二零一二年十一月六日
討論文件

立法會保安事務委員會
爲更生人士提供釋後監管
及相關的尿液樣本測試安排

目的

本文件向委員滙報懲教署的釋後監管及相關的尿液樣本測試安排。

懲教署提供的釋後監管服務

2. 釋後監管的目的，是透過與受監管者定期接觸予以密切監管，以確保他們遵守監管條款，奉公守法，成功融入社會，避免重蹈覆徹。一般的監管條件包括受監管者須與監管人員定期會面、從事監管人員認可的工作和居住在認可的地址、不可再觸犯法例等，部份受監管者亦須接受精神和心理輔導服務。

3. 懲教署根據不同的法例向更生人士進行釋後監管，部份監管計劃的條件在法例訂明，部份計劃的條件則由有關的法定委員會按受監管者的個案情況而訂定。其中一個主要受監管者的類別，是從戒毒所[1]獲釋的更生人士。該些更生人士包括青少年和成年人士，他們均曾在戒毒所接受治療及訓練。《戒毒所條例》(香港法例第244章)訂明由戒毒所獲釋的人士必須接受一年的釋後監管。有關的監管條件主要包括受監管者必須最少每月與監管人員會面一次、從事監管人員認可的工作、居住在認可的地址、不能再濫用危險藥物，以及不能再觸犯任何香港法例等。在二零一二年九月底，共有996名人士按《戒毒所條例》接受釋後監管。

4. 爲清楚了解受監管者的生活和工作模式，以及更了解受監管者重返社會後面對的考驗及來自朋輩的誘惑，懲教署監管人員一般會前往受監管者的居所或工作地點進行探訪和會面，爲他們提供適切的輔導及支援，以協助他們重新融入社會及保持健康生活，遠離不良的影響。

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[1] 懲教署共有三所戒毒所，包括喜靈洲戒毒所、勵新懲教所及勵顧懲教所，在二零一二年九月底共約有700多名青少年及成年所員。

測試受監管者尿液樣本

5. 爲確定受監管者有否在監管期內再吸食毒品，監管人員會以突擊形式，向受監管者收取尿液樣本。收集尿液樣本的工作會在監管人員在場下，在受監管者家中、工作地點，或其他適合地點(例如公厠)進行。一般情況下，懲教署的測試中心[2]會對受監管者的尿液樣本進行初步測試，其後樣本會被送往政府化驗所作確認測試。懲教署人員如認爲有需要就個別個案進行加快測試程序，亦可將尿液樣本直接送往政府化驗所作測試。

6. 假如在政府化驗所的測試中顯示受監管者曾有吸食毒品，監管人員會檢視個案情況，並根據有關條例，向懲教署署長建議向該名受監管者發出召回令，將其召回接受戒毒治療。

戒毒所成功率

7. 戒毒所所員在獲釋後的一年法定監管期內，若沒有「再次吸食毒品」或「觸犯香港法例而再被法庭定罪」，便視作成功個案。在過去三年，戒毒所的成功率如下：

年份	2009	2010	2011
戒毒所成功率	64.7%	49.7%	42.2%

8. 保安局和懲教署均沒有爲戒毒所的成功率定下目標。事實上，戒毒所成功率受多種個人及社會因素影響，包括受監管者過往的犯罪和吸毒背景(例如過往犯罪紀錄多寡、吸食毒品年期長短及犯罪性質等)、受監管者本身的戒毒動機和決心、社會及受監管者家人的支持，以及社會上毒品泛濫的情況等。

9. 除了觸犯上述第7段提及的「再次吸食毒品」及「觸犯香港法例而再被法庭定罪」兩項條款而會被召回外，監管人員亦會因受監管者違反其他監管條款(例如拒絕提供尿液樣本、未有每月最少與監管人員會面一次等)而發出召回令，目的是希望在受監管者還

[2] 懲教署共有五個測試中心，設於荔枝角懲教所、喜靈洲戒毒所、赤柱監獄、大欖懲教所及石壁監獄。

未泥足深陷、干犯罪行或再次吸毒前，將其召回接受進一步訓練及輔導。

就尿液樣本測試安排的改善措施

10. 在二零零九年，兩名懲教署人員被控以「公職人員行爲失當」。案情涉及兩人在執行《戒毒所條例》下的釋後監管安排時，提供虛假尿液樣本。在該案審訊期間，兩名被告辯稱提供虛假尿液樣本是受上司及署方管理層施壓。經審訊後，兩名被告於本年十月初被判罪成。而主審法官在判詞中表示，並不相信懲教署管理層或高級人員曾作出兩名被告辯稱的指示，或默許提供假尿液樣本等行爲，以圖提升戒毒所成功率。判詞中有關部份見附件(只有英文版本)。

11. 懲教署從來沒有施壓，要求職員將成功率維持在高水平。然而，事件亦顯示尿液樣本收集程序有改善的空間。懲教署已全面檢討戒毒所所員獲釋後的監管工作程序，尤其是就尿液樣本收集程序方面。檢討建議一系列改善措施，以減少尿液樣本的人爲干擾因素。有關安排如下：

(a) 督導人員(即監管人員的上司，一般爲高級懲教主任)會向監管人員派發收集尿液樣本的容器，容器上除了寫有受監管者姓名、囚犯編號及取樣日期的標貼外，亦會貼上印有獨立編號，並具防干擾功能之保安標貼。受監管者在提供尿液樣本時，可留意容器上的資料是否有誤。

(b) 收取尿液樣本後，監管人員須在受監管者面前，將防干擾瓶蓋蓋上。若瓶蓋在事後再被開啓，瓶蓋會顯示損毀。

(c) 監管人員必須最遲於收取尿液樣本後的第二個工作天，將所收集的尿液樣本送交懲教署測試中心或政府化驗所。

(d) 懲教署測試中心及政府化驗所職員在接收尿液樣本時，會確定瓶蓋沒有損壞。如有損壞，職員將不會接收該尿液樣本，同時會通知懲教署更生事務組作出相

應跟進行動。

(e) 監管人員必須於「樣本容器使用記錄」清晰記下有關樣本瓶的使用細節，包括受監管者的犯人編號及收集尿液樣本日期，並須將「樣本容器使用記錄」定期呈交督導人員存檔及審核。

(f) 督導人員會不時查閱「樣本容器使用記錄」，確保容器及瓶蓋的使用數量正確無誤。

(g) 督導人員須以隨機抽樣方式對受監管者執行突擊驗尿，然後與監管人員收取的樣本的測試結果作出比對，以減低造假的機會。

12. 以上措施自二零一零年起相繼實施，以減低監管人員和受監管者干擾尿液樣本的機會、加強對受監管者的監察、加快處理違反監管條款的個案，以間接減低受人爲因素影響的可能性。爲了進一步確保有關程序有效避免人爲干預，懲教署已邀請廉政公署防止貪污處就這一系列程序進行全面檢討。檢討工作已於本年十月展開。

13. 另一方面，懲教署正在構思其他措施，以加強尿液樣本測試安排的嚴謹度。例如懲教署正積極研究設立「尿液樣本收集中心」，由其他懲教人員(即非更生事務組人員)收集及處理尿液樣本，以減低當中可能涉及的利益衝突，中心內亦會設有閉路電視記錄及監察化驗過程。此外，爲了提升尿液樣本測試安排的效率，署方計劃採用全新的「尿液樣本測試杯」。此測試杯具有即時測試多款毒品的功能，可讓監管人員盡早初步得悉受監管者有否重沾毒品的跡象，並作出適時的介入，亦防止受監管者因吸食毒品而觸犯其他相關罪行。

14. 懲教署一直非常注重職員的操守及誠信，絕不容忍任何職員違反法例。若發現任何職員有違法行爲，我們必定會嚴正依法處理。

保安局
懲教署
二零一二年十月

就「公職人員行爲失當」審訊的判詞(節錄)
(只備英文版本)

As the number of "improper supervisions" by the defendants and any others who may have been also so misconducting themselves cannot be known, so the extent of the impact on relapse figures also cannot be known but there will certainly have been an impact.

I find the increases in relapse figures are due much more to the factors I have just referred to, in combination, rather than being the indicator of very widespread improper practices such as those of D1 and D2, at such a level that Supervisor or Executive Orders can be inferred.

D1 and D2 each presented as a witness whose evidence was not plainly to be disbelieved. Parts of their evidence were credible.

However the essence of their case was that a "reading between the lines" of documents such as Minutes of Meetings and the various reports, figures and statistics referred to, should lead to the conclusion that there had indeed been the Superior or Executive Orders they sought to establish in this hearing.

I do not accept the interpretations necessary to found that conclusion nor do I accept the conclusion itself. Such evidence as has been given by D1 and D2 as to claimed utterances from senior CSD officers taken as directing or being acquiescent as to improper supervision practices, I find not to be credible. I do not believe them.

The prosecution witnesses gave evidence which I found to be clear, cogent and compelling. I believed it.

I find the evidence does not establish the existence of Superior or Executive Orders as to the improper supervision practices addressed in the evidence..

I do however find, on the balance of probabilities, that, in addition to D1 and D2, amongst some unknown number, but certainly not all, of the front line supervising officers of RU over the period covered by the service of D1 and D2 in RU, there had developed a practice whereby there were departures from the officially instructed requirements of supervision whereby, to varying degrees, supervisees were dealt with in improper ways resulting in urine samples being produced or obtained in such ways as to not lead to

Recall Order processes being implemented despite there being indications the Recall Order process would likely be warranted upon proper inquiry and analysis being done.

The supervision process being corrupted in this way would of course have resulted in fewer recalls and corresponding figures giving an inaccurate "better" picture of the Success Rates than was the true "on the ground" reality.

I find however that the evidence does not establish that the gathering of "better" Success Rates for forwarding to senior officers was the motivation or driving force for the use of the improper practices.

I find the greater likelihood is that given the nature of the recovering drug addict supervisees themselves and the numbers of them required to have time-taking "hands on" supervision by RU field staff, together with the dispiriting constancy of a high rate of field observations by supervisors of supervisees having relapsed, there developed an attitude of "let's just do enough to deal with the numbers and keep things generally under control".

Human nature being what it is, I do not of course, overlook the likelihood of the element of "laziness by shortcut" being also present to some degree. There is plainly more work required to assiduously supervise each supervisee fully as officially required, as opposed to doing what was done here, circumventing of the full rigours of supervision by the various improper means referred to in the Summary of Facts and the evidence.

I find that the impropriety engaged in byD1 and D2 was motivated by self-interest of the sort described in the foregoing passages rather than any intention to generate figures for use beyond the filing of field-level reports in the course of the improperly conducted and shortened purported field supervisions.

In the result, the material upon which the defendants will be sentenced will not include the element of "Superior or Executive Orders", that not having been established on the evidence before me but will include my finding that the defendants were not just two "rogue supervisors" but that for some years

a greater but unknown number of fellow field staff colleagues had acted or were acting similarly.

Let me say again with emphasis, I expressly do not find that the evidence establishes all field supervisors of RU HLC over the period referred to were engaged in the impropriety referred to in the evidence.

However I do find that some unknowable number, it is to be hoped, a small minority, were so engaged. Whatever that number was, it was sufficient to imbue the defendants with the some "support by numbers" as the defendants went about what they well knew was misconduct.

Allan J. Wyeth

Deputy Magistrate

27th September 2012