

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 12, 2013

MEMORANDUM

TO: The Honorable Mele Carroll, Chair
Committee on Human Services

FROM: Patricia McManaman, Director

SUBJECT: **H.B. 458 - RELATING TO RANDOM DRUG TESTING**

Hearing: Tuesday, February 12, 2013; 9:30 a.m.
Conference Room 329, State Capitol

PURPOSE: The purpose of H.B. 458 is to require the Department of Human Services to study and report to the Legislature on the costs and benefits of instituting random drug testing for applicants or recipients of public assistance program benefits.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of this measure and would like to offer the following comments.

Federal law currently includes two provisions added by the 1996 welfare reform law, the PRWORA, P.L. 104-193, related to Temporary Assistance For Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP, formerly Food Stamps). The law includes a lifetime ban on TANF and SNAP for persons convicted of a drug-related felony related to possession, use or distribution. Other than this law, the USDA does not allow states to use drug testing in determining eligibility for SNAP. "No State agency shall impose any other standards of eligibility as a condition for

participating in the program.” 7 U.S.C. §214(b). The Department would not be allowed to implement this requirement on our SNAP applicants and recipients.

States had the option of opting out or modifying the ban imposed by P.L. 104-193. Hawaii opted to modify the lifetime ban and choose not to ban individuals with illicit drug use and abuse, recognizing that disqualifying an individual from assistance was not a solution and understanding that treatment works. As a result the Hawaii State Legislature passed HRS §346-53.3 to allow persons who comply with treatment to be eligible for TANF and SNAP benefits.

For the Temporary Assistance For Needy Families (TANF) and the General Assistance (GA) financial assistance programs, treatment for those identified with substance abuse is a presently a requirement and only those willing to comply with treatment are able to participate. Department contracted medical or psychological examiners establish whether an individual suffers from substance abuse, illegal or otherwise. Examiners also establish the treatment plan and require urinalysis to monitor treatment compliance when they determine with cause that it is necessary.

Under TANF, individuals identified as having substance abuse issues are required to participate in treatment as part of a barrier removal plan towards employment. Treatment along with other activities is allowed to meet their work participation requirements. First-to-Work case managers monitor treatment and failure to comply causes not just a disqualification for the individual but a whole family sanction. For the first non-compliance, ineligibility continues until compliance, the second infraction causes a minimum two month sanction and will continue beyond two months unless the household reapplies and complies. The third and subsequent infraction makes the family ineligible for a minimum of three months and continues beyond three months unless the household reapplies and complies.

For GA, an individual must be temporarily disabled to be eligible. The Department contracted examiners in addition to certifying disability and establishing the treatment plan are also required to monitor compliance with the treatment plan. Proof of treatment compliance must be submitted eight weeks following initial approval and at scheduled intervals thereafter. In the event a case closes prior to the next treatment compliance check, applicants reapplying within three months of case closure must provide prior proof of treatment before benefit approval. Failure to comply with treatment or to provide proof of prior treatment means benefit denial. Failure to comply with treatment causes a one month disqualification, the second is for three months and the third and future non-compliance causes six months of disqualification.

In 2003, Michigan's attempt at drug testing was ruled unconstitutional by the Michigan Court of Appeals. Until recently no other state had implemented suspicionless testing. However In 2011, Florida passed a law that required all TANF applicants to submit to a drug test. This law was implemented for a few months, but it is currently suspended under a court injunction pending a final court ruling. Random testing or suspicionless testing may well be unconstitutional and we defer to the Department of Attorney General for substantive points of law on this issue. States who have recently passed legislation such as Arizona do not conduct random drug tests. Arizona requires any recipient "who the department has reasonable cause to believe engages in illegal use of controlled substances" to be screened and tested and applies only to FY 2012-2013, (2012 Ariz. ALS 299). Recently, Utah has also implemented drug testing of public welfare recipients. The new law requires welfare recipients to fill out a substance abuse questionnaire. If the survey shows a "reasonable likelihood" for drug use, a drug test is required. A test failure would result in mandatory drug treatment for a minimum of 60 days. Refusal to take the initial drug test, to enter and complete treatment, or a positive test for drugs while in treatment or at its completion

can result in a loss of benefits. Under the rule, cash benefits would be removed for the recipient's entire household for three months on the first offense and 12 months for subsequent test failures in the year after the first failed test.

<http://www.ksl.com/?nid=148&sid=21520244>

During the four months of Florida's program only 2.6 percent of applications (108 of 4,086 applicants) failed the drug test and an additional 40 people cancelled their applications. <http://www.tampabay.com/news/courts/florida-didnt-save-money-by-drug-testing-welfare-recipients-data-shows/1225721>. The experience of Florida shows few applicants tested positive and therefore is not a cost effective use of taxpayer money. In Arizona, only one applicant/recipient was disqualified and saved the state \$560 — out of the \$200 million in benefits paid out since testing started. An additional \$200,000, or one-tenth of 1%, was saved when 1,633 people failed to return their drug use questionnaires.

<http://usatoday30.usatoday.com/news/opinion/editorials/story/2012-03-18/drug-testing-welfare-applicants/53620604/1>.

The Center for Law and Social Policy (CLASP) in a policy brief updated in October 2012, wrote that random or widespread drug testing is an inefficient use of taxpayer money. Testing should be limited to cases where agencies have good cause to believe that a client may be using drugs, or where the client has acknowledged drug use and agreed to participate in a treatment program.

<http://www.clasp.org/admin/site/publications/files/520.pdf>.

The Department does exactly this under its current requirements and has fully implemented HRS §346-53.3 as intended by the Hawaii State Legislature.

Thank you for the opportunity to provide comments on this bill.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 458, RELATING TO RANDOM DRUG TESTING.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Tuesday, February 12, 2013 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): David M. Louie, Attorney General, or
James W. Walther, Deputy Attorney General

Chair Carroll and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but provides the following comments.

This bill would require the Department of Human Services (DHS) to "undertake a study to determine the costs and benefits of instituting random drug tests as a requirement for participating in public assistance programs" and report the findings to the Legislature. While requiring DHS to conduct a study is not *per se* objectionable, the study would be unproductive because random drug testing of public assistance recipients presents significant constitutional concerns under the search and seizure provisions of the Fourth Amendment.

The law is fairly clear that a suspicionless drug testing requirement (such as random testing) for public assistance recipients would be unconstitutional; the issue is less clear as to drug testing based on some individualized finding of cause. But given the complexity of Fourth Amendment law and its application in the context of public benefits, it is almost a certainty that any attempt to require public assistance recipients to submit to drug testing of any sort will result in a court challenge.

In 1999, the State of Michigan was enjoined from implementing a condition of eligibility that required drug testing for all applicants, and random drug testing program for all of its Temporary Assistance for Needy Families (TANF)¹ recipients, under a finding that suspicionless drug testing violates the Fourth Amendment of the United States Constitution. Marchwinski v.

¹ TANF is a federally funded public assistance program. See, 42 U.S.C. §§601-619.

Howard, 113 F. Supp. 2d 1134 (E.D. Mich. 2000), aff'd Marchwinski v. Howard, 319 F.3d 258 (6th Cir. 2003), Marchwinski v. Howard, 60 Fed. App. 601 (6th Cir. 2003).²

More recently, in 2011 the State of Florida was likewise enjoined from implementing suspicionless drug tests as a condition of eligibility for TANF, following a demonstration project in 1998 that made recommendations about the feasibility of expanding the program. In holding that the suspicionless drug testing was violative of the Fourth Amendment, the court noted that,

[d]espite the failure of the Demonstration Project to uncover evidence of rampant drug abuse among TANF applicants; despite the conclusion of researchers that drug use did not adversely impact any of the goals of the TANF program, including employability, earning capacity or independence from social assistance; despite the fact that the study revealed no financial efficacy; despite the legal ramifications; and, despite the express recommendation that the project not be continued or expanded,

Florida enacted the requirement anyway. Lebron v. Wilkins, 820 F. Supp. 2d 1273, at 1279 (M.D. Fla. 2011).

It is well settled that a drug test is a search under the Fourth Amendment of the United States Constitution. Marchwinski, at 1138, citing Skinner v. Railway Labor Executive's Ass'n, 489 U.S. 602, 617, 109 S. Ct. 1402, 103 L. Ed. 2d 639 (1989). The constitutionality of a governmental search is based on “reasonableness.” Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 652 (1995). Generally, this means that the governmental search must be supported by probable cause. United States v. Scott, 450 F.3d 863, 866 (9th Cir. 2005). Suspicionless searches are sanctioned only in limited circumstances. Marchwinski, at 1138.

The question of cause based searches is rather more open. The cases in the area of public benefits law generally do not deal with searches based on cause, but are instead challenges to suspicionless drug testing. See, e.g., Marchwinski, and Lebron. The Lebron court pointedly noted that it did not address whether Florida was authorized to conduct drug testing of TANF applicants based on some quantum of individualized suspicion, an issue not before the court. Lebron, at 17. In other areas outside of public assistance, however, where probable cause is found, generally the courts will find the search constitutional. See, e.g., Skinner. Therefore, it is difficult to say with certainty how a court would treat those types of suspicion-based drug testing programs for purposes of Fourth Amendment challenges.

² The decision was affirmed by an evenly divided en banc panel of the Sixth Circuit Court of Appeals.

Under federal law, both "suspicion" tests and random tests must be justified by the government's "special needs, beyond the normal need for law enforcement[.]" Scott, 450 F.3d at 868; see also Sanchez v. County of San Diego, 464 F.3d 916 (9th Cir. 2006) (applying "special needs" to searches without probable cause); American Fed'n of Gov't Employees v. Martin, 969 F.2d 788 (9th Cir. 1992) (applying "special needs" to drug testing based on reasonable suspicion). Those non-law enforcement "special needs" include, for example, verifying eligibility for welfare programs (Sanchez), and protecting children from the dangers of drug abuse and trafficking (Vernonia). The "special need" must also concern public safety. Chandler v. Miller, 520 U.S. 305, 117 S. Ct. 1295, 137 L. Ed. 2d 513 (1997). In addition, it is not sufficient to simply assert the state's interest as a "special need;" there must be evidence of a concrete threat that would be mitigated through drug testing. Lebron, at 15 (citing Chandler, at 322).

The court in Marchwinski found that the purpose of the TANF program was not to advance the interest of public safety by ameliorating child abuse or neglect, rather its purpose was to strengthen families and move them toward independence from government assistance. Therefore, the court found that Michigan could not legitimately advance the protection of children from abuse and neglect as a reason to support a special need justifying suspicionless drug testing of TANF recipients. Marchwinski, at 1141.

The court in Lebron found there was a lack of evidence to support any of the stated interests as "special needs" that would justify suspicionless wholesale testing of all TANF applicants and recipients, including:

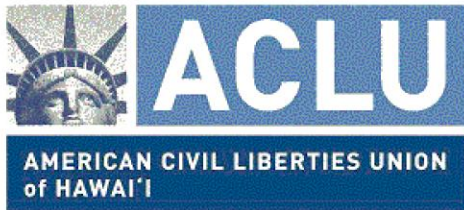
- (1) ensuring that TANF funds are used for their dedicated purpose, and not diverted to drug use;
- (2) protecting children by "ensuring that its funds are not used to visit an 'evil' upon the children's homes and families;"
- (3) ensuring that funds are not used in a manner that detracts from the goal of getting beneficiaries back to employment; [and]
- (4) ensuring that the government does not fund the "public health risk" posed by the crime associated with the "drug epidemic."

Lebron, at 11.

The fact that a public assistance recipient may choose to decline benefits rather than agree to the drug testing does not necessarily end the constitutional inquiry. Under the doctrine of "unconstitutional conditions," once the government elects to provide benefits, in many

situations the conditions placed on those benefits must also comply with the Constitution. Scott, 450 F.3d 866 (discussing Dolan v. City of Tigard, 512 U.S. 374 (1994)).

Based on the above, it appears likely that a randomly administered suspicionless drug testing requirement for public assistance recipients would not withstand a constitutional challenge. We cannot say definitively whether drug testing based on "reasonable cause" could be fashioned in a way that would satisfy the constitutional restrictions of the Fourth Amendment. But it is fairly certain that any attempt to implement drug testing of any kind would draw a court challenge with an uncertain outcome. We recommend that this bill be held by the Committee.



Committee: Committee on Human Services
Hearing Date/Time: Tuesday, February 12, 2013, 9:30 a.m.
Place: Room 329
Re: Testimony of the ACLU of Hawaii in **Opposition** to H.B. 458, Relating to Random Drug Testing

Dear Chair Carroll and Members of the Committee on Human Services:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in **opposition** to H.B. 458, which seeks to study the costs and benefits of instituting random drug testing for recipients of public assistance program benefits.

There is no need to spend the time and resources for a study on this issue: it is already clear that such a program would be ineffective, expensive, and illegal.

I. Random drug testing of public assistance recipients is ineffective.

a. Recipients of public assistance do not use drugs at higher rates than the general population.

In 2011, Florida became the first state to implement a bill mandating suspicionless drug testing of all applicants for Temporary Assistance for Needy Families (TANF). The law was in place for approximately four months before it was blocked by a federal judge (in a lawsuit brought by the ACLU). In that time, only 2.6% of applicants tested positive,¹ far lower than the estimated 8.13% of all Floridians (age 12 and up) estimated by the federal government to use illegal drugs.² Additional research showed that there is no higher rate of drug use among TANF applicants than among the general population.³ In other words, the perception that the poor use drugs at higher rates than the general population is a myth.

¹ Lizette Alvarez, *No Savings Are Found From Welfare Drug Tests*, N.Y. TIMES, Apr. 17, 2012, available at <http://www.nytimes.com/2012/04/18/us/no-savings-found-in-florida-welfare-drug-tests.html?ref=us>.

² Rachel Bloom, *Just as We Suspected: Florida Saved Nothing by Drug Testing Welfare Applicants*, Apr. 18, 2012, available at <http://www.aclu.org/blog/criminal-law-reform-racial-justice/just-we-suspected-florida-saved-nothing-drug-testing-welfare>.

³ Robert E. Crew, Jr. & Belinda Creel Davis, *Assessing the Effects of Substance Abuse Among Applicants for TANF Benefits*, 17(1) J. of Health & Soc. Pol. 36 (2003).

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b. Random drug testing programs are expensive, and they do not save money.

In the four months in which Florida's drug-testing program was in place, Florida spent \$118,140 reimbursing the overwhelming number (over 97%) of Florida TANF applicants who tested negative for drugs. That is far more than any money saved by the program, and does not include administrative costs, staff costs, and, of course, litigation costs (estimated to be over \$400,000 to date⁴). Furthermore, the testing program did not deter individuals from applying for help – an internal document about TANF caseloads revealed that, at least from July through September, the policy did not lead to fewer cases. Research in other states yielded similar results: recent fiscal notes have set the cost of implementing such programs at \$2.2 million for the first year in Maryland, \$1.45 million for the first year in Virginia, and \$1.77 million for the first year in Kansas.

Mandatory drug testing policies exacerbate existing stigmas associated with receiving public assistance and may deter people in need from applying for aid. Furthermore, public assistance programs provide basic food and shelter for families – if Hawaii truly wants to combat drug addiction and its corresponding societal costs, the Legislature should use its limited resources to fund drug treatment programs rather than simply block access to public assistance.

II. Random drug testing of public assistance recipients is unconstitutional.

Mandatory drug testing policies violate the Fourth Amendment's requirement that the government have individualized suspicion before forcing someone to submit to a drug test. Indeed, federal courts in Michigan and Florida struck down random drug testing programs; the day after the ruling in the Florida case, a federal court in Missouri struck down a related measure that required random drug testing of students at Linn State Technical College as a condition of enrollment.⁵

⁴ Yael Ossowski, *FL: State's Mandatory Drug Tests for Welfare Face Biggest Costs in Court*, FloridaWatchdog.org, Dec. 4, 2012, available at <http://watchdog.org/63121/fl-states-mandatory-drug-tests-for-welfare-face-biggest-costs-in-court/>.

⁵ *Federal Judge Blocks Unconstitutional Mandatory Drug Testing Policy at Missouri College*, ACLU.org, Oct. 26, 2011, available at <http://www.aclu.org/criminal-law-reform/federal-judge-blocks-unconstitutional-mandatory-drug-testing-policy-missouri>.

Chair Carroll and Members of the Committee on Human Services
February 12, 2013
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In Florida, a U.S. District Court Judge issued a 37-page opinion halting enforcement of Florida's new law mandating drug tests for all applicants for the state's TANF program.⁶ The Court ruled that compelled drug testing is a search under the Fourth Amendment, and that individuals retain a right of privacy against such intrusive, suspicionless searches by the state, even when applying for temporary assistance.⁷

Any such similar imposition of drug testing in Hawaii would be subject to legal challenge by the ACLU of Hawaii and found to be unconstitutional. Any study of such a proposal would be a waste of scarce resources. Thus, we respectfully ask this Committee to defer this measure.

Thank you for this opportunity to testify.

Sincerely,

Daniel M. Gluck
Senior Staff Attorney
ACLU of Hawaii

The American Civil Liberties Union of Hawaii ("ACLU") has been the state's guardian of liberty for 47 years, working daily in the courts, legislatures and communities to defend and preserve the individual rights and liberties equally guaranteed to all by the Constitutions and laws of the United States and Hawaii. The ACLU works to ensure that the government does not violate our constitutional rights, including, but not limited to, freedom of speech, association and assembly, freedom of the press, freedom of religion, fair and equal treatment, and privacy. The ACLU network of volunteers and staff works throughout the islands to defend these rights, often advocating on behalf of minority groups that are the target of government discrimination. If the rights of society's most vulnerable members are denied, everyone's rights are imperiled.

⁶ *Lebron v. Wilkins*, 820 F.Supp.2d 1273 (M.D. Fla. 2011).

⁷ *Id.*

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COMMITTEE ON HUMAN SERVICES

Rep. Mele Carroll, Chair

Rep. Bertrand Kobayashi, Vice Chair

Tuesday, February 12, 2013

9:30 a.m.

Room 329

OPPOSITION TO HB 458 - RANDOM DRUG TESTING STUDY AND REPORT

Aloha Chair Carroll, Vice Chair Kobayashi and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 5,800 Hawai'i individuals living behind bars, always mindful that approximately 1,500 Hawai'i individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

HB 458 requires the Department of Human Services to study and report to the legislature on the costs and benefits of instituting random drug testing for recipients of public assistance program benefits.

Community Alliance on Prisons finds it profoundly sad that year after year this issue is brought forward. We, therefore, respectfully ask the committee to hold this bill.

The majority of TANF recipients are children from impoverished families (U.S.D.H.H.S, 2010). The Drug Policy Alliance notes that "removing or restricting assistance due to the behavior of a parent punishes children for circumstances beyond his or her control" (2011). Additionally, the increased stigma and fear attached to applying for TANF benefits has the potential to deter needy individuals with children and families from applying at all; thus increasing the vulnerability experienced by impoverished families and children.

TANF is not a hand out, it is a temporary assistance program that helps families get the support and training they need to achieve self-sufficiency. In fact, a recent study by the Social Research Institute at the University of Utah found that, of the 813 customers who were new to cash assistance in 2006, half of the group used 9 months of cash assistance or less and then left TANF.¹

¹ Mary Beth Vogel-Ferguson, Family Employment Program (FEP) Study of Utah: A Snapshot in Time - 2008: Wave 3, Social Research Institute, College of Social Work, University of Utah, January 2009.

To quote from a November 30, 2011 Rockefeller Report² commenting on a proposed law in Georgia ...

It is ironic that we, as a nation of opportunity, always turn on the downtrodden in times of trouble. Just recently we observed two (2) Georgia lawmakers, Rep. Jason Spencer, R-Woodbine, and Sen. John Albers, R-Roswell, propose an idea that, if it takes hold here in this state, would add another insult to the disadvantaged amongst us. They want all welfare recipients to be periodically drug-tested in order to be eligible for benefits.

The impulse may be from a good place. Drug abuse, both from the damage it does to the soul and the criminal activity that comes with it, can take a particularly heavy toll on the edges of our communities. So, the idea that we should wean the poor off of chemical dependency (which should, frankly include alcohol and tobacco, as well as obesity health choices), makes a lot of sense from a social engineering perspective.

TANF does not just go to support individuals, it provides support for families. Under this proposal, innocent kids could be robbed of critical financial support, because a parent's positive test for marijuana.

Moreover, why are we only drug testing TANF recipients? To be clear, why not test ALL recipients (including businesses and all employees) of public monies for illegal drugs? This would ensure that all public funds are used for their intended purpose. The reason not is because this would be a gross abuse of individual rights.

(...)

In other words, drug abuse has no correlation with the length of time on welfare AND the instance of abuse is much lower amongst welfare recipients. Essentially, this law is aimed at something that is not a problem, unless your goal is to force welfare recipients (and them only) to be drug-free, without imposing such a restriction on the rest of us.

The following is from Women With A Vision, Inc.³

Drug testing for TANF recipients is a fiscally irresponsible waste of resources

Drug-testing is an expensive and ineffective method of identifying individuals with substance abuse issues. These tests only identify drug usage, not addictions or drug abuse problems. The drug tests themselves, will often identify casual marijuana users but fail to identify stronger, more addictive substances that clear out of the system quickly, such cocaine, methamphetamine, and opiate-based drugs (Drugs of Abuse Reference Guide, 2011).

Welfare recipients have been shown to use drugs at the same rate as the general public.

The state and national proposals to require drug-testing for TANF participants assume that such testing will produce a high number of positives and thus save the regular taxpayer money. However, it has been shown that welfare recipients use illegal substances at the same rate as the rest of the population (NIH, 1996). This means that a high number of test kits will be negative --

² Local attorney Jim Rockefeller owns the Rockefeller Law Center and is a former Houston Co. Chief Assistant District Attorney, and a former Miami Prosecutor.

³ **Women With A Vision's No Justice Project**, New Orleans, Louisiana. www.wwav-no.org

each negative test kit is approximately \$42 of wasted taxpayer money. This money would be better spent on treatment for individuals struggling with addictions and disorders.

Drug testing is not the most effective or sensitive way to identify people struggling with addictions

Over half the states currently use a “screen-and-refer” method to detect and intervene with TANF recipients. Questionnaires and surveys, designed to identify problematic users and refer them to treatment, are able to distinguish between abuse and use while also detecting alcohol abuse issues. These methods of assessment are far more cost effective and less time-consuming than broad drug testing for TANF.

A report from the Universities of Michigan and Pennsylvania⁴ states:

Our results confirm and update earlier findings that psychiatric disorders are much more prevalent than illicit drug dependence among TANF recipients.⁵

This suggests that screening welfare applicants and recipients for depression, post-traumatic stress disorder, and other psychiatric disorders would detect many problems likely to hinder the transition from welfare to work. Such policies would address a much larger population of TANF recipients than the important, but small, population of drug-dependent recipients who might be detected through chemical drug tests.

(...)

When asked in Fall 1999 whether they had to take a drug test for an employer or training program in the prior year, about one-third of respondents reported taking such a test. However, only 5 respondents, about 2.5 percent of those tested and about 1 percent of the total sample reported that they did not pass. The benefits of drug testing must be weighed against the potential mis-allocation of treatment resources to occasional users.

Community Alliance on Prisons understands that this bill is about a study and report to the legislature. What do you need to know that hasn't already been studied by experts? This bill just seems to be a waste of precious resources and mean-spirited.

We respectfully ask that you hold this bill and review the research we cited and the plethora of other research about targeting the neediest families.

Mahalo for this opportunity to testify.

⁴ **DRUG TESTING WELFARE RECIPIENTS--FALSE POSITIVES, FALSE NEGATIVES, UNANTICIPATED OPPORTUNITIES**, Pollack, Danziger, Jayakody, Seefeldt, January 2001

⁵ Danziger S, Corcoran M, Danziger S, et al. **Barriers to the employment of welfare recipients**. In: Cherry R, Rogers W, eds. *Employment for All?* New York: Russell Sage Foundation; 2000.
Jayakody R, Danziger S, Pollack H. **Welfare reform, substance use and mental health**. *Journal of Health Policy, Politics, and Law*. 2000;25(4):623-51.



TO: House Committees on Human Services

FROM: Pamela Lichty, MPH
President

DATE: February 12, 2013, 9:30 a.m., room 329

RE: H.B. 458 RELATING TO RANDOM DRUG TESTING – **IN STRONG
OPPOSITION**

Aloha Chair Carroll, Vice Chair Kobayashi, and members of the Committee. My name is Pam Lichty and I'm testifying for the Drug Policy Action Group in opposition to HB 458.

We believe that the study called for in this bill is wholly unnecessary since research, as well as experience in other states, has shown that drug testing welfare recipients is costly, ineffective, impacts minorities disproportionately, perpetuates stigmatization, and has a large negative impact on children.

If the idea is to truly identify recipients with substance abuse problems, drug testing is an extremely costly way of doing so. When Florida drug tested their TANF population they found only 2.6% of the population tested positive, a rate four times lower than that of the general population (according to Justice Department estimates.) The cost for each "find", i.e., person who tests positive, ranges from \$500 to thousands of dollars. Florida discontinued its program in 2011 after a US District Court found such testing to be in violation of the 4th Amendment. A Michigan court also determined, back in 2003, that such testing was unconstitutional. We simply don't see why Hawaii would choose to go down this same dead end path. These court decisions also found that there are more effective, less costly ways of determining problematic drug abuse.

More than half the states use questionnaires designed to identify problem users and refer them to treatment. This method has high accuracy rates, distinguishes between drug use and abuse, and can also detect alcohol abuse. This is an evidence-based, state of the art approach, as opposed to a punitive, adversarial one.

In sum, we ask the Committee to hold this unnecessary and wrong-headed bill. Mahalo for the opportunity to testify.

kobayashi1-Joni

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 11, 2013 8:12 AM
To: HUS testimony
Cc: jbsestak@prodigy.net
Subject: Submitted testimony for HB458 on Feb 12, 2013 09:30AM

Categories: Yellow Category

HB458

Submitted on: 2/11/2013

Testimony for HUS on Feb 12, 2013 09:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Betty Sestak	AAUW - Windward	Oppose	No

Comments: Other states have already shown that such a program would be ineffective, expensive and unconstitutional.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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February 12, 2013

Testimony in Opposition to HB 458

TO: Representative Mele Carroll, Chair
Representative Bertrand Kobayashi, Vice Chair
Members of the Human Services Committee
February 12, 2013, 9:30 AM

FROM: Annie Hollis, BA, MSW candidate (2013)
Hawaii State Commission on the Status of Women, practicum student

The Commission opposes HB 458, Relating to Random Drug Testing, requiring DHS to conduct a study on the costs and benefits of instituting random drug testing for recipients of public assistance program benefits. Given that most science and medical experts overwhelmingly oppose the drug testing of welfare recipients, and that there is not a statistically significant number of welfare recipients using illegal drugs, the Commission believes that the Department's existing work and new initiatives should be the priority.

The state of Michigan instituted drug testing of welfare recipients, and the policy was subsequently struck down as unconstitutional in 2003.¹ Before this policy was halted, only 10% of recipients in Michigan tested positive for illegal drugs, with 3% testing positive for hard drugs such as cocaine and amphetamines—rates that are similar to that of the general population.² In addition, the Center for Addiction and Mental Health recommends against drug testing of welfare recipients, finding that there was little benefit to testing and that stigma associated with testing affected people receiving benefits negatively.³ Other states, like New York, Maryland, and Louisiana have considered a program to randomly drug test welfare recipients, but have found that random testing is not cost effective, and questionnaire screenings are more cost-effective in identifying drug users.⁴

There is little evidence that drug testing welfare recipients saves money. The average cost of a drug test is about \$42 per person, and that figure does not include the costs of hiring staff to administer, monitor, and track the tests and their results.⁵ In 2011, Florida passed a law requiring prospective benefits applicants to take drug tests. In a year, only 108 people of the 4,086 people who took a drug test failed, costing taxpayers \$118,140 in reimbursements for drug test costs. The state's net loss totaled \$45,780 in reimbursements, not including attorney and court fees, and staff time used to implement the new policy.⁶

¹ *Marchwinski v. Howard*, 113 F. Supp. 2d 1134 (E.D. Mich. 2000), aff'd, 60 F. App'x 601 (6th Cir. 2003)

² ACLU. DRUG TESTING OF PUBLIC ASSISTANCE RECIPIENTS AS A CONDITION OF ELIGIBILITY. Accessed via <http://www.aclu.org/drug-law-reform/drug-testing-public-assistance-recipients-condition-eligibility> on February 7, 2013.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Davis, B. (2012). FLORIDA'S WELFARE DRUG TESTS COST MORE MONEY THAN STATE SAVES, DATA SHOWS, The Miami Herald.

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



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Not only has this type of legislation been found unconstitutional by the United States Supreme Court, this legislation is not based on sound facts or evidence. This bill would further stigmatize the needy and perpetuates a stereotype that those individuals on any type of public assistance are lazy and dishonest. Nationwide, the majority of those individuals receiving state or federal assistance are women and children. This legislation would have a disproportionately negative effect on women and children.

Under the 4th Amendment, drug tests are considered to be searches. The U.S. Supreme Court, in Chandler v. Miller voted 8-1 to strike down a Georgia law requiring candidates for state office to pass a drug test. More recently, a U.S. District Court judge halted the enforcement of Florida's law mandating drug tests for TANF applicants. The Court found that compelled drug testing is a search under the 4th amendment, and that the individuals retain a right of privacy against intrusive searches without suspicion.

The Commission believes this bill to be bad public policy and urges the Committee to not pass it.



Dedicated to safe, responsible, humane and effective drug policies since 1993

February 12, 2013

To: Rep. Mele Carroll, Chair
Rep. Bertrand Kobayashi, Vice Chair and
Members of the Committee on Human Services

From: Jeanne Ohta, Executive Director

RE: HB 458 Relating to Random Drug Testing
Hearing: Tuesday, February 12, 2013, 9:30 a.m.

Position: Strong Opposition

The Drug Policy Forum of Hawai'i (DPFH) writes to oppose this measure, which requires that the Department of Human Services (DHS) conduct a study on the costs and benefits of instituting random drug testing for recipients of public assistance program benefits.

Requiring DHS to study random drug testing at a time when programs have been cut and the state has been unable to restore needed services is a foolish use of already scarce resources. Suspicionless drug testing of welfare recipients has already been found to be ineffective, expensive, and unconstitutional.

Recipients of public assistance do not use drugs at higher rates than the general population. Florida implemented mandatory drug testing of TANF recipients in 2011. After approximately four months, only 2.6% of applicants tested positive.¹ That rate is four times lower than the estimated drug use of Floridians ages 12 and up, according to Justice Department estimates.

Mandatory drug testing of those receiving public benefits targets communities of color. Stigmatizing certain individuals who seek out one type of public assistance over another undermines fairness, and perpetuates the dangerous, baseless notion that low income people and communities of color are somehow less deserving.

Sanctions on TANF recipients will fall heavily on children. The majority, roughly 75%, of TANF beneficiaries are children from impoverished families.² Removing or restricting assistance due to the behavior of a parent punishes the child for circumstances beyond his or her control.

¹ Lizette Alvarez, *No Savings Are Found From Welfare Drug Tests*, N.Y. Times, April 17, 2012, available at: http://www.nytimes.com/2012/04/18/us/no-savings-found-in-florida-welfare-drug-tests.html?_r=0

² Administration for Children & Families. U.S. Dept. of Health & Human Services. Caseload Data 2010.

Mandatory drug testing proposals would also exacerbate existing stigma associated with receiving unemployment, TANF or other public benefits, and could potentially deter struggling individuals from applying for aid.

Drug testing also fails to find other serious problems like alcohol abuse and mental health disorders. A study by researchers from the Univ. of Michigan on a similar program found that the majority of those who tested positive were casual users with no classifiable underlying addiction. The drug testing program, however, ignored other serious issues like mental health problems.³

Random drug testing programs are expensive and they do not save money. Simple drug testing is an expensive and ineffective method of identifying people with substance abuse problems. Drug tests identify drug usage, not substance abuse problems, and most positive tests identify marijuana users, rather than individuals struggling with addiction. Other less expensive and more reliable means of screening for substance abuse problems are available that do not damage the relationship between service providers and recipients.⁴

Methods of screening for drug dependence that are more cost-effective and reliable include in-person interviews and questionnaires that are less likely to damage the mutual trust relationship between social worker and client like a drug test would.⁵ More than half the states use questionnaires designed to identify problem users and refer them to treatment (called a “screen-and-refer” method) that have high accuracy rates, are able to distinguish between drug use and drug abuse, are able to also detect alcohol abuse, and are far less costly than drug testing.⁶

The cost per “find” from drug testing could be anywhere from \$500 to thousands of dollars.⁷ Each drug test costs between \$35-75.⁸ TANF recipients use drugs at the same rate as the general population (around 8%⁹), which means the vast majority of testing kits return negative results.

There exists already compelling evidence that random drug testing of welfare recipients is ineffective, that the state will not save money, rather, that the program will actually waste taxpayer money, and that the assumption that welfare recipients use drugs more than the general population is false. The study is unnecessary and a waste of already scarce resources of the department. For these reasons, we respectfully request that the committee hold this measure.

³ Pollack, Harold A., et al. "Drug testing welfare recipients—false positives, false negatives, unanticipated opportunities." *Women's Health Issues* 12.1 (2002): 23. Academic Search Complete. EBSCO. Web. 28 June 2010

⁴ "States consider drug testing for welfare recipients." *Alcoholism & Drug Abuse Weekly* 21.8 (2009): 4-6. Academic Search Complete. EBSCO. Web. 25 June 2010.

⁵ "States consider drug testing for welfare recipients," *Alcoholism & Drug Abuse Weekly* 21.8 (2009): 4-6

⁶ Robert E. Crew, Jr. and Belinda Creel Davis, "Assessing the Effects of Substance Abuse Among Applicants for TANF Benefits: The Outcome of a Demonstration Project in Florida," *Journal of Health and Social Policy*, 2003; "The State of State Policy on TANF & Addiction," Legal Action Center, Gwen Rubenstein, June 2002, Accessed via the Internet: http://www.lac.org/doc_library/lac/publications/state_of_state.pdf

⁷ Workplace Substance Abuse Testing, Drug Testing: Cost and Effect. R. Brinkley Smithers Inst., Cornell Univ. (1992).

⁸ Legal Action Center. Drug Testing in Connection With Welfare Reform. LAC. Web. 25 June 2010.

⁹ National Institutes of Health. NIAAA Researchers Estimate Alcohol and Drug Use, Abuse, and Dependence. NIH, 1996.



February 11, 2013

To: Representative Mele Carroll, Chair
Representative Bertrand Kobayashi, Vice Chair and
Members of the House Committee on Human Services

From: Katie Reardon Polidoro, Co-Chair, Hawaii State Democratic Women's Caucus

RE: HB 458 Relating to Random Drug Testing

Position: Opposition

The Hawaii State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawaii's women and girls.

Mandatory drug testing proposals exacerbate existing the stigma associated with receiving unemployment, Temporary Cash Assistance for Needy Families (TANF) or other public benefits, and could potentially deter struggling individuals from applying for aid. Stigmatizing certain individuals who seek out public assistance perpetuates the dangerous, baseless notion that low income people are participate in substance abuse at high rates.

Many recipients of public assistance, and specifically of TANF, rely on that assistance to provide for their young children. The majority, roughly 75%, of TANF beneficiaries are children under the age of 11.¹ Of adult TANF recipients, over 80% are women, most of whom are single mothers.² These families rely on assistance for their basic needs. Surely, children will be the most hurt by random drug testing and related sanctions. Removing or restricting assistance due to the behavior of a parent punishes the child for circumstances beyond his or her control.

Random drug testing programs are expensive and identify drug usage, not substance abuse problems. Methods of screening for drug dependence that are more cost-effective and reliable include in-person interviews and questionnaires.³ More than half of the states use questionnaires designed to identify problem users and refer them to treatment that have high accuracy rates, are able to distinguish between drug use and drug abuse, are

¹ Administration for Children & Families. U.S. Dept. of Health & Human Services. Caseload Data 2010.

² Id. 14.8% of adult TANF recipients are male. Only 14% of adults on TANF are married or live with a partner.

³ "States consider drug testing for welfare recipients," *Alcoholism & Drug Abuse Weekly* 21.8 (2009): 4-6

able to also detect alcohol abuse, and are far less costly than drug testing.⁴ Hawaii should be spending funds on addiction treatment and other services that will actually meet the underlying needs.

We believe that random drug testing of public assistance recipients will do more harm to children families in need of help, and that there are existing, more cost effective ways to assist public benefit recipients with substance abuse issues. The study proposed by HB 458 is both costly and poorly aimed. We ask the Committee to vote “No” on HB 458.

⁴ Robert E. Crew, Jr. and Belinda Creel Davis, “Assessing the Effects of Substance Abuse Among Applicants for TANF Benefits: The Outcome of a Demonstration Project in Florida,” *Journal of Health and Social Policy*, 2003; “The State of State Policy on TANF & Addiction,” Legal Action Center, Gwen Rubenstein, June 2002, Accessed via the Internet:
http://www.lac.org/doc_library/lac/publications/state_of_state.pdf



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Committee on Human Services

Rep. Mele Carroll, Chair

Rep. Bertrand Kobayashi, Vice Chair

Tuesday, February 12, 2013 – 9:30 AM

Conference Room 329

RE: STRONG OPPOSITION FOR HB 458 – Drug Testing

Dear Chair Carroll, Vice Chair Kobayashi and Members of the Committee,

My name is Heather Lusk, and I am writing on behalf of the CHOW Project to respectfully urge you to oppose HB 458, which would require the DHS to report to the legislature on the benefits of testing welfare recipients.

- Recipients of public assistance do not use drugs at higher rates than the general population.
- Mandatory drug testing of those receiving public benefits targets communities of color.
- Mandatory drug testing proposals would also exacerbate existing stigma associated with receiving unemployment, or other public benefits
- Drug testing also fails to find other serious problems like alcohol abuse and mental health disorders.
- Random drug testing programs are expensive and they do not save money.

Hawaii should be spending funds on addiction treatment, counseling, replacement therapy and other services that will actually meet underlying needs. Although proponents of drug testing argue that it will encourage those who fail to seek drug treatment, their proposals generally fail to provide additional treatment funding to address the lack of capacity, even though drug treatment is an extremely efficient use of taxpayer money.

The Community Health Outreach Work (CHOW) Project is dedicated to serving individuals, families and communities adversely affected by drug use, especially people who inject drugs, through a participant-centered harm reduction approach. CHOW works to reduce drug-related harms such as but not limited to HIV, hepatitis B/C and overdose.

Sincerely,

Heather Lusk
Executive Director
CHOW Project
hlusk@chowproject.org

To: HOUSE COMMITTEE on HUMAN SERVICES
Rep. Mele Carroll, Chair
Rep. Bertrand Kobayashi, Vice-Chair

From: Teresa Bill, Univ. Hawai'i Bridge to Hope Coordinator
Ph: 956-9313

Re: Strongly Opposing HB 458, Relating To Random Drug Testing
Tues. Feb 12, 2013 9:30 a.m.
Conference Room 329 Committee Clerk, room 304

I am Teresa Bill, **testifying in strong opposition to HB 458** requiring DHS to study the costs and benefits of implementing random drug testing of participants in public assistance programs. I am the Coordinator of a Univ. of Hawai'i program called "Bridge to Hope" that supports TANF/"welfare" participants in their pursuit of higher education as a means of economic self-sufficiency. However, my testimony is not the official testimony of the University. I am also a community member of the Dept. of Human Services' Financial Assistance Advisory Council.

As a taxpayer, I oppose the misdirection of DHS staff time and energy on a task that negatively targets and stereotypes participants.

I can only hope that **if** a study is conducted and the assessments of the Dept. of Human Services, the State Attorney General, Federal courts and others – are detailed and compiled in one document, that the Hawai'i State Legislature will heed their professional opinions and set this issue to rest, once and for all.

The topic of "drug testing public benefit participants" recurs regularly and gives a forum to stereotypes and misunderstandings regarding low-income families and individuals who utilize public assistance programs. The tenor of these discussions presumes to connect welfare recipients with drug use, drug testing, food stamp and welfare fraud. These are inaccurate and destructive stereotypes that public assistance recipients must face and fight against every day. It contributes to the shame that our families feel and their reluctance to publicly share their participation in programs linked to "welfare," including positive and successful programs like Bridge to Hope.

Last January Rep. Mizuno held an informational briefing on this issue, where it was clearly conveyed that while this may be a "hot topic" for Legislators across the country; the cost in terms of financial resources, as well as privacy and civil liberties is high and far exceeds the benefits erroneously sought after.

Thank you for the opportunity to testify.

Please do not pass HB 458.

Suzanne Pel
2537 Kapiolani Blvd
Honolulu, HI. 96826

February 11th, 2013

The Honorable Senator Les Ihara, Jr.

Dear Senator Ihara:

My name is Suzanne Pel and I reside at 2537 Kapiolani Blvd in Honolulu, Hawaii. I am currently a Graduate Student at Hawaii Pacific University.

I am writing you today to ask that you help and support the HB 458 Bill, I believe that this bill is in relation to the Violence Against Women Act (VAWA). That is scheduled for reauthorization February 11th, 2013. I strongly believe that this bill is very important and it has great affects on many individuals because it may ultimately reduce unfair treatment.

I appreciate your help and ask that you please send me a response letting me know the status of this Bill.

Thank you for your time and considering my request.

Sincerely,

Suzanne Pel

Drug Testing of Welfare Recipients

Recipients of public assistance do not use drugs at higher rates than the general population. Mandatory drug testing of those receiving public benefits targets and perpetuates the stereotype that poor people on welfare are worthless junkies.

The reality is that TANF recipients use drugs at the same rate as the general population (approximately 8%), which means the more than 90% of testing kits will return negative results. Random drug testing programs are expensive and ineffective. Each drug test costs between \$35-75. The cost per “find” from drug testing could be anywhere from \$500 to thousands of dollars.

More importantly, approximately 75% of TANF beneficiaries are children. Removing or restricting assistance punishes the child for the behavior of a parent.

Drug tests can only identify drug usage, not substance abuse problems. Other less expensive and more reliable means of screening for substance abuse problems are available. The majority of states use questionnaires designed to identify problem users and refer them to treatment (called a “screen-and-refer” method) that have high accuracy rates, are able to distinguish between drug use and drug abuse, are able to also detect alcohol abuse, and are far less costly than drug testing.

Random drug testing of public assistance recipients is unconstitutional: mandatory, suspicionless drug testing for public assistance violates the 4th Amendment’s protection from unreasonable search and seizure, and is unnecessary, given the existence of more effective and less invasive means of detecting drug abuse.