

Advisability of Substance Abuse Testing in Parents Who Severely Maltreat Their Children: The Issue of Drug Testing before the Juvenile/Family Courts

Richard Famularo, MD; Gayl Spivak; Doris Bunshaft, MA; and Jeffrey Berkson, MA

The authors discuss the advisability of juvenile courts requiring urine testing for parents who severely maltreat (abuse and/or neglect) their children. While urine testing for substance abuse is not sufficient to ensure adequate treatment, it is important as part of the overall substance abuse treatment in a selected group of parents. An objective of this article is to offer specific urine testing guidelines in the context of child maltreatment cases in which the court considers removing children from parental custody to state custody. Although potentially useful, urinalysis to detect abused substances has limitations and is appropriate only in well-defined situations. Effective treatment of the substance-abusing, child-maltreating parent must be multimodal, with treatment of substance abuse as the first and most important step.

The issue of mandatory drug abuse testing is surrounded by controversy. Positions are defended strenuously, and personal beliefs become generalized rules. These "rules" are then applied without consideration of specific situations. Clearly, individual case assess-

ment is required to answer any questions regarding substance abuse testing.

The primary intent of the authors is to address the testing issue as an integral part of an effective strategy for intervention. The position proposed in this article is strictly limited to child custody cases and not meant as an argument for or against substance abuse testing in other situations.¹ The situation in the juvenile court is unique by virtue of the child's central position. Therefore, a discussion of substance abuse testing in this context must include consideration of the child's best interests.

Dr. Famularo is affiliated with Boston Juvenile Court and Harvard Medical School and is Director of the Psychopharmacology Clinic, Department of Psychiatry, Children's Hospital, Boston, MA. Gayl Spivak is a student intern. She and Dr. Bunshaft are affiliated with the Psychology Division, Boston Juvenile Court, Boston, MA. Dr. Berkson is Director of the Adolescent Program, Evanston Hospital, Evanston, IL. Address reprint requests to Dr. Famularo, Department of Psychiatry, Children's Hospital, 300 Longwood Ave., Boston, MA 02115.

Substance abuse is defined here as the misuse of any chemical or drug, including alcohol, which results in any cognitive, social, or behavioral dysfunction. While the authors refer to the term "abuse," it should be understood that the position put forth also pertains to the condition of addiction. Addiction is defined as physiological dependence, development of withdrawal symptoms upon cessation of use, and excessive drug-seeking behavior.

The principal author reported previously on the incidence of parental alcoholism in cases of severe child maltreatment in which the child was removed from parental custody. This study² revealed alcoholism or a history of alcoholism in 30 percent of the mothers (control = 9%) and in 50 percent of the fathers (control = 6%) as determined by Research Diagnostic Criteria.³

Previous reports^{4,5} reveal that alcohol abuse is associated with family dysfunction and child maltreatment. Controlled studies^{2,6} have shown that substance-abusing parents are more likely to severely maltreat their children than are those parents who do not abuse substances. Another study⁷ found a significant history of alcoholism among parents who have had their parental rights terminated.

Parents facing the court constitute a distinct subgroup of substance abusers, not by virtue of their drug abuse patterns but because of the child custody issue. All decisions made by the court, therefore, must address not only the principles of substance abuse treatment for an individual but also the welfare of the child.

Four central questions must be asked when proposing drug testing. Will the program (1) aid in detection of substance abuse, (2) motivate the parent to engage in substance abuse treatment, (3) aid in the treatment process, and (4) increase the chances of a favorable outcome for the child? Careful consideration must be given to each of these questions before initiation of any evaluation and treatment program.

Care and Protection Process in the Juvenile/Family Court Setting

The advisability of court-ordered urine drug testing in parents who have severely maltreated their children is to be differentiated from the legal power of the court to order such testing. Under Massachusetts state law the court has the "power to use necessary means to exercise and enforce that jurisdiction, and broad mandate to act in furtherance of child's welfare."⁸ Furthermore, "if the court finds allegations in the petition proved . . . it may adjudge that the child is in need of care and protection and may commit the child to the care of the department [social service agency] . . . or make any other appropriate order with reference to the care and custody of the child as may conduce to his best interests. . . ."⁹ The "judge may order temporary arrangements such as supervised visiting and counselling which look to restoration of family unit."¹⁰

State law provides for child protection and under appropriate circumstances the state may take custody of the child. When "the court is satisfied that there is reasonable cause to believe that the child is suffering from serious abuse or ne-

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glect, or is in immediate danger of serious abuse or neglect, and that immediate removal of the child is necessary to protect the child from serious abuse or neglect, the court may issue an emergency order transferring custody of a child under this section to the department or to a licensed child care agency or individual. . . ."¹¹ Involuntary child removal from parental custody remains a rare event, representing only .06 percent of all alleged child abuse or neglect reports. The vast majority of alleged child maltreatment cases are managed by the social service department without any court involvement. Permanent removal of children is appropriate only via "clear and convincing evidence."¹² In 1982 the United States Supreme Court decided that, at least, the clear and convincing evidence standard of proof applied to state's parental rights termination proceedings.¹³ In *Santosky v. Kramer*, parents unsuccessfully challenged the constitutionality of a New York statute under which the state may terminate the rights of parents when the finding of "permanently neglected" is supported by a fair preponderance of the evidence.

The juvenile/family court typically issues orders relative to the child's placement, medical care, financial support, and general welfare. It also issues orders relative to the reunification of the family. Parents are directed by the court to participate in any manner the court deems appropriate. Typically, the court would issue directives relating to parental visitation and treatment. Because the petition is not a criminal matter, parents are not subject to prosecution or imprisonment for noncompliance with the

court directives. It is the court's mandate to reunite families wherever possible, and because the court determines the conditions under which the family may be reunited, to this extent it exerts influence over parental behavior.

Drug Testing and Techniques

Random urine testing, in most circumstances, remains inadvisable. Current practice is to use several different laboratory assays. Unfortunately, most individuals and institutions misunderstand or are misinformed about urine substance abuse assays. Laboratories process large numbers of urine samples. Currently, the most common assay is the enzyme-multiplied immunoassay technique (EMIT). Other commonly used methods include gas chromatography (GC), thin-layer chromatography, mass spectroscopy (MS), high-pressure liquid chromatography, and combination techniques such as GC-MS. The manufacturer claims that EMIT tests give correct results for 97 percent to 99 percent of all samples tested and at least a 95 percent confidence in the accuracy. These rates apply when each operator runs the test according to the manufacturer's instructions. "Incorrect results most commonly are due to the improper handling, storage or testing of samples."¹⁴ In other words, the test, if done under ideal circumstances, yields highly (but not completely) accurate results. Accuracy obviously is decreased by human or machine error and the frequency of error cannot be fully known. It is likely, therefore, that the rates cited will not be reached. Previous proficiency studies conducted by the Centers for

Disease Control¹⁵ indicate that laboratories "miss a substantial number of drug challenges," reflecting "serious shortcomings in the laboratories."

Upon determination of a positive (drug present) or negative (drug absent) result, the information is forwarded to the requesting party. Incorrect data are potentially very damaging for an individual, such as a parent involved in a court proceeding. In an attempt to lessen the likelihood of a false-positive result (drug reported as present though it is actually not present in the urine sample), confirmation is required. Confirmation implies repeating the urine assay, often by a different method. GC-MS technique is the most sensitive and specific of the urine assays and results from this technique have been entered as evidence in court proceedings. However, given its design and cost, a screening process using this method would be prohibitively expensive. Theoretically, confirmation by GC-MS would make false-positive results rare. Reports of false-negative results (drug reported as not present though it actually is present in the urine sample) would not have the same level of confidence, because confirmation is performed only upon determination of a positive result. Currently, confirmation testing is not routinely performed and most labs will only double-check the urine sample upon specific request. A recent survey¹⁶ of experts who defended analytical data offered the opinion that confirmation of a positive result via a different procedure "adds significantly to the defensibility of the data in court."

As it is currently practiced and used, drug testing is not fully accurate, and certainly raises concerns with respect to individual rights. Therefore, most, but certainly not all, opinion opposes substance abuse testing. This opposition is not appropriate to single random urine testing. A positive test on a single isolated drug abuse screen, even if fully accurate, only documents a very recent exposure to the drug without proving or disproving repeated use. Furthermore, a positive result does not indicate the level of social, familial, or psychological dysfunction experienced as a result of drug use. Interpreting a single positive result is unwise because of its potential for misrepresenting the occasional recreational user, or for underestimating the poor functioning of the person who is seriously abusing drugs.

Comment

Effective treatment of substance abuse requires that the drug abuser admit to his or her behavior and feel and exhibit some motivation to change this behavior. The authors fully support this position. However, the responsibility to protect children and provide a safe environment resides with the state as well as with parents. When a child is deemed to be in need of care and protection, the court has the responsibility to decide matters in the best interests of the child. In discharging its responsibilities to care for and protect a child, the court cannot ignore a high index of suspected parental substance abuse, given the potentially deleterious effects upon the child. The court issues many orders, one of which

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may relate to urine testing for drugs of abuse. The authors support this testing of parents if all the following conditions are met.

Reasonable Suspicion of Substance Abuse Before any order for testing, other evidence should be obtained. Whereas termination of parental rights requires clear and convincing standard, the court may order urinalysis when there is reasonable suspicion that the parent has abused substances. Evidence may be gathered through direct observation by qualified personnel who possess an appreciation of the sequelae and presentation of substance abuse (lability of mood, irritability, slurred speech, disturbance of gait, sedation, pupillary changes, disheveled appearance, variable neurocognitive performance, etc.). The use of semistructured interviews (SKID-II), Research Diagnostic Criteria, or self-rating scales may be of benefit in defining substance abuse. Given the current bias against full disclosure, all pertinent information should be included in the diagnostic assessment. Reasonable suspicion may also be established by a history of alleged substance abuse by family members/significant others or by other historical evidence (driving under the influence, aggression while using drugs, previous substance abuse treatment, tolerance to substance, morning drinking, withdrawal symptoms, etc.) consistent with substance abuse. The evidence should indicate the existence of a parental substance abuse problem that may be contributing to maltreatment of the child.

Multiple Urine Samples As noted

earlier, a single urine sample is not particularly useful. Drug samples should be performed twice weekly for at least two months in persons alleged to be drug abusing or addicted (to aid detection) and for at least three to six months for persons known to be recently drug addicted or abusing (to aid in confirming a current drug-free state). Compliance is greatest when the urinalysis is performed at a hospital or clinic in close proximity to the parent's home. Results should be directed to the court and one person (e.g., probation officer) should have responsibility for coordinating tests and collecting data.

Confirmation Any initial positive urine test must be confirmed by a second technique, preferably GC-MS. The court must request automatic confirmation for all urine samples. Only confirmed samples should be reported as positive and the state must bear the cost of the confirmation testing.

Treatment Any parent requesting drug treatment or found to be drug abusing/addicted should be immediately referred to the proper treatment facility. An evaluation of the extent of abuse and the level of dysfunction should take place during initial presentation to determine the appropriate intervention (i.e., inpatient or outpatient, group or individual). The compliance of the parent and the associated diagnoses/difficulties, as well as the quality of the program, determine the eventual success of the overall intervention. Urinalysis is but a small part of the treatment program that only has value in determining whether a substance has recently been

ingested, without reference to severity of dysfunction. Urinalysis serves as a device to ensure that a known substance abuser is remaining substance free. Various other forms of treatment (e.g., individual, family) may be appropriate in addition to substance abuse treatment and should begin as soon as possible.

Detection of substance abuse (presumably in those who deny their active drug use) can only be increased if testing is frequent and consistent. Drugs such as cocaine, amphetamines, and certain opioids are quickly metabolized and might not be detected by either random or weekly urine testing. Urine testing is clearly intrusive, so if the court decides on this course of intervention in the interest of the child it must do so correctly and with a foundation in science.

The court is using substance abuse testing first to ensure that the child is not subjected to a drug-abusing parent and second to encourage maltreating and substance-abusing parents to become involved in appropriate treatment.

Urine testing *per se* would not lead to a better treatment outcome for either the parent or the child. The court, though, is saying to these parents: If you will admit to yourself and to the court that you have a problem with substance abuse, we will help provide treatment and you will be improving your chances for regaining custody of your child. Obviously, parents retain the right to refuse all treatment without fear of criminal punishment. If parents refuse to submit to urinalysis, or for that matter if they refuse to participate in any court-ordered intervention, the court considers

their refusal and decides in the best interest of the child, provided that a clear and convincing standard has been met for termination of parental rights. The court must then decide whether the child should be returned home or should reside in a foster setting.

Substance-abusing people often suffer multidimensional problems and may be disproportionately disposed to personality disorder, depression, difficulty with peers and spouses, and criminality. These problems may be precipitated or worsened by drug abuse or may function independently from abuse. It is not clear, necessarily, that a substance-abusing parent once returned to sobriety will in fact become a more effective parent, but it is our belief that a substance-free parent will function at a higher level than will a substance-abusing parent. For example, it may be naive to assume that an alcoholic with a criminal record or with a history of violence toward his family will stop being violent or aggressive upon successful treatment of the alcoholism. This certainly would be our hope, but the hope and the reality of the situation may be widely separated. It is quite likely that individuals who severely maltreat their children have a more fundamental problem, whether environmentally or biologically generated, that leads to multiple areas of difficulties, only one of which is substance abuse.

This fundamental or developmental problem may predispose the parent to poor socialization, poor parenting, depression, substance abuse, and criminality, among other problems. Given this range of other concerns, it is not

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clear that effective substance abuse treatment will effectively treat the child abuse or neglect. However, it is clear that effective overall treatment cannot proceed during active substance abuse. Because the substance abuse, and certainly addictive states, can be emotionally and physically all-consuming, the treatment of this problem must be addressed before other concerns. It is typically futile to offer the more conventional psychotherapies to an active substance abuser, given his or her poor motivation and compliance. Affect, cognition, and judgment are too often impaired in substance abusers to allow for successful treatment.

Upon successful completion of substance abuse treatment, other problems may be addressed with much greater likelihood of success. At this point a multimodal intervention is indicated including social supports for isolated parents, financial assistance as appropriate, group therapy for those with interpersonal difficulties, probation follow-up as applicable, and medication for major psychiatric disorders, (especially depression), as well as human support and educational succor for parents.

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