



Drug Testing and Public Assistance

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In the last decade, numerous states have made drug screening and testing an eligibility condition for Temporary Assistance for Needy Families (TANF) cash assistance under certain circumstances. As of September 2016, 13 states have adopted such regulations. Wisconsin included a provision in its state budget to screen and test certain individuals participating in FoodShare Employment and Training under the Supplemental Nutrition Assistance Program (SNAP). Legislatures in 17 other states have recently considered bills to drug test under TANF. In states that have implemented these policies, few applicants have been identified as likely users, and even fewer have tested positive – in many cases, less than 1 percent of applicants. Consequently, operating costs far exceed the fiscal savings from denying benefits. This is consistent with previous research that found only a small share of welfare recipients experience substance abuse disorders.

Suspicion-less Testing

Some states have attempted to impose drug testing requirements on *all* applicants or recipients of TANF benefits. Time and again, these laws have been found unconstitutional under the Fourth Amendment, constituting a search without basis. In 1999, Michigan became the first state to implement suspicion-less drug testing for welfare recipients under its Family Independence Program. The state required all TANF applicants to submit to urine drug testing in order to receive benefits. In 2003, the U.S. Sixth Circuit Court of Appeals upheld a federal district court ruling that found the law unconstitutional.¹ In 2011, Florida passed a law requiring suspicion-less drug testing of all TANF applicants as well as random drug testing for current beneficiaries. In 2014, the U.S. Eleventh Circuit Court of Appeals held that Florida's law violated the Fourth Amendment for its unreasonable search of applicants without evidence of "a more prevalent, unique, or different drug problem among TANF applicants than in the general population."²

Florida implemented its rule from July to December 2011 before the court imposed an injunction. In the four months Florida ran its testing policies, only 2.6 percent of over 4,000 applicants tested positive for illegal substance use. The law required reimbursement to those who passed the drug test, costing the state \$118,140.³ An additional \$307,883 in legal fees and other costs were spent appealing the law in court.⁴ Combined with the settlement amount awarded to the plaintiff, the drug testing law cost Florida nearly a million dollars.

Screening for Reasonable Basis

Following these rulings, other states have pursued legislation that mandates drug testing for applicants based on reasonable suspicion related to illicit substance abuse. In order to identify a reasonable basis, some states have directed their agencies' staff to consider an applicant's employment record, criminal history, and personal or visual observations during appointments. Some states require all applicants to complete a brief questionnaire in which a particular answer demonstrates suspicion for a follow-up drug test. At least three states utilize the Substance Abuse Subtle Screening Inventory (SASSI) indicators to determine reasonable suspicion. However,

according to the SASSI Institute, using its product to discriminate against individuals applying for public assistance subverts its purpose and violates the Americans with Disabilities Act.⁵

State drug testing policies can impact a family unit's TANF receipt. As seen in Appendix A, almost every state that drug tests for TANF has policies that are designed to protect children from losing benefits if the adult recipient fails to comply with screening/testing procedures or tests positive for illegal drug use. If this occurs, most states will continue to provide the children benefits through a "protective payee," who may also be required to participate in drug screening and testing. In some states, an adult applicant who tests positive on a drug test may still be eligible to receive TANF benefits with completion of a substance abuse treatment or job skills training program referred by the human services agency.

Some states directly pay the cost of screening and testing each TANF applicant, while others require the applicant to pay for the procedures. Of the states that require an applicant to pay for testing, some are mandated to reimburse a recipient who tests negative for the cost of the test. If an applicant tests positive and the state paid for the test, the agency may seek reimbursement by deducting the cost of the drug test from a recipient's program benefits. Michigan's pilot program plans to deduct the cost of drug testing from an individual's monthly benefit payment, while North Carolina terminates benefits and holds an individual responsible for the costs of drug testing and substance abuse treatment.

States also vary in the consequences for applicants who either test positive or are non-compliant with the drug screening process. A majority of states mandate mental health or substance abuse treatment for individuals who fail drug testing, requiring continual participation and completion of a treatment program in order to receive assistance. The length of time an individual is ineligible to reapply to TANF also differs between states, ranging from 90 days for first instance of non-compliance to permanent ineligibility after a third test failure. The repercussions of non-compliance for each state are provided in Appendix B.

There are currently nine states that have implemented drug screening or testing within TANF for at least one year. When accounting only for individuals referred to complete a follow-up drug test, positive results range from 3.2 percent in Utah to 16.9 percent in Kansas. The costs of screening and testing applicants also vary across states; for example, Missouri spent an estimated \$7,006 per positive test result, compared to \$1,299 in Oklahoma and \$200 in Tennessee.⁶ With cost savings lower than expected, some legislators have argued that the number of applicants who did not comply with testing policies is a positive intended outcome. In Arizona, over 55 percent of applicants referred to a follow-up drug test refused to take one; in Missouri, 47 percent of referred applicants, or 711 individuals, did not comply.

A table showing the results for each state for which we have data is provided in Appendix C. Appendix D lists the remaining states that passed legislation regarding drug screening or testing to receive public benefits.

Appendix A: Comparison of State Drug Testing Policies

	Does State Agency Pay or Reimburse Cost of Drug Test?	Does State Agency Refer Applicants who Fail Drug Test to Substance Abuse Treatment?	Can Adult Applicants Receive Benefits after Drug Test Failure?*	Can Dependent Child in Unit Receive Benefits after Adult's Test Failure?**
Alabama[‡]	YES	NO	YES	YES
Arizona	YES	NO	NO	YES
Arkansas	YES	YES	YES	YES
Georgia[‡]	NO	NO	NO	YES
Kansas	YES	YES	YES	YES
Maine	YES	YES	YES	--
Michigan	NO	YES	YES	--
Mississippi	YES	YES	YES	YES
Missouri	YES	YES	YES	YES
North Carolina	NO	YES	NO	YES
Oklahoma	YES	YES	NO	--
Tennessee	YES	YES	YES	YES
Utah	YES	YES	YES	YES
Wisconsin	YES	YES	YES	--

* States marked YES require ongoing participation in or completion of substance abuse treatment in order to receive program benefits.

** Maine, Michigan and Wisconsin do not specify whether the eligibility of children in a family unit is affected by drug testing policy.

‡ State law not yet implemented.

Appendix B: Other States with Drug Screening and Testing Laws

Alabama: In April 2014, Gov. Robert Bentley signed Senate Bill 63 into law. The law requires drug screening of all individuals applying for TANF and deems a previous drug conviction within five years of application as reasonable suspicion. A person who tests positive for a drug as a result of a drug screening required under this section and who is unable to produce a valid prescription for the drug shall receive a warning that any subsequent positive drug screening will result in a loss of benefits. Upon a second positive drug screening, the person shall be ineligible for TANF for one year after the date of the positive drug screening results. Upon a third positive drug screening, the person shall be permanently ineligible for TANF. The law became effective on October 1, 2015.⁷

Arkansas: In March 2015, Gov. Asa Hutchinson of Arkansas signed Senate Bill 600 into law. The law establishes a plan to develop a two-year pilot program for suspicion-based drug screening and testing of each TANF applicant.⁸

Georgia: In April 2014, Gov. Nathan Deal signed House Bill 772 into law. This bill requires the Department of Social Services to conduct a drug test on an individual applying for or currently receiving TANF or SNAP benefits if there is reasonable suspicion of substance abuse. Georgia's law is considered the most stringent in comparison to similar legislation passed in other states, as it requires the applicant to pay for their own drug test and would not allocate funding for substance abuse treatment interventions for those testing positive.⁹ The law's inclusion of SNAP applicants and recipients was in violation of federal guidelines under the U.S. Department of Agriculture.¹⁰ As of January 2016, the law has not been implemented.

Maine: In 2011, Gov. Paul LePage worked with the state legislature to include a budgetary provision requiring the state Department of Health and Human Services (DHHS) to establish drug screening and testing on TANF, requiring applicants and current recipients with a drug-related felony conviction in the past 20 years to undergo SASSI screening before being scheduled for a urinalysis. The DHHS rules specify that this requirement does not apply to alcohol-related convictions.¹¹ Between April and June 2015, 13 out of 15 recipients scheduled for either the screening assessment or urinalysis failed to complete them; one person tested positive for drugs.¹²

Michigan: In December 2014, Gov. Rick Snyder signed into law two bills that require Michigan's Department of Human Services to pilot drug screening and testing in three counties.

North Carolina: In September 2013, House Bill 392 was enacted when the state General Assembly voted to override Gov. Pat McCrory's veto. However, the rules were not fully adopted by the Department of Social Services until August 2015 when drug screening first began.

Wisconsin: In November 2015, Gov. Scott Walker approved administrative rules submitted by Wisconsin's Department of Children and Families to require substance abuse screening, testing, and treatment under the state's Transform Milwaukee program, the Transitional Jobs program, and the

Wisconsin Works programs.¹³ The requirements may also apply to individuals seeking unemployment benefits and those participating in the FoodShare Employment Training Program for SNAP benefits. A lawsuit has been filed by the state attorney general against the U.S. Department of Agriculture for clarification of federal guidelines.¹⁴

Appendix C: Consequences for Non-Compliance of State Drug Screening Policies

	Screen or Test Refusal	First Test Failure	Second Test Failure	Third Test Failure
Alabama	Ineligible for assistance	Termination of assistance	Ineligible for assistance for 1 year	Permanently ineligible for assistance
Arizona	Termination of assistance	Ineligible for 1 year	—	—
Arkansas	Ineligible for assistance for 6 months	Referral to substance abuse treatment	Ineligible for assistance for 6 months	
Georgia	—	Ineligible for one month	Ineligible for three months	Ineligible for 1 year
Kansas	—	Referral to substance abuse treatment and/or job skills program	Terminated from assistance for 12 months or until completion of program(s)	Termination of assistance
Maine	Termination of assistance	Referral to substance abuse treatment	Termination of assistance	—
Michigan	Ineligible for assistance for 6 months	Referral to substance abuse treatment	Termination of assistance	—
Mississippi	Ineligible for 90 days after a first refusal; Ineligible for 1 year after a second refusal.	Referral to substance abuse treatment	Termination of assistance; can reapply after 90 days	Termination of assistance for 1 year
Missouri	Ineligible for assistance for 3 years	Referral to substance abuse treatment	Ineligible for assistance for 3 years	—
North Carolina	—	Ineligible for 1 year. Can reapply after 30 days with completion of substance abuse treatment	Ineligible for assistance for 3 years	—
Oklahoma	Disqualified for assistance	Ineligible for 1 year. Can reapply after 6 months with completion of substance abuse treatment	Ineligible for assistance for 3 years	—
Tennessee	Disqualified for assistance	Ineligible for 6 months. Referral to substance abuse treatment	Ineligible for assistance for 1 year	—
Utah	Ineligible for 90 days after a first refusal; Ineligible for 1 year after a second refusal.	Referral to substance abuse treatment. If failure to complete, can reapply after 90 days	Termination of assistance; can reapply after 1 year	—
Wisconsin	Disqualified for assistance	Referral to substance abuse treatment	Ineligible for 12 months	—

Appendix D: State Drug Testing Results

STATE	EFFECTIVE DATE	SCREENING METHOD	DRUG TESTING RESULTS	DRUG TESTING COSTS
Arizona	November 24, 2009	Completion of Illegal Drug Use Statement	<p>From 2009-2014: 142,424 adults completed drug screening.</p> <ul style="list-style-type: none"> ○ 42 applicants referred to follow-up drug testing: <ul style="list-style-type: none"> • 3 tested positive • 23 applicants failed to take drug test 	Drug test administration totaled about \$500 , but does not include personnel costs. Savings from 16 recipients removed from benefits totaled less than \$4,000 . Net savings of about \$3,500 .
Arkansas	April 8, 2015	Written questionnaire with two questions. An answer of “yes” to any question is cause for suspicion.	<ul style="list-style-type: none"> ○ 800 drug tests administered <ul style="list-style-type: none"> • 1 tested positive 	Arkansas spent \$169 of the \$100,000 budgeted for the testing program.
Kansas	July 1, 2014	Arrest records from drug related charges within the last 12 months; employment records; self-declaration; visual observation of drug use or drug paraphernalia; Substance Abuse Subtle Screening Inventory (SASSI) indicators; prior refusal to drug test	<p>From July - December 2014: 2,783 applications received.</p> <ul style="list-style-type: none"> ○ 65 applicants referred follow-up drug testing: <ul style="list-style-type: none"> • 11 applicants tested positive • 12 failed to take drug test 	Kansas Department of Children and Families estimates a cost of \$40,000 from July to December 2014.
Michigan	Pilot Program: October 2015-September 30, 2016	50-question screening tool	<p>From October 2015 – May 2016: 303 applicants and recipients have participated in the pilot program</p> <ul style="list-style-type: none"> • 0 tested positive 	Michigan’s state legislature appropriated \$300,000 for the pilot program, although the state has spent only \$300 as of June 2016.
Mississippi	July 1, 2014	Adult Substance Abuse Subtle Screening Inventory (SASSI-3)	<p>From August 2014 - April 2015: 5,578 applicants completed SASSI screening.</p> <ul style="list-style-type: none"> ○ 72 applicants referred for drug testing: <ul style="list-style-type: none"> • 64 applicants tested negative • 8 applicants tested positive (1 false-positive result) <p>State did not track the number of applicants/recipients who were sanctioned or denied benefits due to failure to comply with drug screening or treatment requirements</p>	Mississippi spent \$18,750 on SASSI-3 questionnaire kits. Drug tests were \$43 per test for a sum of \$3,096 .
Missouri	March 2013	Screening tool; Missouri State Highway Patrol law enforcement records	<p>From January - December 2014: 38,970 applicants screened.</p> <ul style="list-style-type: none"> ○ 446 referred to follow-up drug test: <ul style="list-style-type: none"> • 48 tested positive <p>As of November 2014, 711 applicants refused to complete drug test and were denied benefits.</p>	Missouri Department of Social Services budgeted \$336,297 in 2014 for the testing program.
Oklahoma	November 1, 2012	SASSI-3	<p>From November 2012 - 2014: 3,342 applicants screened.</p> <ul style="list-style-type: none"> ○ 2,992 applicants referred for drug testing: <ul style="list-style-type: none"> • 297 tested positive 	Oklahoma estimated total cost of \$385,872 over the two-year testing period.
Tennessee	July 1, 2014	Written questionnaire with three questions. An answer of “yes” to any question is cause for suspicion.	<p>As of Feb 2016: 28,559 applicants screened (116 refused)</p> <ul style="list-style-type: none"> ○ 609 drug tests administered: <ul style="list-style-type: none"> • 55 tested positive • 23 completed substance abuse treatment • 32 denied benefits 	First year of testing cost \$11,000 to outside vendor conducting tests. This figure does not include state agency costs to process application materials or testing logistics.
Utah	May 8, 2012	SASSI-3	<p>From August 2014 - July 2015: 4,225 applicants and recipients screened.</p> <ul style="list-style-type: none"> ○ 460 drug tests administered: <ul style="list-style-type: none"> • 18 tested positive • 12 compliant with substance abuse treatment • 6 sanctioned for non-compliance 	\$75,886 spent on drug tests over a three-year period. Staffing costs not included. Year 1: \$25,654 on drug tests, \$5,957.50 on SASSI kits Year 2: \$26,951 on drug tests, \$5,982 on SASSI kits Year 3: \$23,281 on drug tests, \$5,281 on SASSI kits.

Endnotes

¹ *Marchwinski v. Howard*, 319 F.3d 258 (6th Cir. 2003).

² *Lebron v. Sec. of the Fla. Dep't of Children and Families*, 772 F.3d 1352 (11th Cir. 2014)

<http://media.ca11.uscourts.gov/opinions/pub/files/201410322.pdf>.

³ Lizette Alvarez, “No Savings Are Found From Welfare Drug Tests,” *The New York Times*, April 17, 2012,

<http://www.nytimes.com/2012/04/18/us/no-savings-found-in-florida-welfare-drug-tests.html>.

⁴ Dara Kam, “Taxpayer Tab Mounts In Welfare Drug-Test Legal Fight,” *CBS Miami*, December 8, 2014,

<http://miami.cbslocal.com/2014/12/08/taxpayer-tab-mounts-in-welfare-drug-test-legal-fight/>.

⁵ “Screening Issues”, The SASSI Institute, <https://www.sassi.com/customer-support/clinical-support/screening-issues/>.

⁶ Stephanie Larsen, “Putting the Smack Down”, *Snopes*, December 13, 2015, <http://www.snopes.com/should-we-drug-test-welfare-recipients/>.

⁷ Act No. 2014-438, SB63, Alabama State Legislature, <https://legiscan.com/AL/text/SB63/id/1004655>.

⁸ Act 1205, SB600, Arkansas State Legislature,

<http://www.arkleg.state.ar.us/assembly/2015/2015R/Pages/BillInformation.aspx?measureno=sb600>.

⁹ Act 664, HB772, Georgia General Assembly, <http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/772>.

¹⁰ <http://d35brb9zkkbdsd.cloudfront.net/wp-content/uploads/2014/06/FNS-Letter-to-DHS-Drug-Testing-HB-772-Done-6-3-14.pdf>.

¹¹ Chapter 10-144 -331: Public Assistance Manual (TANF), Maine Department of the Secretary of State

<http://www.maine.gov/sos/cec/rules/10/ch331.htm>.

¹² Alanna Durkin, “Few drug tests ordered for welfare users in Maine so far,” *The Big Story*, *Associated Press*, August 12, 2015,

<http://bigstory.ap.org/article/73ab7fccd2864f65a2f232d9ce55a842/few-drug-tests-ordered-welfare-users-maine-so-far>.

¹³ Chapter DCF 105, “Substance Abuse Screening and Testing for Certain Department Work Experience Programs,” Department of Children and Families, State of Wisconsin, http://dcf.wisconsin.gov/admin_rules/pdf/DCF105.pdf.

¹⁴ “DOJ Files Lawsuit Against Federal Government Over Drug Testing Requirements for Welfare Recipients,” Wisconsin Department of Justice, July 14, 2015,

<http://www.doj.state.wi.us/news-releases/doj-files-lawsuit-against-federal-government-over-drug-testing-requirements-welfare>.