

28 November 2023

C174693



Tēnā koe 

Thank you for your email of 20 October 2023 to the Department of Corrections – Ara Poutama Aotearoa, requesting information about Alcohol and Drug (AOD) testing of people serving community based sentences and orders. Your request has been considered under the Official Information Act 1982 (OIA).

People being managed by Corrections in the community have to comply with the conditions of their sentences or orders. Standard conditions are generic and set out in the Sentencing Act 2002 and Parole Act 2002. Special conditions are imposed by the Court or New Zealand Parole Board and are specific to the person's individual risks and rehabilitation needs. Special conditions may include not to use alcohol and/or drugs (unless the drugs have been prescribed for the person by a doctor). People with this condition may be tested for alcohol and drugs.

Research shows that people managed by Corrections have higher rates of mental health and substance use disorders than the general population. Testing for AOD in the community enables Corrections and Police to intervene with offenders who are subject to an abstinence condition and who are at risk of causing harm.

International research and experience tell us that testing for alcohol and drugs is most effective when it's done alongside appropriate interventions. Corrections staff have a range of rehabilitation options available to refer people to and are trained to identify the most appropriate intervention for each individual. Testing is one tool alongside programmes and motivational approaches that allows us to work with people to support change and help keep communities safe.

Once an abstinence condition is imposed, the person is assigned to a testing tier by a probation officer. This is a two-step process where an automated calculator provides the initial tier (based on static risk factors) and the probation officer then uses their professional decision-making skills to determine the final tier based on other factors known about the case which may affect the level of risk in relation to alcohol and drugs.

Cases can be assigned to tiers one, two and three, which determine the frequency of their testing. Tier one is reasonable grounds urine testing only. This means a probation officer can request a test if they have cause to suspect a person is not adhering to their abstinence condition. Alternatively, the probation officer can organise a test if they become aware of a potentially high-risk situation (for example, a reunion or a special birthday) and chooses to test after the event. The majority of Corrections' testing is based on reasonable grounds.

Those on tiers two and three are entered into a "randomiser", where tier two is set at a lower rate than tier three. At the beginning of each month the randomiser is run and a number of cases are assigned for testing. A centralised team at National Office organises this testing to occur throughout the month and liaises with the probation officer for an appropriate time for the test to take place. It is recommended to give an individual no more than 48 hours notice prior to testing, which allows them to organise themselves but not long enough to successfully compromise the test (for example, by abstaining, or through dilution). Those on tiers two and three are also subject to reasonable grounds testing.

If a person's risk/need changes throughout their sentence or order, the probation officer can choose to increase or decrease their testing tier.

You requested:

- *Could you also please let me know what happens to those offenders when it is discovered that the samples they have provided are false?*

Corrections takes all instances of non-compliance with community-based sentences and orders seriously. Corrections actively manages a person's compliance with their conditions and holds them to account if they breach. Potential penalties can include breach action, increased reporting to Community Corrections, or formal prosecution which can result in a person returning to prison.

Probation Officers also endeavor to discuss false and positive tests with the person to understand the circumstances that led to the failed test. Probation Officers may also talk to their whānau/support people, as well as refer them to a provider for treatment.

- *Are all samples tested?*

All samples that pass initial integrity checks are sent away for laboratory testing. If a test is positive, an individual has the right to request a second test of the urine sample they had provided at the time. This is called the B Test.

- *What are the most common ways false samples are given (eg. synthetic urine/animal urine)?*
- *I would like to make a request for information regarding the number and percentage of offenders on community sentence or probation who are giving false or fake urine samples to the Drug Detection Agency.*

- *How often are offenders on community sentences tested?*

Releasing the information requested relating to the frequency of tests, and the most common identified methods and frequency of false/adulterated samples, could compromise Corrections' ability to effectively manage people subject to abstinence conditions.

Accordingly, these requests are refused in accordance with section 6(c) of the OIA, as the release of this information could prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.

I trust the information provided is of assistance. I encourage you to raise any concerns about this response with Corrections. Alternatively, you are advised of your right to also raise any concerns with the Office of the Ombudsman. Contact details are: Office of the Ombudsman, PO Box 10152, Wellington 6143.

Ngā mihi



Leigh Marsh  
National Commissioner