

Drug Testing of Public Assistance Recipients Raises Legal, Cost and Other Concerns

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House Concurrent Resolution No. 58 calls for the creation of a Joint Legislative Study Committee on Substance Abuse and Public Assistance to examine the feasibility of random drug testing for public assistance and unemployment compensation recipients. In considering such a policy, three main points of concern must be addressed: **the legality of random drug testing, the claim that substance use is widespread among public assistance recipients, and the cost and efficiency of random testing.**

1) Random drug testing of public assistance recipients will face legal obstacles.

- a. In 2003, the U.S. 6th District Court struck down Michigan's random drug testing plan, noting that there was a lack of individualized suspicion and that the program was an infringement of the Fourth Amendment.¹ The plan had called for "substance abuse testing as a condition of eligibility for family independence assistance (TANF)." **Note:** Michigan is the only state to have implemented a policy of random drug testing.
- b. *Goldberg vs. Kelly* (1970) holds that welfare recipients are constitutionally entitled to a hearing before their benefits can be terminated.²

2) Substance use is not a common trait of public assistance recipients.

- a. If all welfare recipients were to stop using illicit drugs, the size of the welfare population would show little decline.³
- b. The National Household Survey on Drug Abuse and the Women's Employment Study showed that illicit substance use among TANF recipients had *decreased* from 1990 to 2001, and that broad trends of substance use among TANF recipients appeared to parallel trends in the general population.⁴
- c. During Michigan's brief implementation of random drug testing, roughly 10 percent of recipients tested positive. The majority of these positives had used only marijuana.⁵
- d. Only 1/5 of recipients who reported illicit substance use meet the diagnostic criteria for *substance dependence* or *substance abuse*.⁶

3) Random drug testing of public assistance recipients is costly and not efficient.

- a. Legislation in Louisiana that would test *only* recipients of cash assistance (not Unemployment Insurance or SNAP) has been estimated to cost over \$700,000, if each drug test cost \$50.⁷ As the proposal for West Virginia includes programs besides TANF, it could run well over \$1 million each year, without any indication of how much money it will save.
- b. Since most drugs remain detectable in urine for only a short time, random drug testing will cost the state money without necessarily finding those who are using illicit

substances (Table 1). Furthermore, those drugs posing a significant or serious threat to West Virginia⁸ (highlighted in gray) are only detectable for a few days after use.

- c. Urine tests produce a number of false-positive results, so further confirmatory testing would need to be done for anyone who tested positive. The most accurate way to do this is through a gas chromatography/mass spectrometry (GC/MS) test, which is time-consuming, expensive, and requires a high level of expertise.⁹

Precedents for requiring confirmatory testing:¹⁰

- i. The current federal probation regulations require that if a probationer is to be returned to prison based on a drug test, it must be confirmed by GC/MS at a SAMHSA certified laboratory.
- ii. The Federal Bureau of Prisons requires that all positive-test results of those serving their sentence in a community treatment center be validated to substantiate the positive result.

Table 1. Length of Time Substances Can Be Detected in Urine¹¹

Substance	Time
Alcohol	7-12 h
Amphetamine	2 d
Methamphetamine	2 d
Barbiturate	
Short-acting (eg, pentobarbital)	1 d
Long-acting (eg, phenobarbital)	3 wk
Benzodiazepine	
Short-acting (eg, lorazepam)	3 d
Long-acting (eg, diazepam)	30 d
Cocaine metabolites	2-4 d
Marijuana	
Single use	3 d
Moderate use (4 times/wk)	5-7 d
Daily use	10-15 d
Long-term heavy smoker	>30 d
Opioids	
Codeine	2 d
Heroin (morphine)	2 d
Hydromorphone	2-4 d
Methadone	3 d
Morphine	2-3 d
Oxycodone	2-4 d
Propoxyphene	6-48 h
Phencyclidine	8 d

¹ Michigan House Fiscal Agency. 2004. "Legislative Analysis: Drug Testing of FIP Recipients." Available at <http://www.michiganlegislature.org>

² Goldberg v. Kelly, 397 U.S. 254 (1970). View entire case at: <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=397&invol=254> (Accessed on July 13, 2009).

³ Pollack, Harold, Sheldon Danziger, Kristin Seefeldt, Rukmalie Jayakody. June 2002. "Substance Use among Welfare Recipients: Trends and Policy Responses." *The Social Service Review*, Vol. 76, No. 2, pp. 256-274.

⁴ Metsch, Lisa, and Harold Pollack. 2005. "Welfare Reform and Substance Abuse." *The Milbank Quarterly*, Vol. 83, No. 1, pp. 65-100.

⁵ Michigan House Fiscal Agency.

⁶ Pollack et al. 2002.

⁷ Legislative Fiscal Office. Fiscal Note for HB 897.

www.legis.louisiana.gov/billdata/streamdocument.asp?did=657095 (Accessed June 18, 2009).

⁸ U.S. Department of Justice, National Drug Intelligence Center. West Virginia Drug Threat Assessment.

<http://www.usdoj.gov/ndic/pubs5/5266/>

⁹ Moeller, Karen, Kelly Lee, Julie Kissack. 2008. "Urine Drug Screening: Practical Guide for Clinicians." *Mayo Clinic Proceedings*, 83(1), pp. 66-76.

¹⁰ On-Site Drug Testing. Ed. Amanda Jenkins, Bruce Goldberger. *Humana Press*. 2001.

¹¹ Moeller et al. 2008.