

Drug Testing and Public Assistance

In the last decade, numerous states began requiring those applying for and/or receiving cash assistance under Temporary Assistance for Needy Families (TANF) to undergo screening for the possibility of illicit substance use and, dependent on screening results, chemical drug testing. As of February 2019, at least 13 states have such policies.¹ More recently, states have tried to apply similar rules to other programs, including food assistance under the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and Unemployment Insurance (UI).

In states that have implemented drug testing policies, few applicants have been identified as likely users, and even fewer have tested positive (in most cases, less than 1 percent of applicants).² This practice is based on erroneous stereotypes³ which, among other things, suggest that people with low incomes are more likely to use controlled substances than those with higher incomes. Such testing is an unwise use of state taxpayer dollars since operating costs far exceed the money saved from denying people benefits. This is consistent with previous research finding that only a small share of welfare recipients have substance use disorders.⁴ Moreover, drug testing policies harm families and do not effectively identify those who need substance use disorder treatment.

Courts Have Rejected Suspicionless Testing

In the past, some states have sought to impose drug testing requirements on all TANF applicants and/or recipients. Routinely, these laws have been found unconstitutional under the Fourth Amendment, which prohibits unreasonable searches, because the testing has been deemed a search without cause.⁵ In 1999, Michigan became the first state to implement suspicionless drug testing for welfare recipients under its Family Independence Program. The state required all TANF applicants to submit urine drug tests to receive benefits. In 2003, the U.S. Sixth Circuit Court of Appeals upheld a federal district court ruling which found the law unconstitutional.⁶ In 2011, Florida passed a law requiring suspicionless drug testing of all TANF applicants and random drug testing of 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."⁷

Before the court imposed an injunction in 2011, Florida implemented its rule for four months. During that period, the state found only 2.6 percent of more than 4,000 applicants who tested positive for controlled substance use. The law required reimbursement of the drug testing fees to those who passed the drug test, costing the state \$118,140.⁸ The state spent an additional \$307,883 in legal fees and other costs appealing the ruling.⁹ Combined with the settlement amount awarded to the plaintiff, the drug testing law cost Florida nearly \$1 million.

Many States Now Require Screening Before Drug Testing in TANF

Following these rulings, other states have pursued legislation requiring drug testing for some TANF applicants or recipients. To avoid legal challenges, states claim a “reasonable suspicion” of illicit substance use based on results of a screening test. Such states require all applicants to complete a brief substance use disorder questionnaire with questions inquiring of recent drug use. Affirmative responses to the questions signal the possibility of recent drug use, thus forming a basis for reasonable suspicion.¹⁰ At least five states use the Substance Abuse Subtle Screening Inventory (SASSI) to determine reasonable suspicion. By the SASSI Institute’s own admission, however, using its product to discriminate against people applying for public assistance subverts its purpose and violates the Americans with Disabilities Act.¹¹ Some states have directed their agencies’ staff to consider an applicant’s employment record, criminal history, and personal or visual observations during appointments as a basis for reasonable suspicion. Such practices could have disparate racial impacts because people of color are more likely to have criminal records due to unequal enforcement of drug laws, particularly for marijuana;¹² previous job terminations based on racially biased practices such as hair drug tests;¹³ and implicit bias on the part of public assistance administrators.¹⁴

Some states directly pay the cost of screening and testing each TANF applicant, while others require the applicant to pay. After a two-year pilot, Arkansas recently began requiring all TANF applicants to be screened for substance use disorder prior to enrollment. Based on screening results, Arkansas applicants can be subjected to drug tests and required to enroll in substance use disorder treatment. Of the states requiring an applicant to pay for testing, some reimburse the cost to a recipient with negative results. If an applicant tests positive and the state paid for the test, the agency may seek reimbursement by deducting the test’s cost from a recipient’s program benefits. A Michigan pilot program, for example, deducted the cost of drug testing from the monthly benefit of those who tested positive, while North Carolina terminates benefits and compels the individual to cover the costs of drug testing and substance use disorder treatment.¹⁵

States also vary in the consequences they impose on applicants who either test positive or are non-compliant with the drug screening process. Most states mandate mental health or substance use disorder treatment for individuals who fail drug testing, requiring consistent participation and completion of a treatment program to receive assistance. The length of time a person is ineligible to reapply to TANF also differs among states, ranging from 90 days for the first test failure to permanent ineligibility after a third failure.¹⁶

Screening and Testing in Other Programs

In recent years, a few states have proposed expanding drug testing to other programs including SNAP, Medicaid, and UI. However, because these programs are federal-state partnerships, with specified eligibility rules, states cannot add their own eligibility conditions without federal approval.

Georgia attempted to require drug testing as a condition of eligibility in 2012 and 2014, to which the U.S. Department of Agriculture (USDA) forbade.¹⁷ In 2015, Wisconsin passed legislation requiring drug testing for SNAP recipients. After the Obama Administration deemed the policy incongruent with federal law, then Governor Scott Walker attempted to sue the federal government to obtain permission.¹⁸ Walker’s lawsuit was dismissed by a federal judge who ruled Wisconsin could not sue because the state had not implemented its drug testing policy. Undeterred, Walker signed a state budget which included a provision mandating screening and testing for applicants to FoodShare Employment and Training (FSET) under SNAP.¹⁹ This rule has the indirect effect of limiting access to SNAP because people who are unemployed and not otherwise exempt can lose their SNAP benefits if they fail to participate in FSET. Although Walker was defeated in November 2018, the Wisconsin legislature in December 2018 enacted SB 886,²⁰ which incorporated provisions of the rule into state statutes to prevent the new governor from withdrawing it.

The federal government has similarly never allowed drug testing as a condition of eligibility for Medicaid.²¹ In 2017, Wisconsin sought to drug test Medicaid applicants ostensibly to “help more people move from government dependence to true independence by ... providing incentives for healthy lifestyles.”²² The state’s measure would have mandated noncustodial, able-bodied adults applying for Medicaid to complete a health risk assessment and—with reasonable suspicion from the assessment—submit a drug test. A positive result would have required completion of substance use disorder treatment to maintain eligibility. In October 2018, the federal Centers for Medicare & Medicaid Services denied Wisconsin’s request to drug test, but allowed the health risk assessment as well as work requirements and time limits on receipt of benefits.²³

As part of the Middle Class Tax Relief and Job Creation Act of 2012 (MCTRA),²⁴ Congress authorized, though did not require, states to conduct mandatory drug testing of UI applicants in two limited circumstances: if the applicant “was terminated from employment most recently because of [controlled substance] use” or “is an individual for whom suitable work is only available in an occupation that regularly conducts drug testing.” If an applicant tests positive for drugs in either circumstance, a state may deny UI. During the Obama Administration, the U.S. Department of Labor (DOL) promulgated final MCTRA rules defining “occupation” as a position or class of positions which are required—or may be required in the future—by state or federal law to be drug tested. In November 2018, DOL proposed a rule²⁵ allowing states to expand the occupations that regularly conduct drug testing. This would swell the definition to include those professions that test on a regular basis, along with those requiring *pre-employment screening*—effectively denying UI benefits to countless unemployed people who may need assistance to cover their basic needs and those of their families.

Drug Screening is Costly, Wasteful, and Harms Families

When considering only those referred to complete a follow-up drug test, positive results range from 3.5 percent in Utah to 16.9 percent in Kansas.²⁶ The costs associated with 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.²⁷

Drug testing policies have proven harmful to children because they reduce the resources available to the entire family. For instance, when someone is ineligible for assistance, the overall household receives less support because the benefit level determination still considers the income of the ineligible member.²⁸ In addition, while a child may continue to receive benefits from a “protective payee”—who may also be required to participate in drug screening and testing—due to a parent ineligible for drug-testing-related reasons, some parents may not realize they can still apply for benefits for their children when they are ineligible. As seen in *Appendix A*, almost every state that drug tests for TANF has policies designed to protect children from losing benefits if the adult recipient tests positive or fails to comply with screening/testing procedures.

In some states, an adult applicant who tests positive may still be eligible for TANF with completion of a substance use disorder treatment or job skills training program referred by the human services agency. However, testing positive is not the same as needing treatment, because chemical tests cannot determine substance use disorder. For instance, someone suffering from alcoholism will not be identified through these tests, but a casual user of marijuana may well be.²⁹

Even when treatment is required, numerous barriers limit access to effective, long-term care. Many treatment areas have a shortage of treatment slots,³⁰ and programs that serve pregnant and parenting

women are even more scarce.³¹ In addition, factors such as “bureaucracy, tension between treatment providers and welfare administrators, work schedules, mental health issues, family situations, social stigma, and discrimination”³² hamper access for people. Furthermore, conditioning benefit receipt on drug screening may actually make it harder for people to obtain treatment, as they may be unwilling to disclose their substance use disorder for fear of losing benefits or custody of their children.

For the reasons above, passing a drug test should never be a condition for applicants or current recipients of public assistance to meet. It is costly, yields very few positives, and is ineffective in identifying those who have substance use disorders. It should be the position among the states to reject drug testing policies because they impede access for people in need of help covering their basic needs and those of their families.

A table listing states and their respective TANF drug testing policies is in *Appendix A*. *Appendix B* details the consequences for non-compliance of state drug screening policies. *Appendix C* lists outcomes of the TANF drug testing programs in each state for which we have data.

Appendix A: Comparison of State TANF Drug Testing Policies

	Does State Pay or Reimburse Cost of Drug Test?	Does State Refer Applicants Who Fail Drug Test to Substance Use Disorder Treatment?	Can Adult Applicants Receive Benefits after Drug Test Failure?*	Can Dependent Child in Household 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	—
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 use disorder treatment to receive program benefits.

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

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

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

Appendix C: State TANF Drug Testing Outcomes

	Effective Date	Screening Method	Drug Testing Results	Drug Testing Costs
Alabama	October 1, 2015	Questionnaire asking applicants to declare any prior drug convictions and recent use of illicit substances*	In 2017, none of the 19,529 Alabama applicants were tested for drugs*	\$0*
Arizona	November 24, 2009	Completion of Illegal Drug Use Statement	In 2017, 3,461 of 81,286 TANF recipients answered questions about illegal drug use and related employment or problems in the preceding 30 days. Two people submitted drug tests, which were both negative	\$46
Arkansas	April 8, 2015	Questionnaire (pg. 10) with two questions. An answer of "yes" to any question is cause for suspicion	Some 3,430 of the 19,228 applicants for TANF in 2017 were screened for drug use. Five were given drug tests and only 2 tested positive. Another 8 refused to take the test*	The testing costs alone were a couple hundred dollars, but staffing costs increased the overall cost to \$32,507 (more than \$6,500 per test)*
Kansas	July 1, 2013	Arrest records from drug-related charges within the last 12 months; employment records; self-declaration; visual observation of drug use or drug paraphernalia; SASSI indicators; prior refusal to drug test ³³	In 2017, 220 of 22,523 Kansans applicants were tested for drugs; 46 were positive (50 refused to take the test)*	Associated drug testing costs, staff expenses, and other operating costs totaled \$43,880*
Maine	July 1, 2014	SASSI-3*	In 2017, 7 of 3,414 TANF applicants were tested; all 7 tested positive	\$844*
Mississippi	July 1, 2014	Online version of the SASSI. ³⁴	In 2017, 464 of 11,407 TANF applicants tested (26 did not complete the tests). Six tests were positive*	\$8,493*
Missouri [‡]	March 2013	Screening tool; Missouri State Highway Patrol law enforcement records ³⁵	Tested 108 of 32,774 TANF applicants. Eleven were positive (305 applicants did not show up for a drug test or refused)* †	\$336,297*
North Carolina	August 1, 2014	Two verbal screening questionnaires, the Alcohol Use Disorders Identification Test (AUDIT), and Drug Abuse Screening Test (DAST-10) ³⁶	258 of 28,828 applicants were tested in 2017*	\$14,410*

Oklahoma	November 1, 2012	The minimum screening includes SASSI. Additional screening methods may include a clinical interview, consideration of the person's history with OKDHS, and an Addictions Severity Index (ASI) ³⁷	In 2017, 3,915 of 13,361 TANF applicants were screened; 1,196 were sent to a second round of screening; and 841 were given tests, 77 were positive*	\$50,294*
Tennessee	July 1, 2014	Written questionnaire with three questions. An answer of "yes" to any question is cause for suspicion ^{38, *}	Out of 13,058 new applicants, 164 were given drug tests. 26 tested positive, another 95 did not complete the required test within the 45-day time limit*	\$5,279*
Utah	May 8, 2012	SASSI ^{39, *}	Utah screened 3,068, 450 were given a drug test, 94 tested positive (another 94 were rejected for refusal or failure to take the test).	\$30,776, plus staff costs*
West Virginia	October 20, 2017	Drug Use Questionnaire (DFA-WVW-DAST-1) ⁴⁰	Of 798 applicants screened, 83 were given drug tests, with 4 testing positive*	\$50,172*

* Source: <https://thinkprogress.org/states-waste-hundreds-of-thousands-on-drug-testing-for-welfare-3d17c154cbe8/>.

‡ Missouri allows applicants to waive submitting a drug test in exchange for being referred to a substance use disorder treatment program. See Endnote 10.

Acknowledgements

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Endnotes

¹ See Appendix A.

² Bryce Covert and Josh Israel, "What 7 states discovered after spending more than \$1 million drug testing welfare recipients," *Think Progress*, February 2015, <https://thinkprogress.org/what-7-states-discovered-after-spending-more-than-1-million-drug-testing-welfare-recipients-c346e0b4305d/>.

³ *TANF Policy Brief: Random Drug Testing of TANF Recipients is Costly, Ineffective and Hurts Families*, Center for Law and Social Policy, October 2013, <https://www.clasp.org/sites/default/files/public/resources-and-publications/files/520.pdf>.

⁴ Victoria Palacio, *Drug Testing SNAP Applicants is Ineffective and Perpetuates Stereotypes*, Center for Law and Social Policy, July 2017, <https://www.clasp.org/sites/default/files/publications/2017/08/Drug-testing-SNAP-Applicants-is-Ineffective-Perpetuates-Stereotypes.pdf>.

⁵ *Ibid.*, 4.

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

⁷ *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>.

⁸ 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>.

⁹ 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/>.

¹⁰ See Appendix C.

¹¹ "Screening Issues", The SASSI Institute, <https://www.sassi.com/customer-support/clinical-support/screening-issues/>.

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¹³ Christina Sterbenz, "Boston Police Used A Racist Drug Test, Lawsuit Says," *Vice News*, March 2018,

https://news.vice.com/en_us/article/wj493x/boston-police-use-a-racist-drug-test-lawsuit-says.

¹⁴ Mary Mannix and Henry Freedman, "TANF and Racial Justice," *Journal of Poverty Law and Policy* 47 (2013), http://povertylaw.org/files/docs/article/chr_2013_september_october_mannix.pdf.

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¹⁶ See *Appendix B*.

¹⁷ Arthur Delaney, "No Drug Tests For Food Stamp Recipients, Feds Tell Georgia," *HuffPost*, June 2014, https://www.huffingtonpost.com/2014/06/03/food-stamps-drug-test_n_5440742.html.

¹⁸ Arthur Delaney, "Court Tosses Scott Walker's Food Stamp Drug Testing Lawsuit," *HuffPost*, October 2016, https://www.huffingtonpost.com/entry/scott-walker-drug-testing_us_57f65f53e4b05f39c51e7aad.

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²⁰ *SB 886*, Wisconsin Legislature, December 2018, <https://docs.legis.wisconsin.gov/2017/proposals/sb886>.

²¹ <https://familiesusa.org/1115-waiver-element-drug-testing>.

²² "Section 1115 BadgerCare Reform Demonstration Waiver FAQs," Wisconsin Department of Health Services, revised December 2018, <https://www.dhs.wisconsin.gov/badgercareplus/waivers-cla.htm>.

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²⁴ *H.R. 3630 - Middle Class Tax Relief and Job Creation Act of 2012*, Congress.gov, December 2011, <https://www.congress.gov/bill/112th-congress/house-bill/3630>.

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²⁷ *Ibid.*

²⁸ Darrel Thompson, *No More Double Punishments: Lifting the Ban on SNAP and TANF for People with Prior Felony Drug Convictions*, Center for Law and Social Policy, January 2019, https://www.clasp.org/sites/default/files/publications/2019/01/2019_%20nomoredoublepunishments.pdf.

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³⁰ Peter Friedmann, Stephenie Lemon, Michael Stein, et al., "Accessibility of Addiction Treatment: Results from a National Survey of Outpatient Substance Abuse Treatment Organizations," *Health Services Research* 38 (2003): 887-903, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1360921/>.

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