



west midlands
police and crime
commissioner



cranstoun 

Implementing or Expanding Drug Testing on Arrest in Police Custody



Cranstoun

Cranstoun has been making a difference since 1969. We offer a wide range of services across England, including criminal justice services, community-based substance use services, supported housing, specialist services for young people, families, carers, and domestic abuse services.

There is the potential to **change offender behaviour through early intervention whilst improving victim satisfaction** and **increasing reporting by reluctant victims**.

Introduction

At Cranstoun, we can contribute to reducing reoffending behaviour, tackling the root causes of criminality. Cranstoun is a Social Justice Charity, our vision is to bring world class services to help rebuild lives and to inspire and empower people to live healthier and safer lives. Across the services we offer, we work to identify, develop and deliver innovative, evidence-informed solutions that rebuild lives. At Cranstoun, we pride ourselves on creativity and collaboration. Where gaps in services exist or ideas are in their infancy we are able assist in service design and operationalising strategic ideas.

The government will invest additional funding over the next 4 years, to enable police to test individuals arrested for a broader range of offences. While drug testing is already in operation in some areas of England & Wales, other areas may have less experience of the implementation of such services.

This document covers the operational considerations for Police Forces looking to implement or expand Drug Testing on Arrest including:

- **Service Implementation**
- **Testing Cohort**
- **Drug Testing**
- **Paperwork**
- **Reporting**
- **Required Assessments and Follow Up Appointments**
- **Court, Trials and Sentencing**
- **Failure to comply with DToA or Required Assessments**
- **Cranstoun Arrest Referral Service**
- **Costs**
- **Further Support or Advice**

Service Implementation

Drug testing was introduced in 2003 as one of a suite of tools and powers used as part of the Drug Interventions Programme (DIP) to help tackle drug-related offending. Drug testing (and its related interventions) is available to local areas in England & Wales and is currently operational in 23 police forces areas (of the 43 force areas in England & Wales). In those areas the police, under the Police and Criminal Evidence Act (1984), have the power to request a sample of oral fluid to test adults arrested (or charged) with any offence for the presence of the specified Class A drugs, heroin and / or cocaine/ crack. Those testing positive are required by law to undergo an assessment of their drug use, leading to treatment and other support where appropriate. Failure to take a drug test (without good cause) is a criminal offence.

The long-term funding would support the recruitment of Arrest Referral Workers who work in custody suites to identify individuals who have been arrested but not tested and could benefit from interventions ranging from assessment right through to referral to specialist treatment services.

Detailed scoping at an early stage is recommended. Existing arrest figures can be used to provide an indication of the likely ‘throughput’ of individuals generated by drug testing; including the likely numbers of those arrested who will be tested; the proportion of those testing positive; required to attend initial and follow-up assessments. Another key indication of activity levels are arrest and custody entry times. This analysis is invaluable in determining the input needed from all partners that would be involved in delivering interventions.

Engagement with local treatment providers is essential to ensure they have the knowledge to complete the appointments that are required following a positive drug test. It is advisable to consult with strategic members of the Local Criminal Justice Board. A list of key stakeholders is provided below and can be used as part of any implementation plan:

Stakeholder	Engaged		Stakeholder	Engaged	
Custody Staff (Insp, Sgts, DEOs, etc)	Y	N	Defence Representatives	Y	N
Custody Partners (L&D, Healthcare, Lay Visitors)	Y	N	LCJB Members	Y	N
Substance Use Treatment Teams.	Y	N	Reducing Reoffending Group Members	Y	N
Probation	Y	N	All Police Officers	Y	N
Magistrates	Y	N	The Criminal Justice & Community Single Point of Contact (SPOC)	Y	N
Court Clerks	Y	N	Police & Crime Commissioners	Y	N

Testing Cohort

Testing is allowed for specified Class A drugs in the following circumstances:

- You have been arrested or charged with a ‘trigger offence;’ or,
- When a police inspector, or higher rank, has reasonable grounds for suspecting that the offence was linked to the use of a specified Class A drug, and authorises the taking of a sample.

Specified Class A drugs are heroin or cocaine (including crack cocaine).

Trigger offences are generally offences involving stealing, fraud or drugs, and include:

- Theft and attempted theft.
- Robbery and attempted robbery.
- Burglary and attempted burglary.
- Aggravated Burglary.
- Handling stolen goods and attempting to do so.
- Taking a conveyance without owner's consent/authority (TWOC).
- Aggravated TWOC.
- Going equipped for burglary or theft.
- Fraud and attempted fraud by false representation, failing to disclose information, or by abuse of position.
- Possession of articles for use in frauds.
- Making or supplying articles for use in frauds.
- Begging and persistent begging.
- Possession of a specified Class A controlled drug.
- Production or supply of a specified Class A controlled drug.
- Possession of a controlled drug with intent to supply where that drug is a specified Class A controlled drug.

A blanket approach to testing Over 18's arrested for a Trigger Offence can be costly and result in many negative and therefore wasted tests. Some Forces have taken a 'Targeted Testing' approach. With this approach a suspect is arrested for a 'trigger offence' and also suspected of using the specified Class A substances. Justification for the test is based on previous intelligence, suspect presentation in custody (or at point of arrest) and arrest circumstances.

Drug Testing

The Home Office have commissioned the following drug testing kits to be used within police custody: <https://www.toxicology.abbott/en/screening-devices/sotoxa-mobile-test-system.html>



It is recommended that at least one training session is provided by the supplier to 'Testing Champions' who can then cascade the training to the wider custody team.

When a decision has been made to complete a drug test on a PIC a DT1 Form must be completed and the following verbal warning issued:

Before charge:

"You are 18 years old or older and have been arrested for:

*a) a trigger offence**

OR

b) an offence for which the inspector has authorised a drug test....<give reasoning>

I (name, rank, number) am now going to ask you to provide a sample of saliva for testing in accordance with the Police and Criminal Evidence Act 1984.

- *The purpose of the test is to find out whether you have evidence of the presence of crack/cocaine or heroin in your body.*
- *If the result of the test is positive, you may be required to attend an initial and follow up assessment with a drugs worker and to remain for its duration. Failure, without good cause, to attend and remain for the duration of either of these assessments, when required to do so, may result in prosecution.*
- *If you are later charged the result will be passed to the Court for use in making decisions on bail.*
- *If you are found guilty of the offence charged the Court may use the result to help inform your sentence.*

I remind you that whilst you are in custody you are entitled to:

I) The right to have someone informed of your arrest;

II) Free and independent legal advice and have the right to consult privately with a solicitor;

III) The right to consult a copy of the Codes of Practice

You may also speak to a drugs worker (should one be available in custody).

These rights and entitlements may be exercised at anytime whilst you are in custody.

Do you wish to exercise any of these entitlements?"

"Do you agree to provide a sample of saliva?"

"You do not have to, but I must warn you that, if you fail to provide a sample of saliva without good cause, you will commit an offence for which you may be imprisoned, fined or both."

If detainee refuses to provide a sample, Custody Officer to consider charging

Disputing Drug Test Results

A suspect has the right to dispute the results of the drug test. This can be for a number of reasons but the most common being the use of medication that shows up as an opiate. In these circumstances the sample must be sent to a laboratory for a Confirmation Analysis. Suppliers of the drug testing equipment will be able to discuss this process with Police Forces.

Paperwork

The process of completing a drug test and the subsequent appointments that follow require the completion of various documents. These are detailed in the table below and master copies can be found in the links in Table 2.

Table 1:

Doc	Use Description	Completion Responsibility
DT1	Completed during the MDT process as a paper log of the completed test.	Completed by a Custody Sergeant
DT2	Testing for specified 'Class A' drugs at police stations. Results of Test.	Completed by a Custody Sergeant, DEO or Custody Assistant.
MG11	Evidential Statement of failure to attend/remain for a Required Assessment.	Completed by an ARW / Treatment Team
RA1	Written Notice of a Required Assessment. Issued after a positive drug test in custody.	Completed by a DEO, PC or Custody Sergeant. *
RA2	Written notice to vary a Required Assessment to another time/date / location.	Completed by an ARW / Treatment Team or a PC if changes are made within custody.
RA3	Written Notice of attendance at Required Assessment.	Completed by an ARW / Treatment Team
RA4	Written Notice of a Follow Up Assessment.	Completed by an ARW / Treatment Team
RA5	Written Notice that the Required Assessment (inc FUA) has ended.	Completed by an ARW / Treatment team

* The West Midlands Police Force Chief Constable expanded responsibility for serving the RA1 to allow Police Staff (Custody Assistants & Detention and Escort Officers) to serve this document. This may be a consideration for other Forces.

Copies of all documents can be found in the links below:

Table 2:

Document	Link
DT1	https://www.gov.uk/government/publications/drugs-test-1-dt1-form
DT2	https://www.gov.uk/government/publications/drugs-test-2-dt2--2
MG11	Local Force Documents
RA1	https://www.gov.uk/government/publications/required-assessment-ra-forms
RA2	https://www.gov.uk/government/publications/required-assessment-ra-forms
RA3	https://www.gov.uk/government/publications/required-assessment-ra-forms
RA4	https://www.gov.uk/government/publications/required-assessment-ra-forms
RA5	https://www.gov.uk/government/publications/required-assessment-ra-forms

The links on the previous page will display bilingual documents in both English and Welsh. It is recommended that these are amended to suit by removing the unused language. Master copies of all of the documents listed above are available by contacting aowen@cranstoun.org.uk.

Reporting

The Home Office requires monthly reporting from police forces completing drug test on arrest. The Home Office will supply a Microsoft Excel template for completion. Police Forces must be able to report on the following:

Drug Type	No of drug tests completed	Opiates (positive)	Cocaine (positive)	Both Cocaine & Opiates (positive)	
Total Trigger Offences	No of drug tests completed	Opiates (positive)	Cocaine (positive)	Both Cocaine & Opiates (positive)	
Total Non-Trigger Offences	No of drug tests completed	Opiates (positive)	Cocaine (positive)	Both Cocaine & Opiates (positive)	
Drug Type by Age Band	18-24	24-29	30-39	40-49	50+
Drug type by offence group -	See 'Offence mapping' tab within Excel template for guidance				
Drug type by gender	Male	Female	Total		
Drug type by ethnicity group	See 'Lookups' tab within Excel template for guidance				

Required Assessments & Follow Up Appointments

Any individual who tests positive will be required by the police to attend an initial assessment (Required Assessment) and, if appropriate, a follow-up assessment (Follow Up Appointment). It is recommended wherever possible that the initial assessment should take place in the custody suite.

The following verbal warning should be issued at the point of serving the RA1.

'You have already received an oral warning that you will be guilty of an offence under Section 12 (3) of the Drugs Act 2005 and will be liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine of up to £2500 (level 4 on the standard scale) or both if you fail without good cause to attend the initial assessment and remain for its duration. You will also be guilty of an offence under Section 14 (3) of the Drugs Act 2005 and will be liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine of up to £2500 (level 4 on the standard scale) or both if you fail without good cause to attend the follow-up assessment and remain for its duration.'

Cranstoun are experts in the establishment of custody based Arrest Referral Service and can support the implementation of Drug Test on Arrest services. A custody based Arrest Referral Service should be the preferred service to intervene following a positive drug test and offer interventions and onward referral whilst the PIC is in custody. Where this is not an option or part of the existing service

and 'Out Of Hours' System will need to be established to custody staff have an effective and simple mechanism for booking Required Assessments.

Single Point of Contact (SPOC): The Criminal Justice & Community Single Point of Contact (SPOC) directory consists of contact details of Criminal Justice organisations and Community Drug and Alcohol treatment providers throughout England & Wales. The main purpose of this directory is to promote successful communication and pathways between organisations for those individuals moving from Criminal Justice organisations to Community providers and vice versa as well as supporting effective Continuity of Care across the system. All new arrangements relating to the booking of Required Assessments must be updated to ensure consistency for any out of area referrals. Updates must be submitted via: SPOC@phe.gov.uk

Courts, Trial and Sentencing

The outcome of Drug Test on Arrest is included as part of court files and although it cannot be used as evidence it is important that sentences take into consideration any vulnerabilities when sentencing. A positive drug test can be a contributing factor within a Pre-Sentence Report and ensure consideration is given to the use of a Drug Rehabilitation Requirement (DRR). Probation PSR Authors should be fully aware of the DToA scheme and its implications.

Failure to comply with DToA or Required Assessments

An individual can refuse to provide a saliva sample. This cannot be forcibly taken and therefore if no reasonable explanation can be given for refusal consideration should be given to charge.

Failure by an individual who has tested positive, including those whose positive result has been maintained by confirmatory testing, to attend and remain at a Required Assessment is a criminal offence. Many existing areas conducting testing on arrest have put mechanisms in place to manage breaches.

West Midlands Police currently have DIP (Drug Intervention Programme) Co-ordinators who manage any breaches resulting from Drug Test on Arrest. A DIP Analyst monitors DToA performance across the Force including testing rates, positive test v negative test comparisons, positive test substance comparisons, missed opportunities as well as demographic breakdowns of those tested.

Cranstoun Arrest Referral Service (CARS)

Cranstoun's approach to Criminal Justice based substance use workers engages with individuals at any point within the criminal justice system, improves treatment pathways, increases the use of Community Sentence Treatment Requirements (Drug Rehabilitation Requirements / Alcohol Treatment Requirements) and reduces drug related crime. Our custody based service does not only rely on the result of a drug test. We have found that targeted approaches to those most at need in custody yields the best results and this can be done via a Required Assessment or Voluntary custody based assessment.

CARS can be available to young people and adults depending upon local policy and address both drug and alcohol use.

Cranstoun's Arrest Referral Service operational hours are tailored to suit local arrest trends. Our web based booking systems provide easy referral processes for police staff and officers for out of hours appointments.

Interventions delivered include

- Lifestyle Assessment including all aspects of an individual's life
- Substance Specific Harm Reduction Advice
- Custody Naloxone & Needle Exchange Services
- Tailored Individual Advice & Support
- Onward Referrals to Specialist Treatment
- DRR & ATR Suitability Assessments at first contact
- Case Management

Costs

Fixed Costs

Any police site commencing drug testing will need two drug testing devices and will need to arrange (with the supplier) at least one training session in its use.

Variable Costs

A number of ongoing variable costs will need to be considered and will depend upon the volume of drug testing conducted. These costs relate to drug testing consumable items and for confirmatory testing services provided by the Home Office contracted drug testing supplier.

The costs of introducing Drug Testing on Arrest can extend to the financing of CJIT workers to complete Required Assessments in custody. Police Forces will also need to consider any changes that will be necessary to make the custody suite(s) in which drug testing will be conducted fit for purpose such as a dedicated room to complete drug tests.

Further Support

If you require any additional support please do not hesitate to contact Cranstoun's Criminal Justice Lead, Arron Owen who will be more than happy to help: aowen@cranstoun.org.uk