daily basis. The facts speak for themselves on the need for drug testing. One needs only to listen to the tales of woe being told throughout

the country of people from all walks of life. Hardly a week goes by without another executive, manager, police officer, sports figure, housewife, or just plain working stiff, telling of the collapse of their lives and those around them as a result of drug dependency.

In the public sector, more so than in private industry, we, as administrators, make decisions on a daily basis affecting the lives of millions of people. We owe a duty to those we serve to keep our decisions free from the contaminating influence of drugs. Those who steadfastly raise the spectre of fear of creating a so-called "Big Brother" society because of a minimal intrusion on their rights are chasing the hole while the doughnut gets away.

The Constitution is not a perfect document. It never was and probably never will be. If it were, there would have been no need to amend it twenty-two times. For those who feel drug testing should only be conducted on persons displaying unusual conduct or weakness in job performance, I say they fail to recognize a critical factor. That factor is some drug abusers rely on narcotics to make them appear normal and be able to get through the day.

A critical element in any drug testing proposal is to build into it a procedure allowing for rehabilitation. Generally, this process should be available to public employees as well as those

from the private sector. One area where I feel a line of demarcation must be drawn is in public safety services. Here the liability factors far outweigh the personal preference I hold for rehabilitation. I do not mean a police officer, firefighter, administrator, or management level employee in those services should be denied a rehabilitation effort. The problem lies in how to continue employment in those services after a purportedly successful rehabilitation process. Public safety personnel who are found to be drug abusers unfortunately must be separated from those services. One can hardly expect a court to accept the testimony of a police officer with a history of drug abuse.

There will be some who will argue that the potential for job loss is the major factor in opposing drug testing. After all they say, the use of a "recreational drug" on my day off or while on vacation a month ago, should not be grounds for any disciplinary action. There is no such thing as a "recreational drug". Recreation is defined as a diversion from work. If we accept such romantic definitions of drug abuse, we are setting up a foundation fraught with weakness.

Drug testing, performed by a reliable entity, using proven methods, can and should be a viable tool in management's repair kit. It can and should be done without discriminatory tactics. Although in my many debates on this subject, many have opposed the practice, no one has provided a viable alternative. The war on drugs must be conducted on three fronts. We must attack

it from the demand side through educational programs, and we must attack it through testing and rehabilitative efforts in the workplace. Absent this three-pronged attack, drugs will become a bigger threat to the welfare of this country than communism.

The following quote from one of the framers of the Constitution is most appropriate in relation to the issue of constitutional prohibitions.

"I am not an advocate for frequent changes in laws and constitutions, but laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors."

These words of Thomas Jefferson are inscribed on the wall of the Jefferson Memorial in Washington, D.C.



DEPARTMENT OF POLICE

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JOHN A. TRUHE
CHIEF OF POLICE

THE TOWNSHIP OF UNION

IN THE COUNTY OF UNION

REMARKS BEFORE SENATE COMMITTEE INVESTIGATING THE SUBJECT OF DRUG TESTING IN THE WORKPLACE

I would like to appraise the committee of a special set of circumstances which surround the question of drug testing of candidates for employment and current employees of the criminal justice system.

There is, perhaps, widespread agreement that drug abusers, generally, are victims and the greater goals of our society dictate that the emphasis of any legislation be rehabilitation. Nevertheless, in the case of current sworn law-enforcement employees, the situation is somewhat different.

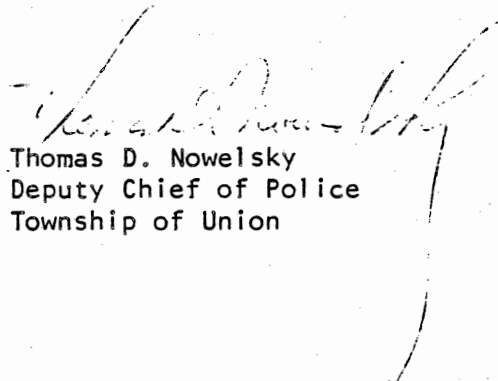
All abusers of illegal drugs share several attributes: In the first place, they may have reduced productivity and usefulness to their employers. In the case of an accountant, this may result in improperly prepared financial documents. In the case of a Police Officer, this may result in serious injury or death. In other words the ramifications of the use of drugs are far different. Secondly, all are guilty of violating the laws pertaining to possession and use of the illegal substance. In the case of a salesman, that violation is probably a disorderly persons offense or, perhaps even a lesser offense. In the case of a Police Officer, that offense represents gross misfeasance in office, because he has failed to uphold the laws according to his oath of office.

This violation is an indictable offense. Current court rulings have held that conviction of even a disorderly persons offense involving moral turpitude is a requirement for loss of employment.

Police professionals are universally opposed to permitting a recovering drug addict to perform the sensitive duties of Police Officer. They are very concerned that the civil liability, the vicarious liability, of doing so would be unacceptable in light of recent trends in civil litigation against political sub-divisions as well as federal suits under Section 1983 of Chapter 42 of the U.S.Code.

In conclusion, while we applaud the intent of this committee to curb excesses by employers in their employee relations, we respectfully request that any legislation include various options for our profession, and, perhaps others with similar ramifications. We strongly urge that the committee review the extensive guidelines promulgated by the Attorney General for criminal justice candidates and employees in the State of New Jersey. We believe that these guidelines provide the needed tools to keep our Police Forces Drug-Free, while still protecting the rights of the employees and candidates for employment.

Thank you for your time.



Thomas D. Nowelsky
Deputy Chief of Police
Township of Union

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A -2

AUGUSTUS NASMITH
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April 3, 1987

Hon. Robert E. Littell
47 Church Street
P.O. Box 328
Franklin, N.J. 07416

Re: A-2850 --- Drug Testing

Dear Mr. Littell:

If the above bill is to be amended in the Senate Labor, Industry and Professions Committee on April 9th for other reasons, would you acquiesce in the attached amendment which would broaden the railroad exemption to all employees, not merely the "hours of service" employees now covered by FRA regulations? This would avoid future confusion. As you know, Congress and Secretary of Transportation Dole are considering proposals to tighten the Federal requirements.

We discussed this briefly in December and you suggested I bring it up after passage by the General Assembly.

Very truly yours,

Augustus Nasmith

AN:gv

Enclosure

CC: Hon. Thomas P. Foy
Hon. Raymond Lesniak
Dale Davis - Committee Aide

282X

Senate Committee Amendments

to

Assembly Bill No. 2850 Aca

Amend:

Page	Sec.	Line
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9	11	7-8
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After c. omit "Employment of railroad workers covered by Federal Railroad Administration regulations" and insert in lieu thereof:

"Railroad employees subject

to the Federal Railway Labor Act".

MOTOR CARRIER LIAISON PROJECT
Suite 206
470 Prospect Avenue
West Orange, New Jersey 07052

Project Director:
Marion L. Hall
(201) 731-0999

Project Administrator:
New Jersey Motor Bus
Association, Inc.
Frank P. Gallagher,

Statement of Marion L. Hall
before
The New Jersey Senate
Labor, Industry and Professions Committee
Hearing on Assembly Bill No. 2850 - Drug Testing
April 9, 1987

My name is Marion L. Hall, I am project Director of the Motor Carrier Liaison Project with offices in West Orange, New Jersey. The Motor Liaison Project is funded by the Urban Mass Transportation Administration and was established under contract with the New Jersey Department of Transportation to, among other matters, develop policy agendas for the private bus carriers transporting commuters to and from New York City, utilizing the bridges and tunnels operated by the Port Authority.

I appear before this hearing today to register the total support of the private bus carriers transporting passengers within and to and from the State of New Jersey for enactment of a New Jersey statute which will make drug testing mandatory at time of employment and at periodic times thereafter for all bus and truck drivers employed within the State of New Jersey.

President Reagan, on October 27, 1986, signed into law a bill which includes a provision requiring truck and bus drivers nationwide to meet national driver's license standards. That bill, sponsored by Representative James Howard (D-3rd District of New Jersey), is aimed at increasing highway safety, requires a special license for drivers of trucks and buses and will

establish a national data bank to keep tabs on their driving records. This will counteract problems caused by truck and bus drivers who avoid penalties for traffic violations by holding licenses from more than one state. The Howard bill also establishes rigid penalties for driving under the influence of alcohol or drugs as well as other driving-related offenses.

The Howard bill, however, does not provide for drug testing at the time of employment, when a license is issued, nor at periodic times during the employment of a truck or bus driver. Drug testing at each of these intervals is essential if the Howard bill is to be effective.

The bus carriers operating in New Jersey have a responsibility to the public, both those riding our buses and others, to insure to the best of our efforts, that all bus drivers are free of the influence of drugs. Elimination of the possibility of drug related accidents will help to hold insurance rates in line and, therefore, prevent unnecessary fare increases need to offset such expenses. Also, and much more important, it is essential that truck and bus drivers be free of drug use if we are to prevent the death and injury of innocent citizens resulting from vehicle which involve drug-impaired drivers.

In summary, the private bus companies operating in New Jersey strongly urge enactment of a New Jersey state statute which will require drug testing of truck and bus drivers at time of employment and at periodic times thereafter.