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Drug-Testing for Welfare Benefits

April 13, 2016

Many states have implemented or discussed plans that require their welfare recipients to pass a drug test in order to be eligible for benefits. These policies have their proponents and opponents, and in this article Wonk Tank examines the arguments.

Background

Discussions of drug-testing welfare recipients began in earnest following the 1996 Federal Welfare Reform Act.^[1] This act did not require states to drug test their welfare recipients as a requirement for receiving assistance,^[2] but Temporary Assistance for Needy Families (TANF) and other block grants to states allowed for drug-testing recipients after the enactment of the new law. Many states have considered or enacted legislation around this issue. Twenty states in 2009 and 12 states in 2010 considered such bills, but few have been passed due to the legal dilemmas of implementing random drug tests. A 2003 Michigan Court of Appeals case decided that subjecting every welfare user to a drug test without any evidence of drug use was unconstitutional.^[3] That is not the only court challenge to these types of laws- in December of 2013, a Florida federal judge declared that state's drug testing law unconstitutional.^[4] Despite this concern, however, 12 states passed laws requiring some kind of drug test for welfare recipients between 2012 and 2014. Currently, 15 states have some kind of legislation requiring that welfare recipients be tested for drugs under certain circumstances. This issue has become more of a focus for legislators- in 2016 so far, 17 states have introduced some kind of legislation surrounding drug testing for welfare benefits.^[5]

The state laws requiring drug tests for welfare recipients vary widely from state to state in their requirements. Utah requires applicants to fill out a written questionnaire screening for drug use, while Tennessee and Oklahoma require drug testing for all applicants to its welfare program.^[6] So far, no states have enacted legislation requiring that welfare recipients submit to random drug tests in order to continue their eligibility for welfare. ^[7] States also vary in how they use the results of the tests. Some states refuse to offer benefits to applicants who fail the tests or who refuse to take the test. Others simply require that participants in the program undergo some kind of drug abuse counseling or treatment concurrently while receiving welfare. In addition, some states require drug testing for TANF only, and others drug test for TANF, Supplemental Nutrition Assistance (SNAP) and even Medicaid. ^[8]

The Debate

One of the primary benefits of drug-testing welfare recipients from an economic perspective include potential savings for taxpayers and reduced strain on state aid programs. When Governor Rick Scott of Florida planned to start drug testing welfare recipients in 2008, the state had a \$3.6 billion dollar shortfall in their budget. In 2009, Florida saved a grand total of \$198,400 out of a welfare program that cost around \$178 million—arguably a small difference, but the savings are

expected to continue to rise as the program becomes more efficient. [9] Moreover, the relatively small amount of savings has contributed to a dialogue of drug-testing welfare recipients in order to stop state-funded drug use.

In addition to economic benefits of welfare drug testing, according to some experts, such a policy would also deter welfare recipients from using illegal drugs. However, despite sentiments that this policy is a right direction in the “war against drugs”, such a link between the policy and lowering rates of addiction has not yet been found in any states. Finally, some believe that welfare drug testing is only fair because other independent corporations and agencies also conduct drug tests.

Critics of welfare drug testing claim that it has been widely ineffective in reducing drug use in almost all the states where testing currently takes place. A 1996 report from the National Institute on Alcohol Abuse and Alcoholism found that there is no significant difference in the rate of illegal drug use by welfare applicants and non-applicants.[10] On the other hand, over 70% of illegal-drug users between the age 18 and 49 are actually employed full time.

Even if the program is efficient, economists worry about the high cost of the program, which may even exceed the savings to the budget. Idaho’s state government commissioned a study of the likely financial impact of a drug welfare testing program and found that the costs would in fact exceed the savings.[11] In Florida, the state has had to spend a considerable amount of money defending the policy in court and testing itself costs \$240 for 40 applicants, costing tens of thousands for all applicants in the state.

Finally, the primary argument against welfare drug testing is that it is unconstitutional. The Fourth Amendment puts limits on the types of searches that the state can carry out, and drug tests are a kind of search. In the Supreme Court case *Chandler v. Miller* in 1997, the Supreme Court voted 8-1 to strike down a Georgia law requiring candidates for state offices to pass a drug test, and likely, the court would vote the same way for policies that include drug-testing welfare recipients.

[1] “Drug Testing for Welfare Recipients and Public Assistance.” NCSL. March 28, 2016. <http://www.ncsl.org/research/human-services/drug-testing-and-public-assistance.aspx>.

[2] “Drug Testing of Public Assistance Recipients as a Condition of Eligibility.” ACLU. 2016. <https://www.aclu.org/drug-testing-public-assistance-recipients-condition-eligibility>.

[3] “Drug Testing for Welfare Recipients and Public Assistance.” NCSL. March 28, 2016. <http://www.ncsl.org/research/human-services/drug-testing-and-public-assistance.aspx>.

[4] Jack Grovum. “Some states still pushing drug testing for welfare.” USA Today. March 6, 2014. <http://www.usatoday.com/story/news/nation/2014/03/06/stateline-drug-testing-welfare-states/6118111/>.

[5] “Drug Testing for Welfare Recipients and Public Assistance.” NCSL. March 28, 2016.
<http://www.ncsl.org/research/human-services/drug-testing-and-public-assistance.aspx>.

[6] “Drug Testing for Welfare Recipients and Public Assistance.” NCSL. March 28, 2016.
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[7] “Drug Testing of Public Assistance Recipients as a Condition of Eligibility.” ACLU. 2016.
<https://www.aclu.org/drug-testing-public-assistance-recipients-condition-eligibility>.

[8] “Drug Testing for Welfare Recipients and Public Assistance.” NCSL. March 28, 2016.
<http://www.ncsl.org/research/human-services/drug-testing-and-public-assistance.aspx>.

[9] “Welfare and Drug Testing.” The Economist. September 11, 2011

<http://www.economist.com/blogs/democracyinamerica/2011/09/welfare-and-drug-testing>

[10] “Welfare Reform and Substance Abuse Treatment for Welfare Recipients” NIAA. June 13, 2016.

<http://pubs.niaaa.nih.gov/publications/arh291/63-67.htm>

[11] “What 7 States Discovered After Spending More Than \$1 Million Drug Testing Welfare Recipients” February 26, 2015.

<https://drugfree.org/learn/drug-and-alcohol-news/pennsylvania-introduces-new-program-to-drug-test-some-welfare-recipients/>

Pennsylvania Introduces New Program to Drug-Test Some Welfare Recipients

February 6, 2012 by **Join Together Staff**

Officials in Pennsylvania are introducing a new drug testing program for certain welfare recipients. Pennsylvania's program will randomly test those with a felony drug conviction within the past five years, and those on probation for such crimes. A program introduced in Florida last year to test all welfare recipients was **blocked by a federal judge**.

The Pennsylvania program is being piloted in one county, and could expand statewide this summer if it is shown to be cost effective, **Fox News** reports.

“One of the biggest suggestions I hear from constituents at the numerous town hall meetings I regularly hold is that we need to drug test welfare beneficiaries,” State Senator David Argall, who supports the measure, said in a **statement**. “With over \$10 billion going to the Department of Public Welfare, this initiative seeks to stop the abuse within our welfare system.”

The **National Conference of State Legislatures** says at least 36 states put forth proposals last year around drug testing of welfare and foods stamps. In addition to Florida, Arizona and Missouri also passed legislation. The measures in those two states were tailored more narrowly, the article notes.

Opponents of measures to require drug testing for welfare recipients say they are unfair, and are not cost effective.

<http://www.ncsl.org/research/human-services/drug-testing-and-public-assistance.aspx>

Drug Testing for Welfare Recipients and Public Assistance

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Quick Facts:

At least 15 states have passed legislation regarding drug testing or screening for public assistance applicants or recipients (Alabama, Arkansas, Arizona, Florida, Georgia, Kansas, Michigan, Mississippi, Missouri, North Carolina, Oklahoma, Tennessee, Utah, West Virginia and Wisconsin.) Some apply to all applicants; others include specific language that there is a reason to believe the person is engaging in illegal drug activity or has a substance use disorder; others require a specific screening process.

In addition, Wisconsin included a provision in its 2015 budget bill to drug test certain individuals participating in the Supplemental Nutrition Assistance Program (SNAP) Employment and Training program. The federal government has indicated this goes against federal law prohibiting states from imposing additional eligibility criteria on SNAP recipients. The state has sued the federal government seeking clarity on the federal law.

- Florida's law was halted by a district judge. The District Court issued a final judgment in December 2013 that permanently stopped enforcement of the law saying it violated constitutional protections against unreasonable searches. On December 2, 2014, the 11th U.S. Circuit Court of Appeals upheld the ruling.
- Tennessee's bill required the department to develop a plan of suspicion-based testing and report its recommendations to the legislature by January 2014. The state began a testing program in July 2014.
- As of March 2017, at least 20 states have proposed legislation requiring some form of drug testing or screening for public assistance recipients this year. The states include: Hawaii, Illinois, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New York, North Dakota, Rhode Island, South Carolina, Texas, and Vermont. Florida, Oregon and Pennsylvania have proposals to drug test those applicants who have been convicted of drug-related offenses. Arizona's proposal applies only to nutrition assistance applicants convicted of drug-related offenses.

History and Overview

Substance abuse issues have long been part of public assistance policy discussions. States have proposed drug testing of applicants and recipients of public welfare benefits since federal welfare reform in 1996. The federal rules permit drug testing as part of the Temporary Assistance for Needy Families block grant. In recent years, nearly all states have proposed some form of drug

testing or screening for applicants. In 2009, over 20 states proposed legislation that would require drug testing as a condition of eligibility for public assistance programs. In 2010 at least 12 states had similar proposals. None of these proposals became law because most of the legislation was focused on “suspicionless” or “random” drug testing, which is at odds with a 2003 Michigan Court of Appeals case. Marchwinski v. Howard ruled that subjecting every welfare applicant in Michigan to a drug test without reason to believe that drugs were being used, was unconstitutional.

The proposals gained momentum beginning in the 2011 session. Three states passed legislation in 2011, four states enacted laws in 2012, two states passed legislation in 2013, and three states passed legislation in 2014, bringing the total number of states to twelve. In 2013, Kansas enacted legislation to require drug testing for applicants and recipients suspected of using controlled substances. In 2012, Utah passed legislation requiring applicants to complete a written questionnaire screening for drug use and Georgia passed legislation requiring drug tests for all applicants for Temporary Assistance for Needy Families. Tennessee approved a bill to require the department to develop a plan for substance abuse testing for all applicants and Oklahoma passed a measure requiring all applicants for TANF to be screened for illegal drug use.

Drug Testing for Individuals Convicted of Drug Felonies

The 1996 welfare law bars states from providing TANF assistance to persons convicted of a felony for possession, use, or distribution of illegal drugs. However, it allows states to opt out of the ban or modify the period for which the ban applies. At least four states modified the ban to require those convicted of drug felony charges to comply with drug testing requirements as a condition of receiving benefits, including Maine, Minnesota, Pennsylvania and Wisconsin.

Map of 2012 State Legislative Proposals

