

For discussion on
6 November 2012

Legislative Council Panel on Security

Post Release Supervision of Rehabilitated Offenders and Related Testing Arrangements for Urine Sample

Purpose

This paper briefs Members on the post release supervision provided by the Correctional Services Department (CSD) and the related testing arrangements for urine sample.

Post Release Supervision Provided by CSD

2. The purpose of post release supervision is to ensure supervisees comply with the conditions of supervision, help them reintegrate into the society as law-abiding citizens and prevent their relapse through regular contacts and close supervision by supervising officers. In general, the conditions of supervision require that a supervisee shall meet with the supervising officer regularly, undertake employment and reside at an address approved by the supervising officer and not breach any laws, etc. Some supervisees may also be required to receive mental and psychological counselling services.

3. CSD provides post release supervision for discharged rehabilitated offenders in accordance with various legislations. The conditions of some of the supervision schemes are specified by the relevant legislations while those of some other schemes are set by the concerned statutory review board with reference to the particulars of the supervisee concerned. One of the major types of supervisees is rehabilitated inmate discharged from drug addiction treatment centre¹ (DATC). These supervisees include young and adult persons who have

¹ CSD has three DATCs, namely Hei Ling Chau Drug Addiction Treatment Centre, Lai Sun Correctional Institution and Nei Kwu Correctional Institution, and they had altogether some 700 young and adult inmates as at the end of September 2012.

received treatment and training in DATCs. The Drug Addiction Treatment Centres Ordinance (Cap. 244) (the DATC Ordinance) specifies that DATC inmates have to be subject to supervision for one year after release. Under the relevant conditions of supervision, supervisees are mainly required to meet with their supervising officers at least once a month, undertake employment and reside at an address approved by supervising officers, stay away from dangerous drugs and not to commit any offence against the laws of Hong Kong. As at the end of September 2012, 996 persons were subject to post release supervision under the DATC Ordinance.

4. In order to obtain a clear picture of the life and work pattern of supervisees and to better understand the challenges they face after returning to the community as well as the temptations from their peers, supervising officers of CSD normally visit and interview them in their place of residence or workplace. They will provide appropriate counselling and support to help supervisees reintegrate into the community, lead a healthy lifestyle and stay away from undesirable influence.

Testing Urine Samples of Supervisees

5. To ascertain whether the supervisees have relapsed into drug abuse during the supervision period, the supervising officers will conduct surprise collection of urine samples of the supervisees. The collection procedure will be carried out in the supervisee's place of residence, workplace or other suitable venues (such as public toilets) in the presence of the supervising officer. The urine test centres² of CSD will normally conduct preliminary tests on the urine samples of supervisees, and the samples will then be delivered to the Government Laboratory for confirmation test. If CSD officers consider it necessary to speed up the testing process of a particular case, they may also send the urine sample to the Government Laboratory direct for testing.

² CSD has five urine test centres, which are located in Lai Chi Kok Correctional Institution, Hei Ling Chau Drug Addiction Treatment Centre, Stanley Prison, Tai Lam Correctional Institution and Shek Pik Prison respectively.

6. If the test conducted by the Government Laboratory shows that the supervisee has taken drugs, the supervising officer will review the particulars of the case and make recommendation to the Commissioner of Correctional Services to issue a recall order in accordance with the relevant ordinance, so as to recall the supervisee concerned for receiving drug addiction treatment.

Success Rates of DATCs

7. A discharged DATC inmate case is considered successful if the supervisee is able to meet the requirements of “remaining drug-free” and “not having conviction record again” during the statutory one-year supervision period after release. Over the past three years, the success rates of DATCs are as follows:

Year	2009	2010	2011
Success rate of DATCs	64.7%	49.7%	42.2%

8. Neither the Security Bureau (SB) nor CSD has set any targets for the success rates of DATCs. In fact, the success rates are affected by a number of personal and social factors, which include the criminal conviction and drug abuse history of supervisees (such as the number of previous criminal convictions, the history of drug abuse and the nature of their offences, etc), the motivation and determination of supervisees to stay away from drugs, the support of the community and family members, as well as the prevalence of drug problem in the community.

9. Apart from recalling supervisees because of their failure to comply with the two requirements of “remaining drug-free” and “not having conviction record again” as mentioned in paragraph 7 above, supervising officers may also do so for violation of other conditions of supervision (such as refusal to provide urine sample, failure to meet with supervising officer at least once a month, etc) and recall supervisees to receive further training and counselling before they go far into crimes and drug habits again.

Improvement Measures for Urine Sample Testing Arrangements

10. In 2009, two CSD officers were charged with misconduct in public office. The offence involved the defendants providing false urine samples while performing their supervisory duties under the DATC Ordinance. During the trial, the two defendants contended that their action was due to the pressure exerted by their superiors and management of the Department. The two defendants were convicted in early October this year after the trial. The trial judge indicated in the judgment that he did not believe the management or senior officers of CSD had given the instruction as alleged by the two defendants, or had acquiesced to the practice with a view to increasing the success rate of DATCs. The relevant part of the judgment is at Annex (only the English version is available).

11. CSD has never exerted any pressure on its staff to maintain a high success rate for DATCs. Nonetheless, the incident reveals that there is room for improvement in the urine sample collection procedures. CSD conducted a comprehensive review of the procedures on the post release supervision for DATC inmates, especially the procedures on collecting urine samples. A series of improvement measures have been proposed in the review to minimise the possibility of human manipulation in the collection of urine samples. The relevant arrangements include:

- (a) Supervisory officers (i.e. the superiors of supervising officers, mostly Principal Officers) will issue urine collection containers labelled with the name and prisoner's number (PRN) of supervisees and the date of collection to supervising officers. Each container will also carry a tamper-resistant security label printed with a serial number. Supervisees can check whether the information printed on the container is accurate during the collection of urine sample.
- (b) After collecting the sample, the supervising officer will cover the container with a tamper-resistant lid in the presence of the supervisee. Should the lid be opened again afterwards, the tamper-resistant lid will be damaged.

- (c) Supervising officers are required to send urine samples to CSD urine test centres or the Government Laboratory the following working day after the collection at the latest.
- (d) Upon receipt of the urine samples, the staff of CSD urine test centres or the Government Laboratory will check whether the lids of the containers are intact. Should there be any damage, they will not accept the sample and will inform the Rehabilitation Section of CSD for follow-up action accordingly.
- (e) Supervising officers are required to record the details concerning the sample container in the “Register of the Use of Urine Sample Container” clearly, including the PRN of the supervisees and the date of collection of urine, and submit the register to the supervisory officers on a regular basis for their record and review.
- (f) Supervisory officers will review the “Register of the Use of Urine Sample Container” from time to time to ensure that the number of the containers and lids used tally with the record.
- (g) Supervisory officers should conduct surprise collection of urine samples of the supervisees on a random basis and compare the results with those of the urine samples collected by the supervising officers in order to reduce the possibility of testing results being falsified.

12. The above measures have been implemented since 2010 to reduce the possibility of urine samples being tampered by supervising officers and supervisees, strengthen the supervision of supervisees, speed up the processing of cases which involved the breach of supervision conditions, thereby indirectly minimising the possibility of human manipulation. To further ensure that the relevant procedures are effective in preventing tampering, CSD has invited the Corruption Prevention Department of the Independent Commission Against Corruption to carry out a full review of the above procedures. The review has commenced in October this year.

13. Meanwhile, CSD is exploring other measures to strengthen the integrity of the urine sample testing arrangements. For example, CSD is actively studying the proposal to set up a “Urine Sample Collection Centre” in which the urine samples will be collected and processed by other CSD staff (i.e. staff not from the Rehabilitation Division) to minimise the possible conflict of interest. Besides, CCTV will be installed in the centre to record and monitor the testing process. In addition, to enhance the efficiency of urine sample testing arrangements, the Department plans to use a new type of “Urine Sample Testing Cup” which can instantly detect the existence of several types of drugs. The new measure will enable the supervising officers to have a preliminary idea of whether there are traces of relapse on the part of supervisees as soon as possible and to make timely intervention. That would also prevent the supervisees from committing other related offences as a result of their relapse.

14. CSD attaches great importance to the conduct and integrity of its staff and adopts a zero tolerance approach on any breach of law by the staff. If any correctional staff is found to have breached the law, we will handle the case strictly in accordance with the laws.

Security Bureau
Correctional Services Department
October 2012

Judgement from the trail of "Misconduct in Public Office" (Extract)

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 Superior 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 by D1 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