
Challenge Incarceration Program Random Drug Testing Report and Recommendations

December 2021

REPORT SUMMARY

The Office of the Ombuds for Corrections (OBFC) received a complaint that random Point-of-Care Testing (POCT) /Urinalysis in the Challenge Incarceration Program (CIP) was leading to segregation, disruption to programming, and loss of program time based on unconfirmed test results that later turned out to be negative.

The OBFC found that the temporary removal from programming based on random, unconfirmed testing with no other evidence of use is needlessly disruptive to treatment, unfair, and is not supported by federal treatment guidelines.

The Ombuds recommended that DOC policies should be changed so that CIP participants, when a random POCT is presumed but unconfirmed positive, absent any other evidence of substance use, will remain in the program and not be put into segregated housing until the result of a requested confirmation test is received.

- DOC agreed that there were issues with the drug testing kits used for screening and have switched to another brand of screening tests.
- DOC reviewed protocols for the handling of confirmation testing samples to shorten the response time for urinalysis lab results.
- DOC disagreed with the recommendation that individuals are not put in prehearing segregation until a laboratory confirmation test result is obtained.
- DOC will work with CIP staff to explore other options, such as distance learning to allow an individual the possibility of continuing their programming while they are on prehearing detention status.

Summary Description of Incident

The OBFC received a complaint regarding Point-of-Care Testing (POCT) /Urinalysis in the Challenge Incarceration Program (CIP). The complainant is concerned that segregation and disruption to programming and extension of incarceration past CIP completion is being based on inaccurate positive POCT tests in contradiction to Substance Abuse and Mental Health Services Administration's (SAMHSA) guidelines.

OBFC Investigation

According to the complaint CIP received a new version of test kits. Since then, according to our investigation, from June through November, at least 5 CIP participants tested positive for substance use based on the result of the POCT. The confirmation lab tests came back negative. These were random tests with no other evidence of substance use, and the participants denied use. Because the lab tests take time to process, participants were placed in segregation for several days or more and one spent eighteen days in segregation due to a damaged specimen container before being released back into programming. In addition to the disruption to treatment, they will have to stay in the facility after their group has graduated the CIP program for the length of time that they were in segregation to make up for lost programming time. (DOC Policy 204.060)

The SAMHSA Clinical Drug Testing in Primary Care publication speaks to drug testing being a two-step process, where the drug screens, which is the urinalysis that is being used in CIP, is the first step followed by laboratory confirmation. Of most relevance to this situation:

- Laboratory testing is more accurate than POCT.
- Positive POCT results should usually be followed by a laboratory confirmatory test if the patient denies drug use when confronted with the positive results. A confirmatory test must be done if legal or employment ramifications for the patient will result.
- Caution that the apparent benefit of POCTs—rapid assessment of a patient's drug use—can be detrimental if treatment decisions are based on these rapid, but unconfirmed, results.

OBFC Findings

Removal from programming for random, unconfirmed testing is unfair and is not supported by federal treatment guidelines: Although DOC Policy 205.230 provides for a laboratory confirmation test if an incarcerated person requests one (they are required to pay for it if it comes back positive), the POCT has significant ramifications and are used to remove someone, temporarily, from treatment. While this removal may be due to concerns about possible continued use, when there is no other evidence of possible use, fairness, uninterrupted treatment, and federal substance abuse treatment guidelines support allowing a participant to remain in the program until a lab test confirms the positive POCT. Additionally, CIP

participants are in a highly structured and monitored program that reduces any concerns about continued drug use while awaiting confirmation test results.

Requiring participants to stay beyond graduation dates based on unconfirmed tests is unfair and disruptive: The CIP participants who have been tested with the POCT and that have had presumptive positives are being forced to stay in prison beyond their graduation dates because their segregation time does not count toward programming time. This is unfair to the participants who have been working hard to complete the requirements of CIP and have not used any substances. Furthermore, the time the CIP participant is in segregation is a disruption to their programming and forcing them to go to segregation in the middle of treatment programming can possibly cause distrust in the agency and cause issues related to recovery. CIP is a highly regimented program, where any time spent away can be very detrimental to the success of the participants.

OBFC Recommendations

CIP Participants should remain in program until confirmation is received: The Ombuds recommends that DOC policies be changed so that CIP participants, when a random POCT is positive, absent any other evidence of substance use, will remain in the program and not be put into segregated housing until the result of a requested confirmation test is received.

Consideration should also be given to this policy change applying to random POCT testing for all DOC substance abuse treatment programs.

DOC Response

The following letter is the Department of Corrections response provided in accordance with Minnesota Statutes section 341.93 subd. 6.

December 16, 2021

Mark Haase
Ombudsman for Corrections
540 Fairview Ave N, Suite 202
St. Paul, MN 55104

Dear Mr. Haase,

I have reviewed your report, findings, and recommendation regarding random drug testing in the Challenge Incarceration Program (CIP). I have also shared this information with Warden Bolin and Warden Halvorson as they are directly involved with CIP at their respective facilities.

After review and subsequent determination, we agree that there were issues with the drug testing kits used for screening and, in one case, there was an extended delay in the evidentiary or confirmation testing results. In response, we have recently switched to another brand of screening tests and reviewed protocols for the handling of confirmation testing samples to shorten the response time for urinalysis lab results. We concur that time loss from the program should be avoided for individuals who have had a false positive test result.

However, we disagree with the recommendation that individuals remain in programming until a laboratory confirmation test result is obtained. The current policy and procedures are necessary to provide for due process and to address security risks. For the safety of CIP participants, staff, and the public the current procedure cannot be changed.

Our reasoning is outlined below regarding the use of restrictive housing for prehearing detention:

1. Much of the CIP policy and the current practices are based on several factors that must be considered, including many statutory requirements. The specific relevant statutes are 244.17, 244.171, and 244.172. Important to our consideration is that a positive urinalysis test would result in formal discipline, which would automatically initiate the revocation process from the Challenge Incarceration Program.
2. We appreciate and recognize that removal from treatment is disruptive. But the Challenge Incarceration Program operates at a minimum-security level and two of the three sites (MCF-Togo and MCF-Willow River) do not have a physical barrier or other security devices to prevent participants from walking away. Although the program is highly structured and monitored, the concern is more about public safety than possible continued drug use. We must recognize that a person using illicit

substances could become an immediate security or flight risk. In addition, when a participant is not isolated pending the evidentiary test, they have the ability to influence, disrupt, or threaten others throughout the due process procedure.

It is for these reasons that we move participants to prehearing detention upon a positive screening test result.

In conclusion, while we believe we can, in certain rare circumstances, keep an individual in the program, such a change cannot occur as a matter of policy. Absent overwhelming evidence, we must place the person in prehearing detention while due process is pursued. I will, however, consistent with your recommendation, work with CIP staff to explore other options, such as distance learning to allow an individual the possibility of continuing their programming while they are on prehearing detention status. Conditions allowing, if the individual completes the assignments while on prehearing detention status they will meet the requirements set in statute – 180 days of CIP participation.

Thank you for your time and diligence in reviewing this matter. We welcome input and feedback in improving the Challenge Incarceration Program. Your review and recommendations raise valuable questions for us to consider, while still allowing us to maintain public safety and the fidelity of the due process procedures.

If you have any questions, please do not hesitate to contact me.

Respectfully,



Gino Anselmo

Warden

CC: Michelle Smith, Deputy Commissioner
Ombuds Investigation Response File