

Testimony to the House Federal & State Affairs Committee
Representative Kasha Kelley
March 26, 2012

Chairman Brunk, Vice Chair Patton, and members of the committee, thank you for this opportunity to speak on House Bill 2686. This bill deals with the topic of random drug screening for those receiving public assistance.

Before we visit more about HB 2686, please allow me a moment to share some broader background and history on this issue.

The 1996 Welfare Reform Act (a.k.a. the Personal Responsibility and Work Opportunity Reconciliation Act), under TANF, authorized states to test public assistance recipients for illegal drugs and impose consequences when such tests were failed. Michigan was the first state to put forth such legislation in 1998.

Michigan's law was challenged by the ACLU on grounds that it violated the Fourth Amendment (protection against unreasonable search and seizure). The measure was then blocked by an injunction issued by a U.S. District Court Judge in 1999. That decision was next overturned by a three-judge panel of the Sixth Circuit Court of Appeals. The Sixth Circuit held that welfare recipients have a "diminished expectation of privacy" and were free to not accept benefits if they did not wish to be tested. When the full Sixth Circuit Court of Appeals reviewed the case, six of the judges sided with the state of Michigan, and six voted to void the law. Just as in our process, a measure is lost in the event of a tie vote. The district judge's initial decision stood.

It is notable that the pilot program initiated by Michigan law was in effect for only five weeks before it was halted. Its dictate was to test 20% of recipients randomly every six months. During the short time the program was in effect, 21 of the 268 people tested were positive for illegal drug use, or roughly 8%. With only one-fifth of recipients turning up an 8% positive return rate in the first five weeks, it is conceivable that the program—had it been allowed to continue—would have identified a far greater percentage of tax dollars being used for purposes other than intended. Although the state settled out of court, they did retain the right to test some public assistance recipients if suspected of substance abuse problems.

Michigan has since announced a renewed effort to address abuse in the Michigan welfare system with a package of bills targeted at inappropriate use of the state's cash assistance program. The state is not alone. At least 36 states have offered similar initiatives, as well as a handful of cities and a federal-level proposal to make testing nationwide. These pieces of legislation are either still alive in the legislative process, or in some cases, already enacted into law. In the case of Missouri and Florida (where legislation was passed), application rates dropped (meaning users are weeding themselves out of the process prior to application). While this doesn't ensure that a user will have their drug issue addressed with treatment, it does evidently cause self-policing thus stopping a misuse of funds.

The question for each state that takes up this issue has and will continue to be that of crafting legislation deemed to pass the litmus test of the Fourth Amendment. As such, HB 2686 has been crafted to offer an opt-out provision whereby a recipient or applicant may refuse to be tested. HB 2686 is also crafted with care and concern for those who have addiction issues. It does not seek to cast aside those with

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drug-related problems. Quite the opposite, by screening one-third of cash recipients each year, it seeks to identify those abusing and move them toward healing. As such, when a recipient or applicant has a first positive test, there would be a requirement to participate in an education or treatment program funded by the state. If that program is refused, their cash benefit is lost. In the event that a second test is failed, the recipient would again be required to participate in an education or treatment program, again funded by the state. Only if the treatment is refused is assistance lost. It is the third positive test that terminates a recipient from cash assistance.

In the past, I have requested the contracts the state used for drug testing for the purpose of gaining a general perspective on screening costs, as well as general information on addiction and prevention services. According to KLRD, contractually set pricing has ranged from a one-drug panel, costing \$3.90 to a 10+ drug panel, costing \$5.30, in addition to a confirmation cost ranging between \$15.00 and \$20.00. This assumes contract pricing has remained somewhat stagnant since 2009. Current projections seem to maintain a generally similar price point for tests and panel readings. Although pricing of tests has been driven down through the years, whether more competitive contracts or further bulk discounts exist is unknown, but recommended for pursuit.

It is also good to consider the arguments against legislation of this nature. Most commonly, they are as follows.

- *Screening all applicants/recipients is demeaning to those who do not use.*

Conversely, screening and identification of those with drug problems hastens the state's ability to move those needing treatment into a program. It is respectful of those who have fallen on hard times by preserving and allocating moneys for their intended use as temporary financial assistance, instead of having them diluted and squandered on illegal activity.

- *This type of legislation singles out the poor.*

While it is true that screening those requesting to be on/on public assistance typically encompasses those who are having a difficult time financially, it should be noted the same practice occurs in the private sector where income levels, great or small, are of no factor. Where one is asked to test as a condition of receiving taxpayer money and benefits, the other is asked to test as a condition of employment.

- *Legislation of this nature violates the Fourth Amendment.*

Initially successfully argued in the Michigan court case - because welfare is not an entitlement - states have the right to place reasonable restrictions or conditions on the receipt of discretionary government benefits, according to both the three-judge panel of the Sixth Circuit Court of Appeals and the Washington Legal Foundation. Moreover, identifying recipients who need treatment in an effort to move them out of addiction and poverty, and back into a productive role in society, while aiding the prevention of potential family abuse and neglect, can less be categorized as a violation, but rather a noble attempt at preserving a person's dignity and ensuring a better future.

- *Welfare recipients use illegal drugs at roughly the same rate as non-welfare recipients.*

Whether this statement is true or not has no bearing on the fact that tax dollars are not appropriated for illegal activity, fraud and abuse. While both sets may have drug-related habits and be illegal, only one is taxpayer funded.

- *A focus on drug use distracts from other problems that contribute to unemployment and child neglect.* Conversely, the earlier the intervention, the sooner help can be given for all factors in play.

Drugging is a barrier to employment. Drugging also often harms families through abuse and neglect, whether it be physical, a propensity to spend money on drugs instead of necessities, or both. Moreover, drugging is a dis-incentive to stable employment. Whether psychological disorders, dependency disorders, or other factors are in play in drug use, early intervention and proper placement can identify and stem a tide of consequences.

- *Random drug testing for those on public assistance could lead to an expansion in drug testing.*

As long as illegal drugs remain illegal, and taxpayer funds are allocated for a specific use, but are thus misused, a reasonable instrument such as drug testing is rational in the scope of need.

- *There is a difference between illegal drug use and a dependency on an illegal drug.*

Whether occasional use or a dependency exists is impertinent. The purchase and use of illegal substances with taxpayer moneys is a gross misuse of funding and an affront to those law-abiding citizens paying into the system.

Although much more could be said and written on this issue, I will summarize with a quicker closing. The overarching intent of HB 2686 is to preserve public assistance for its original intent while honoring all who participate in the program. One of the purposes of TANF block grant funds is to design and operate a program that helps promote job preparation. Substance use and abuse are, in fact, barriers to employment. Early detection of illegal drug use can help move those who use into a treatment program where they can have the potential to emerge a victor over drugs, thus ensuring a more productive life, and very likely a better parent and/or spouse. Simply put, we must ensure that dollars meant to help in a time of financial crisis are going for diapers, deli meat and detergent instead of drugs. The thought that the state could be of help to even one family, moving them from a potentially-generational cycle of drugs and financial dependency to independence, productivity and health, is absolutely exciting.

As a final comment, our SRS Agency states they are able to execute this program within existing resources, according to projections.

Thank you, Chairman Brunk and committee members, for your time. I hope I have provided you with useful information. I will now stand for any questions the committee may have.

Kansas Department of Social and Rehabilitation Services
 House Bill No. 2686
 Estimated FY 2014 Annual Cost
 March 26, 2012

Item	Adults	Cost	Expenditures	Financing		Other Federal	Footnote
				SGF	TANF		
Drug Tests							
Positive Tests	0.4%	27	\$0	\$0	\$0	\$0	
Negative Tests	81.1%	5,274	50	263,724	-	-	
Refusing to Complete [1]	18.5%	1,205	-	-	-	-	1
Subtotal	100.0%	6,506	\$263,724	\$0	\$263,724	\$0	
Treatment							
27		3,780	\$102,470	\$56,973	\$0	\$45,497	2
Cash Assistance Savings							
Cases Refusing to Complete Drug Test [1]		1,205	(287)	(4,149,398)	-	-	1
Failure to Complete Treatment		18	(73)	(15,831)	-	-	
2nd and 3rd Positive Penalty		3	(73)	(2,968)	-	-	
Drug Offenses		135	(118,260)	-	(118,260)	-	
Subtotal			(\$4,286,457)	\$0	(\$4,286,457)	\$0	
Positions							
Salaries (12 positions)			\$701,242	\$387,675	\$62,897	\$250,671	3
OOE			24,012	13,275	2,154	8,583	
Subtotal			\$725,254	\$400,949	\$65,050	\$259,254	
Total			(\$3,195,010)	\$457,923	(\$3,957,683)	\$304,751	

Footnotes

- 1/ From Florida's experience, 18.5% refused to complete a drug test. These cases are assumed to be closed for non-cooperation, resulting in 97% of the total assistance savings. For non-cooperation, the full case monthly benefit savings of \$287 is used, not the \$73 adult portion.
- 2 / Treatment costs are low because of the low positive rate (based on Florida's experience).
- 3/ The 12 positions would be deployed as follows:
 - Two each for the more compact KC and Wichita regions
 - Four each for the wide ranging East and West regions

The positions would be required for the following duties:

 - inform clients of drug test requirement and appointments
 - obtain test results
 - coordinate test results with the case workers
 - coordinate negative result with the substance abuse case management contractor (Solutions Recovery Care Coordination)

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