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Criminal
Justice

Drugs-of-Abuse Testing in the Criminal Justice System

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Answers for life.

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Syva has been a leading developer and manufacturer of drugs-of-abuse tests for more than 30 years.

Now part of Siemens Healthcare Diagnostics, Syva® boasts a long and successful track record in drugs-of-abuse testing, and leads the industry in the production of enzyme immunoassays. In addition to drugs-of-abuse assays, Syva has been a key player in the development and manufacture of therapeutic drug monitoring assays.

Syva products are sold in more than 45 countries worldwide.

Introduction

Testing urine for drugs of abuse is a common practice in the criminal justice system. Drugs-of-abuse tests are used to evaluate the substance abuse of inmates, parolees, probationers, and arrestees. The test results are used to make decisions about bail, personal recognizance, compliance with parole or probation conditions, and violations of prison drug-use rules.

Criminal justice officials report that urinalysis programs have a deterrent effect on drug use. Offenders found positive by drug tests have a difficult time refuting the objective evidence provided by drug test results. Fearing detection by the tests, some offenders and would-be offenders reduce or eliminate their drug use.

Several legal issues surround drug testing in the criminal justice system. Many of these issues involve the constitutional right of due process, and are intertwined with technical aspects of the testing. For example, are test results accurate enough to prove drug use? Are they reliable enough to be used as the basis for imposing prison discipline or revoking parole?

These legal issues are not difficult to address, but failure to do so can imperil a urinalysis program, and discredit a criminal justice agency in the eyes of the courts and the public. An agency and its legal counsel should work closely to identify and address potential legal and technical issues before they arise in litigation.

This pamphlet is intended to explore the major issues involved in criminal justice drug testing.

What are EMIT® drugs-of-abuse tests?

EMIT drugs-of-abuse urine tests are immunoassays. Like other such immunoassays, they use antibodies to detect the presence of drugs or other substances in urine. The antibodies in each assay are designed to react only with the drug being tested (for example, cocaine, marijuana, PCP).

If the drug being tested is present, a chemical reaction occurs that changes the light-absorbing properties of the test mixture. Special instruments measure changes in the amount of light the sample absorbs, which is related to the amount of drug the sample contains. The more drug present in the person's urine, the greater the response produced. If there is little or no drug present in the sample, the response is lower.

The sample's response is compared to the response of a calibrator, which contains a known quantity of the drug in question. This known quantity of drug in the calibrator is called the cutoff. If the sample's response is higher than or equal to the calibrator's, the sample is considered positive for the drug. If the sample's response is less than that of the calibrator, the sample is considered negative.

EMIT Assays, and all other urine testing technologies, use cutoff levels. Thus, a negative urine assay result does not necessarily prove that the subject did not consume the drug. A negative result only suggests that there may not have been enough drug in his/her system to exceed the cutoff.

What does a positive EMIT test result mean?

Positive urine test results indicate the presence of a particular drug in the system. No urine-testing technology currently available, including EMIT Assays, can measure impairment. There is no established relationship between the amount of drug found in urine and intoxication. For this reason, charges of "being under the influence" of a drug may be very difficult to prove on the basis of a positive urine test alone.

Do random urine tests violate the rights of offenders?

Generally not, although in extraordinary situations random testing could be seen as an unreasonable search, violating the Fourth Amendment. Courts have approved the random testing of persons in custody, in prison or jail. (See the appendix, "Legal Decisions and EMIT Assays.")

To randomly test probationers or parolees, the most prudent procedure is to establish a release condition that allows random testing.¹

Any release condition, however, must be reasonably related to the protection of society or the rehabilitation of the offender. For example, a urine-testing release condition for an offender with no prior involvement with drugs could be seen as unreasonable.

Authorities must be careful not to demand tests of persons in a way that could be seen as harassing or discriminatory.

Do drug tests violate the Fifth Amendment prohibition against self-incrimination?

No. The privilege against self-incrimination applies only to testimonial evidence; that is, words from the person's mouth. It does not apply to physical evidence that can be obtained from the person, such as urine test results, fingerprints, etc.

Are EMIT Assay results admissible as evidence?

Yes. To be admissible as evidence in court, a scientific principle or technology must be generally accepted in the scientific community.² This same standard for admissibility applies in most criminal justice administrative hearings. There now is little dispute that EMIT Assays meet this criterion.

Scientific studies show that EMIT drug assays are among the most consistently accurate drug-testing methods in current use. They have a screening accuracy rate of 97% to 100%. When confirmed by scientifically-accepted alternative urine-testing

technology, EMIT Drug Assays have an accuracy rate of 100%.³ EMIT Assays are the screening tests most commonly used by labs certified by the Substance Abuse and Mental Health Services Administration (SAMHSA).

Syva, now part of Siemens Healthcare Diagnostics, along with other drug-testing authorities, recommends that all initial positive results be confirmed by a scientifically-accepted alternative urine-testing technology. The technology most commonly recommended is gas chromatography/mass spectrometry (GC/MS). Other acceptable methods include high performance liquid chromatography (HPLC), gas chromatography (GC), and thin-layer chromatography (TLC). Where EMIT Assays are used as screening tests, and their positive results are confirmed by an alternative test of equal or greater sensitivity, the testing is accepted throughout the scientific and medical communities as accurate and reliable.³ In a 1989 U.S. Supreme Court decision, the court found the combination of an initial EMIT test and confirmation by GC/MS to be “highly accurate.”⁴ EMIT tests, even when not confirmed by alternative testing, are routinely used throughout the criminal justice system. In addition, doctors, hospitals, and emergency rooms commonly use unconfirmed EMIT Assay results in medical situations requiring quick, reliable information surrounding the type of drugs a patient may have consumed. If a court or administrative body with jurisdiction over an agency has not previously accepted EMIT Assay results as admissible scientific evidence, the agency offering the results should be prepared to show that the EMIT technology is widely accepted in the scientific and medical communities, and that the results are highly accurate.

Further information on the accuracy of EMIT Assays is available in the guide: *EMIT Drug Abuse Assays: How Accurate Are They?*; available from Siemens Healthcare Diagnostics.

Do EMIT Assay results have to be confirmed by an alternative test to be admitted as evidence?

In the prison disciplinary hearing context, courts have recognized that unconfirmed EMIT test results (preferably an EMIT test run twice on the same sample, a practice commonly referred to as double EMIT testing) are accurate enough. Several federal courts have approved double EMIT testing for use in prison disciplinary hearings.⁵ Some criminal justice jurisdictions choose to freeze samples testing positive by an EMIT Assay. If the subject contests the results of the EMIT test, the sample can be thawed and a confirmation test run.

The issue of running duplicate EMIT tests on the same sample has been litigated in the probation/parole context but not extensively, so that it remains somewhat open.⁶

Are unconfirmed positive EMIT Assay results sufficient proof to show drug use?

To answer this, one needs to determine what the burden of proof is—that is, how strong the evidence must be to show guilt—for the jurisdiction in question. The standard for prison disciplinary hearings is quite low. A reviewing court will usually uphold a hearing result if some evidence in the record supports a guilty finding.⁷ Today, most courts reviewing the decisions of these disciplinary hearings hold that positive results from double EMIT testing meet this standard. And, some courts have ruled that double EMIT tests meet the standard of substantial evidence, a more rigorous standard than some evidence. (See the appendix, “Legal Decisions and EMIT Assays.”)

The standard to show guilt in probation or parole revocations is often somewhat higher than the standard in prison hearings, and may vary from one jurisdiction to another. Precedents set by prison disciplinary hearings approving of EMIT Assays may, therefore, be of limited value in probation or parole cases.

Because the scientific community strongly recommends confirmation, a jurisdiction choosing to rely solely on EMIT Assay results can expect to be legally challenged unless specific legal precedent in that jurisdiction approves of EMIT Assay results only. Such a legal challenge will require carefully-prepared expert testimony to convince the court that unconfirmed EMIT Assay results are reliable and accurate enough to: (1) be admitted as evidence and (2) prove drug use under the relevant burden of proof. The agency and its legal counsel should be prepared for such a legal challenge.

What is necessary to have EMIT Assay results admitted as evidence?

Specific requirements for admission vary from state to state, and requirements for admission in court proceedings will often be more stringent than for administrative hearings. In general, the agency submitting a urinalysis result should be prepared to show that:

- A proper chain of custody was maintained. Sloppy sample handling can lead to test results being thrown out. If a chain-of-custody question is raised, it normally will be the agency's burden to show that a proper chain was maintained.⁸
- The technician performing the test was properly trained.
- The test was properly done according to the manufacturer's instructions.

If these requirements are not met, it may not mean the test result was incorrect but, at the very least, it may create doubt about the validity of the results.

Is it better to use an outside lab for testing or to do the testing on site?

If confirmation is required or desired, an outside lab may have to be used, as some confirmation technologies, like GC/MS, are too complex for on-site use. If the confirmation method is not an issue, either an outside lab or an on-site testing facility is permissible. In choosing one or the other, one

should evaluate the facility's ability to supply accurate test results: document its procedures; and provide expert witness testimony. For instance, what testing methods are used? What quality control procedures are followed? Is chain of custody maintained? Will results be submitted in a form admissible in court or administrative hearings? Can the facility provide in-person testimony from a technician or other expert if needed?

If an outside lab is used, must it be certified by the Substance Abuse and Mental Health Services Administration (SAMHSA)?

SAMHSA certification is certainly one way of ensuring that a lab operates at the highest-quality levels. However, labs that do criminal-justice testing are not required to be SAMHSA-certified. Many labs perform excellent work without being SAMHSA-certified.

Will the technician who performed the test have to testify at the hearing?

Normally not. Written test results are usually admissible if submitted in a form appropriate to the type of hearing. Criminal justice agencies should determine what form of written report is acceptable for the proceeding.

Because there is no right to confront or cross-examine witnesses in prison disciplinary hearings, written test reports are normally acceptable. Some courts allow written reports to be considered in probation revocations if they appear reliable.⁹

Although technicians normally need not testify in person, direct testimony may be preferable if not legally necessary in some situations. For this reason, an agency should have a contingency plan in place for calling technicians to testify. Such a plan is especially important when testing is done by an outside laboratory. Testing laboratories are sometimes located hundreds of miles away, and the in-person testimony of a technician presents problems of logistics, availability, and expense.

What are false-positive results?

If a test result is positive but the drug being tested is not present in the urine, the result is called a false positive. A false positive is usually the result of an assay reacting with a substance that has a chemical structure very similar to the drug being tested. The substance is said to cross-react with the assay.

Amphetamine assays are commonly cited as subject to this type of cross-reactivity. Because some compounds found in over-the-counter cold and cough medicines are structurally very similar to amphetamine and methamphetamine, they are detected by some amphetamine assays. This phenomenon underscores the need to confirm all positive amphetamine test results by an alternative test method.

Syva, now part of Siemens Healthcare Diagnostics, continually tests for possible cross-reacting substances. Large-volume testing laboratories also watch for cross-reactants and report them to Syva. Information about cross-reacting substances is published by Syva in its assay package inserts. Given the amount of testing done each year, it is unlikely there exist cross-reacting substances commonly consumed by humans that have not yet been identified.

The failure of an alternative test to confirm the positive results of an EMIT Assay does not necessarily mean the result is a false positive. This failure to confirm may be otherwise explained, by the fact that EMIT tests are more sensitive than some confirmatory tests, and as a result are able to detect more or different drug metabolites (metabolites are compounds resulting from the breakdown of a drug by the body). In these cases, the positive results are more aptly termed unconfirmed positives.

What about rumors that some beverages and foods can produce false-positive results?

In this regard, coca tea is often cited. Studies have found that the brand Health Inca Tea contained enough cocaine (coca leaves) to cause positive results for cocaine on some cocaine assays.¹⁰ This is a true positive result because the tea actually contained cocaine, and the urine actually contained cocaine metabolites. Coca teas were taken off the market by the U.S. Drug Enforcement Agency several years ago.

Poppy seed consumption has also received much attention. Studies have documented that the ingestion of two cookies sprinkled with poppy seeds produced urine opiate concentrations that were detectable for up to 24 hours after ingestion.¹¹ Poppy seeds do, in fact, contain the opiate compounds morphine and codeine, and at levels detectable by an EMIT opiate assay. The compounds detected in urine by immunoassay, or any other urine testing technology, are indistinguishable from those resulting from heroin use.

One way to differentiate heroin use from poppy seed ingestion, is to have the subject donate another urine sample following a period of abstention from the poppy-seed food. Another way is to test by GC/MS for 6-monoacetylmorphine, a urine metabolite unique to heroin. While this metabolite may be present in urine for only a short time after heroin use, confirmation of this compound is considered proof of heroin use.¹²

Can melanin, the substance in humans that causes skin color, cause false-positive results in EMIT marijuana Assays?

It has been suggested that melanin and other related compounds, thought to occur in higher concentrations in blacks and other darker-skinned people, can cross react with marijuana assays, and cause false-positive results. Researchers did studies in which these compounds were tested at levels far exceeding naturally occurring concentrations, and no cross-reactivity was found.¹³

Can positive results for marijuana be caused by passive inhalation (exposure to someone else's smoke)?

Such positives are, in fact, possible. However, studies indicate that the exposure to "sidestream smoke" must be so intense, that it would be difficult to encounter such exposure levels in real-life situations. Additionally, the marijuana (THC) from such exposure is detected only when the test has a very low cutoff level (for example, 20 ng/mL) many drug testers use a cutoff of 100 ng/mL. No positive results for passive inhalation have been detected when a 100 ng/mL cutoff level test has been used. In fact, studies simulating the exposure conditions found in real-life situations, such as a private party, produced THC levels far below a 20 ng/mL cutoff.¹⁴

To date, there are no published studies examining the question of passive inhalation from drugs other than marijuana.

Can operator error or equipment malfunction cause false positives?

If an operator switches two samples—one truly positive with one truly negative—the test results will, of course, be wrong. However, to prevent errors of this type, laboratories follow strict chain-of-custody procedures, which document the integrity of a sample as it moves through the testing cycle.

As to equipment malfunction and other types of operator error, laboratories follow strict quality control procedures to ensure that the testing equipment is in proper condition, and that the test operator performs the assay procedures correctly. Performed under these conditions, drug test results are at least 97% to 99% accurate, according to studies performed by the American Association for Clinical Chemistry.^{15,16}

Are retention times important?

Yes, at least in some circumstances. Retention time refers to the length of time, after a drug has been consumed, that the body will expel the drug

at a detectable level. Retention times can vary depending upon a number of factors including: the drug taken; the test-subject's metabolism; the frequency of drug use; and the amount of drug ingested. In addition, the lower the cutoff level, the longer the drug will be detected by the test.

Agencies doing drug testing should be familiar with retention times for various drugs. Uncertainty about the retention time of PCP led a court to find a person not guilty of drug use, in a criminal case requiring proof beyond a reasonable doubt.¹⁷

More detailed information about retention times is available in the guide: Frequently Asked Questions About Syva's EMIT Drug Abuse Tests.¹⁸

Shouldn't we use tests at the lowest possible cutoff level to catch as many drug users as possible?

As stated above, the lower an assay's cutoff, the longer a drug will be detected by a test. Decisions about using low cutoffs should be based on the aims of the drug-testing program. Criminal justice agencies testing prisoners, parolees, or probationers for violations of rules or release conditions may, indeed, want to use the lowest cutoff levels available. However, the passive inhalation issue is one reason why testing at the lowest possible cutoff may not always be wise.

The current EMIT Assay cutoff levels are used because they have been shown, over the last 20 years, to reliably separate drug users from non-users. For the convenience of drug testers, the EMIT cannabinoid assays are available at cutoffs of 20, 50, and 100 ng/mL.

Should offenders be allowed to have their urine samples independently tested?

One court has said that probationers have such a right.¹⁹ Another court has ruled that prison inmates do not.²⁰ There is likely to be more litigation on this question.

If independent tests are allowed or required, the criminal justice agency involved should ensure that the tests are at least as sensitive as the original tests. A less-sensitive test might fail to detect the presence of the drug in question.

A final word of caution.

It is easy to find critics of drugs-of-abuse testing. Attacks on the reliability and accuracy of testing technologies should be carefully examined. Rumors about test accuracy often tend to become “fact” because no one takes the time to verify them. Criticisms about one technology or one assay do not necessarily apply to all technologies or assays. Study results purporting to show the inherent inaccuracy of EMIT Assays may be explainable for other reasons. Criticisms about an assay that was on the market five years ago may be irrelevant today because of changes in the chemistry of that assay. Court opinions may be misstated or even reversed by later decisions.

Users of EMIT tests, therefore, should stay in close contact with Siemens Healthcare Diagnostics to verify—or rebut—technical assertions about the assays.

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4. National Treasury Employees Union v. Von Raab, 109 S.Ct. 1384 (1989).
5. Higgs v. Bland, 888 F. 2d 443 (6th Cir. 1989); Peranzo v. Coughlin, 850 F. 2d 125 (2d Cir. 1988).
6. Smith v. State, 250 Ga. 438; 298 S.E. 2d 482 (1983); People v. Walker, 164 Ill. App. 3d 133; 517 N.E. 2d 679 (1987); Connecticut v. Johnson, 11 Conn. App. 251; 527 A. 2d 250 (1987), all approved use of unconfirmed EMIT test results in the probation context.
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19. State v. Quelnan, 767 P. 2d 243 (Hawaii 1989).
20. Pella v. Adams, 723 F. Supp. 1394 (D. Nev. 1989).

Appendix

The use of EMIT drug-of-abuse tests has received support from many courts. In fact, EMIT drug tests enjoy a level of judicial support not approached by any other screening technology. They are the only proprietary drug-of-abuse tests to have been validated by appeal courts.

The following cases deal solely with EMIT tests in the context of prison disciplinary actions or probation/ parole revocations*. However, the courts have upheld the use of EMIT Assays in private and public employment testing programs as well. In this regard, EMIT test results were recently favorably cited by the United States Supreme Court in the case of National Treasury Employees Union v. Von Raab.

At issue in the following cases is whether the use of EMIT test results, either alone or confirmed by a second EMIT test or an alternative test, is legally sufficient for imposing discipline on prisoners who have tested positive. Overwhelmingly, the courts have found that they are.

* Please note that this is not an exhaustive review of all cases concerning EMIT drug tests in the criminal justice context. There exist innumerable cases involving EMIT drug tests that were decided below the appellate level and therefore are not published.

1 **Peranzo v. Coughlin**

850 F. 2d 125 (2nd Cir. 1988)
675 F. Supp. 102 (S.D.N.Y. 1987)**
608 F. Supp. 1504 (S.D.N.Y. 1985)

The court upheld the use of double EMIT testing (samples testing positive by an initial EMIT test are retested by an EMIT Assay) against a challenge by New York inmates. The court found that “the testing procedure—an initial test and a subsequent confirming test—has an accuracy of at least 98%” and that “the test results may be relied upon as sufficient evidence to warrant prison discipline.”

2 **Spence v. Farrier**

807 F. 2d 753 (8th Cir. 1986)

The court rejected a challenge to double EMIT testing by prisoners at the Iowa State Penitentiary. The court stated that “EMIT tests have been found sufficiently reliable to meet the requirements of the due process clause” and that the prisoners’ assertion that the results of the EMIT test are inadmissible because of lack of scientific support was “without merit.”

3 **Higgs v. Bland**

888 F. 2d 443 (6th Cir. 1989)

The court upheld the use of double EMIT testing for inmates incarcerated at the Kentucky State Penitentiary and the Kentucky State Reformatory. The court held that “the reliability of the EMIT test has repeatedly been found to meet due process standards” and that “no evidence was produced in this case to indicate that the probability of false results was more than a mathematical possibility.”

4 **Harmon v. Auger**

768 F. 2d 270 (8th Cir. 1985)

This case involved a challenge by two inmates at the Iowa Mens Reformatory regarding the withdrawal of visitation rights due to the use of marijuana. The court held that EMIT test results “form a sufficient basis for disciplinary action and foster the objective of preventing drug usage at the Reformatory.”

**case quoted

5 **Thompson v. Hall**

No. 88-6525 (4th Cir. 1989) (unpublished)

The court upheld the use of unconfirmed EMIT results against a challenge by inmates of the Maryland Division of Corrections. The court stated that the institution “employed a well-recognized scientific methodology to detect drug use” and that the inmates received “all the process due them under the Constitution and interpreting case law.”

6 **Pella v. Adams**

723 F. Supp. 1394 (D. Nev. 1989)
702 F. Supp. 244 (D. Nev. 1988)*
638 F. Supp. 94 (D. Nev. 1986)

The court held that double EMIT testing does not violate the inmates’ due process rights and that such testing may be used as the “sole evidence” in finding inmates guilty of drug use. The court also held that inmates do not have a right to an independent test of the sample.

7 **Jensen v. Lick**

589 F. Supp. 35 (D. N.D. 1984)

A North Dakota State Penitentiary inmate claimed, among other things, that the EMIT technology was unreliable. The court concluded that EMIT test results can be relied upon “with 95% confidence,” which is “tantamount to almost complete certainty” and, therefore, that the “level of reliability is adequate to support a decision for administrative punishment in the prison circumstance.”

8 **Wykoff v. Resig**

613 F. Supp. 1504 (N.D. Ind. 1985)
aff’d, 819 F. 2d 1143 (7th Cir. 1987)

An inmate at a work release program challenged the loss of “good time” credits and other disciplinary action taken on the basis of a positive EMIT test. The court held that EMIT testing, when confirmed by a second EMIT test or its equivalent, was sufficient to impose disciplinary sanctions against the inmate.

*case quoted

9 **Adkins v. Martin**

699 F. Supp. 1510 (W.D. Okla. 1988)

A federal inmate claimed that disciplinary action was taken on the basis of a false-positive EMIT test result caused by cross-reactivity with a prescription drug and kidney ailments. The initial drug screen was an EMIT test; all initial positive samples were confirmed by GC/MS. The court held that “the evidence meets the substantial evidence standard and is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.”

10 **Rucker v. Johnson**

724 F. Supp. 568 (N.D. Ill. 1989)

An inmate challenged the imposition of prison disciplinary action taken on the basis of a positive EMIT test result confirmed by thin-layer chromatography. The court held that the disciplinary action was based on adequate evidence.

11 **Lahey v. Kelly**

71 N.Y. 2d 135 (1987)

This decision reviewed seven separate prison disciplinary proceedings in which the use of double EMIT testing was challenged. The court held that double EMIT testing is “sufficiently reliable to constitute substantial evidence to support a determination that an inmate has used illegal drugs.”

12 **Berrios v. Kuhlmann**

143 A.D. 2d 475; 532 N.Y.S. 2d 593 (1988)

The court upheld the use of double EMIT testing of inmates for prison disciplinary purposes, stating that “the EMIT test results provided substantial evidence to sustain the prison disciplinary charges of narcotic use” and that “there is no question as to the scientific validity or reliability of the drug tests employed in this case.”

13 **Amaro v. Ternullo**

141 A.D. 2d 539; 529 N.Y.S. 2d 152 (1988)

The court held that the use of double EMIT testing constitutes substantial evidence to support prison disciplinary proceedings.

14 Jones v. U.S.

548 A. 2d 35 (1988)

This case challenged the testing of an arrestee by the District of Columbia Pretrial Services Agency. The court held that “EMIT test results are presumptively reliable and thus generally admissible into evidence in every case.”

15 Smith v. State

250 Ga. 438; 298 S.E. 2d 482 (1983)

This case considered the constitutionality of a random drug-testing program as a condition of probation. The court decided that probation could be revoked on the basis of a single EMIT test, upholding a lower court’s decision that EMIT technology had reached a “scientific stage of verifiable certainty” sufficient to admit the results into evidence.

16 People v. Walker

164 Ill. App. 3d 133; 517 N.E. 2d 679 (1987)

This case involved the revocation of probation based on double EMIT testing. The court held that “where the EMIT test procedure is performed twice, it is sufficiently reliable where it is the only evidence of drug use in a probation revocation proceeding.”

17 Waterman v. Iowa

387 N.W. 2d 776 (1986)

The court held that the failure to give an inmate a copy of an EMIT test report, which showed a positive result for cannabinoids, was not a violation of his due process rights.

18 Abreu v. Coughlin

141 Misc. 2d 1025; 537 N.Y.S. 2d 105 (1989)

The court dismissed a challenge from an inmate that the failure to provide certain calibration information concerning the inmate’s positive EMIT test results rendered those results inadmissible.

19 Brown v. Scully

137 A.D. 2d 595; 524 N.Y.S. 2d 486 (1988)

The court held that double EMIT test results are sufficiently reliable to constitute substantial evidence in prison disciplinary proceedings. The court also noted that “scientific literature supports the finding that a delay in testing will not affect the reliability of the EMIT test where the specimen is promptly frozen and kept in that state until shortly before testing.”

20 In re Johnston

109 Wash. 2d 493; 745 P. 2d 864 (1987)

This case involved the imposition of disciplinary sanctions—specifically, the loss of “good time” credits—based on a single EMIT drug test showing that the inmate had used marijuana. The court held that the sanctions may be imposed on the basis of a single EMIT urinalysis test.

21 Connecticut v. Johnson

11 Conn. App. 251; 527 A. 2d 250 (1987)

The court upheld the revocation of probation where the probationer’s violation of a condition of probation (that is, the use of illegal drugs) was established through random testing using double EMIT testing.

22 Vasquez v. Coughlin

118 A.D. 2d 897; 499 N.Y.S. 2d 461 (1986)

A prisoner, whose urine had tested positive for cannabinoids by double EMIT testing, challenged the reliability of the test results. The court stated that “the reliability of EMIT test results for use in prison disciplinary proceedings has been established by ample scientific evidence” and that “the test results in the instant circumstances were sufficiently reliable to constitute substantial evidence.”

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Notes: