

DRUG TESTING **and the** PUNISHMENT PARADIGM

Drug testing is a standard practice for people on probation and parole. *Should it be? Luke's story* details how this common procedure can disrupt his successful transition from prison.

Luke's transition home from prison embodies the mix of helpful programs and hurdles so many people encounter on community supervision. Luke served twenty years for second-degree murder, and has ten years on Minnesota's supervised release. Prior to his official release date, he benefited from participating in a work program. Without this bridge, Luke said, his transition would have been "incredibly difficult." Employment provided him the ability to save enough money to buy a car and pay for his insurance and cell phone bill without relying on friends and family. Despite being out of prison for a short time, he has already earned a promotion and feels he has a career, not just a job.

While work release smoothed his reentry, other aspects of his supervision seem designed to trip him up. Luke was a teenager when he was incarcerated, with no history of drug or alcohol abuse, yet the terms of his supervision require sobriety. His special conditions of release prohibit him from drinking alcohol or even entering any establishments that derive the majority of revenue from selling alcohol. ***"All I wanna do is go fishing and have a beer with my dad. Like by rule, I can't do that, you know?"***

His supervision also requires drug testing on a monthly basis. This means that an agent will call him randomly and require he drive fifty miles to report for a urinalysis. Luke is proud of finding a career so quickly, but fears the drug testing will eventually conflict with his employment responsibilities. As he explains, ***the drug testing "becomes a burden. Now I gotta take off [work] . . . if they call me, I gotta go take a drug test that day."***

Drug testing in the criminal justice system emerged in the 1960s as a way to identify individuals with addiction issues in need of treatment and to monitor their progress. In 1972, the federal Treatment Alternatives to Street Crimes (TASC) initiative sought to divert users to treatment. Over time, the criminal justice system referred individuals to TASC and used drug tests to enforce compliance with probation and parole.

1960s

Drug testing emerges to identify and monitor individuals in need of treatment

1972

The federal TASC initiative seeks to divert users to treatment

1980s

"Zero tolerance" policies and drug testing become a nearly ubiquitous practice by probation and parole agencies

1992

The American Probation and Parole Association has not put forth guidelines on drug testing since 1992

Drug testing shifted into high gear in the 1980s. The links between substance abuse and crime led to “zero tolerance” policies and drug testing became a nearly ubiquitous practice by probation and parole agencies to “catch” users before they could go on to commit more offenses. A failed drug test could often result in incarceration, despite the general lack of treatment options behind bars. A practice that started by supporting recovery and rehabilitation became a major driver of prison admissions while the nation’s horrific overdose crisis metastasized, climbing to **more than 109,000 deaths in 2022**.

Drug testing and the special conditions on alcohol are common features of supervision that make failure more likely and act as barriers to facilitating successful reentry. These requirements do not serve Luke’s individual needs or respond to the nature of his conviction. Instead, Luke argues, they **“pump money and energy and time and resources into doing the same things that have been proven not to work.”**

Drug testing people on supervision began as one of many well-intentioned measures seeking to reduce the harms of substance abuse, but there is scant research on the effectiveness of drug testing in actually supporting people or producing positive outcomes, especially for those without a clearly identified, underlying need. Instead, a recent study shows that individuals on probation were fifteen times more likely to die from opioid overdoses than the general population, despite mandatory drug tests.

Supervision agencies are on autopilot when it comes to drug and alcohol policies. The American Probation and Parole Association has not put forth guidelines on drug testing since 1992.

Luke’s case raises important questions. **Who should be tested? Can tests be done with minimal disruption for people’s lives? How should agencies respond to failed tests? Are there ways beyond urinalysis to encourage health and safety?** Instead of being a standard practice for probation and parole, drug testing could be tailored to personal needs and used to reinforce positive behaviors rather than continuing down the path of punishment.

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In 2023, the Minnesota Justice Research Center initiated the “Transforming Community Supervision” project to improve public safety, promote better outcomes for individuals on probation and supervised release, and decrease the cycles of revoking people to prison and jail. As part of this effort, community engagement manager Zeke Caligiuri interviewed individuals currently on supervision and discussed the hurdles they are facing to successfully completing their terms. Among the most common was the issue of drug testing, exemplified by Luke’s story.

If you or someone you know is interested in getting involved to transform community supervision, please contact Zeke Caligiuri at zeke@mnjrc.org

1. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9394548/>
2. <https://icija.illinois.gov/researchhub/articles/a-study-of-drug-testing-practices-in-probation>