



STATE OF DELAWARE  
THE COURTS OF THE JUSTICES OF THE PEACE  
820 NORTH FRENCH STREET, 11TH FLOOR  
WILMINGTON, DELAWARE 19801

NORMAN A. BARRON  
CHIEF MAGISTRATE

TELEPHONE (302) 571-6001

POLICY DIRECTIVE 88-113

TO: ALL JUSTICES OF THE PEACE  
NEW CASTLE COUNTY

FROM: NORMAN A. BARRON  
CHIEF MAGISTRATE *N. Barron*

DATE: MAY 23, 1988

RE: DRUG TESTING FOR PERSONS CHARGED WITH MINOR DRUG OFFENSES

During his recent tenure as Criminal Office Judge, Judge Bernard Balick observed that many of those arrested for certain minor drug offenses who were released on unsecured bail failed to appear for their Superior Court arraignments and/or trials. He requested that conditions be placed on their releases, thus making it more likely that they would appear. This request is eminently reasonable.

In light of the above, it shall be a policy for New Castle County Magistrates who release on unsecured bail persons charged with the minor drug offenses to set as a condition of release that the defendant shall report within 24 hours of the time of release or on the next business day for weekend releases, to the Drug Detention and Monitoring Project site located at 1232 King Street for inclusion in the Drug Supervision Program. Minor drug offenses shall include:

1. Possession of a hypodermic needle in violation of 16 Del.C., §4757(c);

2. Possession of a hypodermic syringe in violation of 16 Del.C., §4757(c); and,

3. Maintaining a dwelling in violation of 16 Del.C., §4755(5).

The above listing is not intended to be exclusive.

A urinalysis sample will be taken upon their initial appearance at the DMDA Monitoring site and will thereafter be taken on a weekly basis.

The DMDA Project is defined in the attached Project Description, designated as Attachment A.

The step by step procedures for Magistrates to follow with regard to any case involving a minor drug charge where unsecured bail is imposed are as follows:

1. As a condition of release, order the defendant to: "Report to the DMDA Project for narcotics evaluation and possible placement" on the Bail and Order to Appear form.

2. Briefly explain the Program to the defendant, paraphrasing the information contained in the Referral for Narcotics Evaluation form. Copies thereof are found in Attachment B.

3. Have the defendant sign a copy of the applicable Referral for Narcotics Evaluation form. The original copy of this form is to be forwarded to the DMDA Project. A copy thereof is to be handed to the defendant, and a second copy should be kept with the case file.

4. Forward, via constable or mail runner, all current paperwork to the DMDA Project, 1232 King Street, Ground Floor, Wilmington, DE 19801. Paperwork should include:

- a. Referral for Narcotics Evaluation form;
- b. Copy of the Bail and Order to Appear form.

5. Clerks of the Court should telephone immediately after the defendant's court appearance if during normal working hours or at 8:30 AM on the next normal work day the DMDA Project at 571-6497, advising the project of the defendant's name, DOB, and date/time scheduled to appear at the monitoring site.

\* \* \* \* \*

Three blank referral forms are found herein at Attachment C. Xerox the blank forms as needed in your court.

This Policy Directive is effective upon receipt with regard to New Castle County Magistrates. Kent and Sussex County Magistrates are included on the distribution list for informational purposes only, with the view that the Project may at some future date have State-wide applicability. Questions regarding the DMDA Project should be directed to the Project's Director, Jackie Wilson-Senigo at 571-6497.

NAB:pn

Attachments

cc: The Honorable Bernard Balick  
Members, GH Oversight Committee  
Michael E. McLaughlin  
Jackie Wilson-Senigo  
Carl Schnee, Esquire  
Tom Quinn  
File (P113)

**DETECTION AND MONITORING OF DRUG-USING ARRESTEES**

**DMDA PROJECT DESCRIPTION**

The DMDA Project was implemented in the State of Delaware on April 4, 1988. The project is designed to detect and monitor, by urinalysis, suspected drug abusers. All project participants are on pretrial status who are ordered by the Courts to participate **AS A CONDITION OF RELEASE**. Treatment services are made available to those who request it or to individuals who cannot abstain from drug use. Treatment costs are borne by the DMDA Project.

The DMDA Project has two test sites in New Castle County. The "Initial Detection" site is located at the MPCJF; for testing defendants prior to their arraignment in Magistrate Court No. 18. Defendants are asked to volunteer a urine specimen, following the pretrial interview. Test results are presented to the Magistrate following a decision as to release/not to release. The drug test results are reviewed to determine appropriate conditions of release.

The second, "Monitoring" site, is located within the community; at 1232 King Street, Ground Floor, Wilmington, DE 19801 (571-6497). This site has a primary responsibility to conduct monitoring drug testing on a weekly basis for defendants ordered by any Court in New Castle County.

The Monitoring site also conducts "initial tests" on defendants ordered by the Court. Defendants may be ordered to undergo such an "evaluation test" by being ordered by the Court of jurisdiction to:

"Report to the DMDA Project for narcotics evaluation and possible placement."

In such cases, it is imperative to have the defendant report to the DMDA Project within 24 hours of release (next business day for weekend releases) to obtain a valid "evaluation" sample. Generally, if the initial urine test proves negative for drugs, the defendant is released from the Project. However, the Court may require a defendant "to participate in the DMDA Project until disposition of the pending case." Anyone participating in the DMDA Project who desires treatment is provided for under the project treatment funds. Defendants who test positive at their "initial evaluation" test are required to report to the DMDA Project for weekly urinalysis. Six consecutive "clean" urine screens results in successful release from the Project.

Defendants who prove positive on three urine tests, and/or fail to appear for urine tests are returned to Court on charges of Breach of release. The attached charts provide sanctions on

violations which are recommended by the DMDA Pretrial Officer. The Court of jurisdiction must actually impose some sanction on the defendant, which may or may not incorporate the officer's recommendations.

Attachments

III - d. DMDA SANCTIONS AND VIOLATIONS

The intent of the project is to make every possible effort to avoid detention by revocation of bail where ever possible. However, a consistent pattern of responses to violations of testing requirements must be maintained. In order to achieve this, levels of escalating and de-escalating sanctions have been developed. The levels of escalating sanctions are found in Table 1, and the levels of de-escalating sanctions are found in Table 2. The responses to violations listed below concern the supervision levels referred to in these tables.

1. First positive test and/or no show for testing within a 30 day period. The Pretrial Officer will counsel the defendant, encourage his/her cooperation, and discuss the availability of treatment.
2. Second positive test and/or no show for testing within a 60 day period. The defendant will be moved from Level 1 to Level 2 - increasing the frequency of drug testing and incorporating counseling from the Unit. A Progress Report(See Appendix M) will be submitted to the appropriate judge advising of the change in status.

TABLE 1  
ESCALATING SANCTIONS

LEVEL I	LEVEL II	LEVEL III	LEVEL IV	LEVEL V
Weekly, Bi-weekly, drug testing	Drug Test: 2 x week	Drug Test: 2 x week	In-patient program	Revoke Bail
	Pretrial Counseling	Drug Counseling	House Arrest	Length of detention to be determined by the Judiciary
		Home Visit	SENTAC Intensive Drug Program	Motions for reduction of bail
		Employment	Report: 5 x week	Intake Screening Unit Involvement (See Appendix V).
		Mental Health Counseling	Drug Test: 2 x week	
		Report: 3 x week		

3. Third positive test and/or no show for testing within a 90 day period. Defendant is to be moved from Level 2 to Level 3. If the defendant has failed to appear for drug testing on three occasions, a Violation Report will be sent to the appropriate judge (see Appendix N) requesting a hearing. A recommendation will be made, in that report, to have the defendant undergo a drug test at the time of the hearing.
4. Fourth positive test and/or no show for testing within a 90 day period. A Violation Report will be submitted to the appropriate judge. Sanctions in Level 4 will be recommended to the court.

5. Fifth positive test and/or no show for testing within a 90 day period. A Violation Report will be submitted to the appropriate judge recommending Level #5 sanctions (revoke bail).

All negative results and supervision compliance will result in a de-escalation of supervision and treatment responsibilities, as shown in Table 2.

TABLE 2  
DE-ESCALATING SANCTIONS

LEVEL V	LEVEL IV	LEVEL III	LEVEL II	LEVEL I
Bail Motion granted; Defendant released; to resume participation in Pretrial Drug Detection Unit.	In-patient program  House Arrest  SENTAC Intensive Drug Program  Report: 5 x week  Drug Tests: 2 x week	Drug Test: 2 x week  Drug Counseling  Home Visits  Employment Requirements  Mental Health Counseling  Report: 3 x week	Drug Test: 2 x week  Pretrial Counseling	Weekly, bi-weekly drug testing only

Defendants who have been placed in stricter sanctions can progress to less restrictive intervention as they prove their ability to comply with Court directives. Defendants in Level V (bail revoked; in custody) are terminated from program participation. Upon release from custody, the Court may order the defendant to resume participation in the Pretrial Drug Detection Unit. In such a case, the defendant would enter his participation at Level IV. Sanctions will de-escalate as follows:

1. No missed urinalysis testing appointments (tested twice weekly) and no positive findings on drug tests for 30 days will result in reinstatement at Level III.
2. No more than one missed urinalysis testing appointments and/or positive findings on any drug tests for 30 days will result in a reclassification to Level II.
3. No more than 2 missed urinalysis testing appointments and/or two positive drug tests within a 60 day period will result in reinstatement to Level I.
4. To successfully complete Level I and be discharged from the program;

defendants are required to maintain negative drug test results for six weeks, and miss no drug testing appointments.

In all cases where a defendant has undergone successful transfer to a lesser sanction; progress reports are forwarded to the appropriate judge.





STATE OF DELAWARE  
DEPARTMENT OF CORRECTION  
BUREAU OF ADULT CORRECTION  
DIVISION OF COMMUNITY SERVICES

DETECTION AND MONITORING  
OF  
DRUG-USING ARRESTEES PROJECT

571-6497

1232 King Street, Ground Floor  
Wilmington, DE 19801

Example Copy: Weekday Release

You have been released with the condition to report to the Pretrial Drug Detection Unit (DMDA Project) for narcotics evaluation. If the urine specimen submitted by you tests positive for any controlled substance, you will be required to report back to the DMDA Project for placement in an appropriate program. You are to call this office for your results and further instructions on the day following your initial appointment (between the hours of 8 AM and 5PM, at the phone number listed above). **FAILURE TO APPEAR ON THE DATE NOTED BELOW AND/OR FAILURE TO CALL ON THE FOLLOWING DAY FOR FURTHER INSTRUCTIONS IS A VIOLATION OF YOUR RELEASE CONDITIONS AND COULD RESULT IN YOUR BAIL BEING REVOKED.**

You are to report to the DMDA Project site for your initial evaluation test on: Tues., May 10, 1988 between the hours of 8 AM and 4:30 PM.

Defendant's Name (printed/typed): John Doe

Defendant's Signature: *John Doe*

Date: 5/9/88

Witnessed: *Jarice A. Clerk*  
(Magistrate, Pretrial Services Officer, Court Clerk)



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Example Copy: Weekend Release

You have been released with the condition to report to the Pretrial Drug Detection Unit (DMDA Project) for narcotics evaluation. If the urine specimen submitted by you tests positive for any controlled substance, you will be required to report back to the DMDA Project for placement in an appropriate program. You are to call this office for your results and further instructions on the day following your initial appointment (between the hours of 8 AM and 5PM, at the phone number listed above). **FAILURE TO APPEAR ON THE DATE NOTED BELOW AND/OR FAILURE TO CALL ON THE FOLLOWING DAY FOR FURTHER INSTRUCTIONS IS A VIOLATION OF YOUR RELEASE CONDITIONS AND COULD RESULT IN YOUR BAIL BEING REVOKED.**

You are to report to the DMDA Project site for your initial evaluation test on: Mon. May 16, 1988 between the hours of 8 AM and 4:30 PM.

Defendant's Name (printed/typed): John Doe

Defendant's Signature: *John Doe*

Date: 5/13/88

Witnessed: *Jarvis A. Clark*  
(Magistrate, Pretrial Services Officer, Court Clerk)



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You are to report to the DMDA Project site for your initial evaluation test on: \_\_\_\_\_ between the hours of 8 AM and 4:30 PM.

Defendant's Name (printed/typed): \_\_\_\_\_

Defendant's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witnessed: \_\_\_\_\_  
(Magistrate, Pretrial Services Officer, Court Clerk)



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You are to report to the DMDA Project site for your initial evaluation test on: \_\_\_\_\_ between the hours of 8 AM and 4:30 PM.

Defendant's Name (printed/typed): \_\_\_\_\_

Defendant's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witnessed: \_\_\_\_\_  
(Magistrate, Pretrial Services Officer, Court Clerk)



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You are to report to the DMDA Project site for your initial evaluation test on: \_\_\_\_\_ between the hours of 8 AM and 4:30 PM.

Defendant's Name (printed/typed): \_\_\_\_\_

Defendant's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witnessed: \_\_\_\_\_  
 (Magistrate, Pretrial Services Officer, Court Clerk)