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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.<sup>[1]</sup> This act did not require states to drug test their welfare recipients as a requirement for receiving assistance,<sup>[2]</sup> 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.<sup>[3]</sup> 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.<sup>[4]</sup> 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.<sup>[5]</sup>

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.<sup>[6]</sup> So far, no states have enacted legislation requiring that welfare recipients submit to random drug tests in order to continue their eligibility for welfare. <sup>[7]</sup> 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. <sup>[8]</sup>

### 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. <sup>[9]</sup> 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.<sup>[10]</sup> 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.<sup>[11]</sup> 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. <http://www.ncsl.org/research/human-services/drug-testing-and-public-assistance.aspx>.

[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 food 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.

#### **2017 Legislation**

Arkansas passed SB 123 making their drug testing program permanent.

#### **2016 Legislation**

##### **Legislative proposals:**

At least 17 states had proposals in 2016 to address substance abuse and drug testing for welfare programs.

##### **Legislative enactments:**

**West Virginia** Governor Tomblin signed SB 6 on March 23, 2016, which creates a 3-year pilot program to screen welfare applicants for substance abuse issues. If the caseworker has reason to believe the applicant is abusing drugs, a drug test will be ordered. Applicants who test positive and attend substance abuse treatment, counseling and a job skills program can continue to receive benefits. Applicants who refuse the drug screen or test are ineligible for assistance. However a child whose parent tests positive can still continue to receive benefits through a designated payee. The legislation also includes a required investigation and home visit from Child Protective Services for parents who test positive. The department must report to the legislature on the number of applicants testing positive; those with reasonable suspicion; the number completing treatment and the costs of the pilot program by December 31, 2016 and annually thereafter.

## 2015 Legislation

### Legislative proposals:

At least 18 states introduced proposals that would require drug screening or testing for public assistance applicants and/or recipients in 2015. The states include: Connecticut, Illinois, Iowa, Kentucky, Maine, Massachusetts, Minnesota, Montana, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, Virginia and West Virginia. Hawaii's proposal is for the state to study the issue. In addition, Missouri proposed drug testing for the Supplemental Nutrition Assistance Program (SNAP).

### Legislative enactments:

**Arkansas** Governor Hutchinson signed SB 600 into law on April 8, 2015 requiring the Department of Workforce Services to establish a two-year pilot program of suspicion-based drug screening and testing for each applicant and recipient of TANF. The pilot should be statewide and include all counties bordering Mississippi, Missouri, Oklahoma and Tennessee (all states with existing drug testing laws). All applicants and current recipients (upon redetermination of benefits) shall be screened and if reasonable suspicion of drug use, the applicant or recipient is required to take a drug test. If a person refuses to take the test or tests positive, they are ineligible for benefits for six months. A person testing positive can still receive benefits if they comply with a treatment plan. The law exempts individuals who are in the Career Pathways and Community Investment Initiative. The department shall identify the screening tool and develop a plan for funding the program and report to the General Assembly on the results of the program. The law shall take effect no later than December 31, 2015 and expire after two years unless otherwise extended by the legislature. In 2017, the state made the program permanent through SB 123.

**Wisconsin** included a provision in the 2015 budget bill (SB 21) to drug test individuals participating in the Wisconsin Works and the Transform Milwaukee Jobs program and work experience programs for non-custodial parents. The bill also included a provision to test applicants for 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.

## 2014 Legislation

### Legislative proposals:

At least 18 states introduced proposals or had carryover bills that would require drug screening or testing for public assistance applicants and/or recipients in 2014

### Legislative enactments:

**Michigan** Governor Rick Snyder signed HB 4118 and SB 275 into law on December 24, 2014. The bills require the Department of Human Services to establish and administer a suspicion-based drug screening and testing program in at least three counties. The department must screen applicants and recipients of the Family Independence Program in the pilot counties using a valid substance abuse screening tool. If the screening tool gives the department reason to believe the person has a substance abuse problem, the person will be required to take a substance abuse test. If the applicant refuses to take the test, benefits will be denied and they

may re-apply after 6 months. For those who test positive, they will be referred to a department-identified community mental health entity and can be eligible to continue receiving benefits. If the individual tests positive, the cost of the test is deducted from their benefit amount. The department must report to the legislature on the pilot program within 60 days of its ending.

The **Alabama** legislature passed [SB 63](#) and Governor Bentley signed it into law on April 10, 2014. The bill requires applicants for Temporary Assistance for Needy Families and certain recipients upon reasonable suspicion of illegal substance use to undergo drug screening, defined as a chemical, biological or physical instrument to detect the presence of drugs. Reasonable suspicion exists for those with a conviction of use or distribution of drugs within five years and for those who test positive to screening. If a person refuses to take the test or delays the test, benefits can be denied. A positive screening results in a warning that benefits may be lost. A subsequent positive screening will result in loss of benefits. The bill specifies that if parents lose benefits, the child(ren) may still receive benefits through a third party.

**Mississippi** Governor Phil Bryant signed [HB 49](#) into law on March 24, 2014. The bill requires all applicants for Temporary Assistance for Needy Families (TANF) to complete a written questionnaire to determine the likelihood of a substance abuse problem. If the results indicate a likelihood the person has a substance abuse problem, the applicant must submit to a drug test. The test is paid for by the state human services department. If the applicant tests positive, the person may be eligible for benefits if they comply with an approved substance abuse treatment plan and test negative at the end of treatment. If the applicant refuses to participate in a treatment plan, or is otherwise noncompliant with the plan, benefits are terminated. The bill takes effect July 1, 2014.

### 2013 Legislation

At least 29 states introduced legislative proposals requiring drug testing or screening for public assistance applicants or recipients in 2013.

### Legislative Proposals:

Alaska, Alabama, Arkansas, Connecticut, Hawaii, Iowa, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Maryland, Maine, Michigan, Mississippi, Montana, North Carolina, North Dakota, New Hampshire, New Jersey, Nevada, New York, Pennsylvania, South Carolina, Texas, Virginia, Vermont, Washington, West Virginia

### Legislative Enactments:

The **Kansas** legislature passed [SB 149](#) and Governor Brownback signed the bill into law on April 16, 2013, requiring the Department for Children and Families to establish a drug screening program for applicants and current recipients of cash assistance when reasonable suspicion exists that the person is using controlled substances. Kansas SB 149 requires the Department for Children and Families to establish a drug screening program by January 1, 2014 for applicants and recipients of cash assistance when reasonable suspicion exists that the person is using controlled substances. The suspicion can be based on a person's demeanor, missed appointments, police records, termination from previous employment due to substance use or prior drug screening records. If the drug test result is positive the person is required to complete a substance abuse treatment program and a job skills program. Those who refuse to take the test or participate in the treatment and job skills program are ineligible for benefits. Those deemed ineligible for these reasons can designate a protective payee to receive benefits on behalf of the child(ren). The bill also makes those convicted of a drug felony after July 1, 2013 ineligible for cash assistance. First time offenders are ineligible for five years; repeat offenders are forever ineligible.



**North Carolina** passed HB 392 in July 2013, which included a provision to require drug testing of the state's welfare applicants or recipients for whom the department had reasonable suspicion are engaging in illegal use of controlled substances. The Governor vetoed this provision of the bill in August recommending further study of the issue because existing law already required drug screening and treatment as a condition of receiving benefits. The legislature overrode the veto in September. The county departments of social services are now required to test all applicants or recipients if there is reasonable suspicion of drug use. Those who test positive are denied benefits. The cost of the test and any subsequent treatment is paid by the individual. The department must report to the General Assembly on implementation of the program by April 1, 2014.

### 2012 Legislation

At least 28 states put forth proposals requiring drug testing for public assistance applicants or recipients in 2012. Four states, Utah, Georgia, Tennessee and Oklahoma passed legislation.

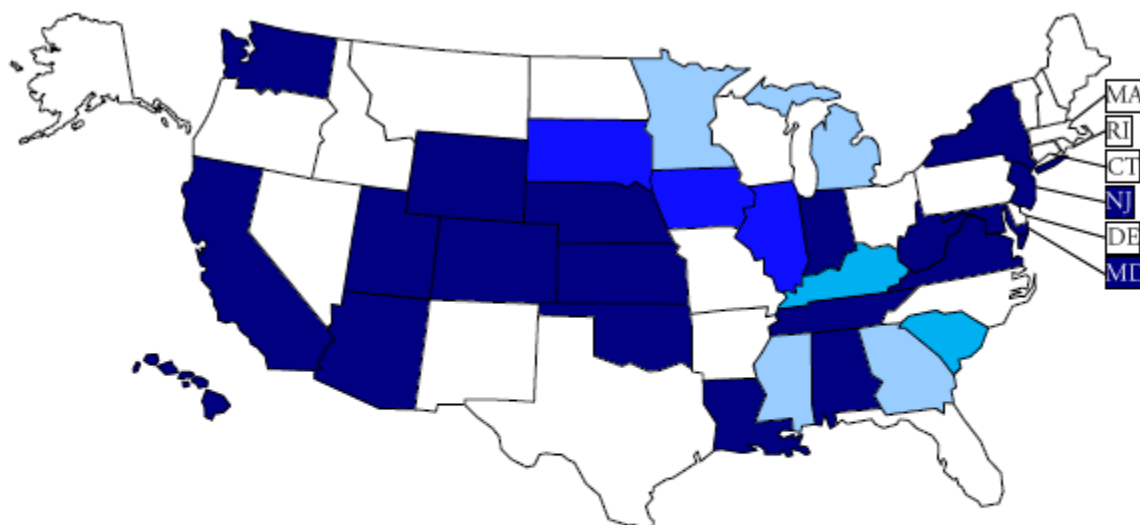
**Utah** passed HB 155 requiring individuals applying for cash assistance to complete a written questionnaire screening for illegal drug use. If there is reason to believe the person has a substance use disorder or is engaging in illegal drug activity, the applicant must take a drug test. If the test is positive, the individual is required to complete treatment and remain drug free in order to receive benefits. The state will terminate benefits for an applicant who refuses to take the test. Governor Herbert signed the bill into law on March 23, 2012.

**Georgia** passed HB 861 requiring drug tests for all individuals applying for Temporary Assistance for Needy Families benefits. Applicants must be notified of the drug testing requirement at the time of application, and are required to pay for the test. If an applicant tests positive the person is ineligible for benefits for one month and until he or she tests negative. A parent's positive test result does not affect the child's eligibility for benefits; however, any benefits received must be disbursed through a protective payee who must also pass a drug test. Governor Deal signed the bill on April 16, 2012 and goes into effect July 1, 2012. The Georgia General Assembly revised the statute in 2014 with HB 772 to include reasonable suspicion before requiring a drug test. HB 772 also included recipients of Supplemental Nutrition Assistance Program (SNAP), however this was found to violate federal law and the state will not enforce this provision.

**Tennessee** passed SB 2580 requiring the department of human services to develop a plan to implement a program of suspicion-based drug testing for each TANF applicant. The bill requires the department to consult with experts in identifying appropriate screening tools and assessments. The Department must report to the General Assembly its final plan and recommendations by January 2014.

**Oklahoma** passed HB 2388 requiring the Department of Human Services to screen all adult applicants for Temporary Assistance for Needy Families (TANF) to determine if they are engaged in illegal use of controlled substances. If so, the applicant's request for benefits shall be denied. The bill was signed by Governor Fallin on May 16, 2012 and goes into effect November 1, 2012.

Map of 2012 State Legislative Proposals



- Temporary Assistance for Needy Families (TANF) only [19]
- TANF + Supplemental Nutrition Assistance (SNAP/food stamps) [3]
- TANF + SNAP + Medicaid [2]
- TANF + other state or local assistance programs [4]

Programs Included

Several states include other assistance programs, such as medical assistance, Supplemental Nutrition Assistance Program (SNAP, also formerly known as food stamps), child care, and other state-funded programs. At least 12 states include language requiring testing only if there is reasonable cause to believe the person is using illegal substances. In most cases, if the applicant or recipient tests positive they are ineligible for benefits for a specified period of time or until they complete a substance abuse treatment program. The requirements often do not affect the eligibility of a child in a home where the parent tests positive, however, a family member or other designated person who has also passed a drug test is required to be the protective payee for the child's benefits.

Below is a table listing states with proposals in 2012 and the programs included:

Program	# of States	States
Temporary Assistance to Needy Families (TANF)	28	AL, AZ, CA, CO, GA, HI, IA, IL, IN, KS, KY, LA, MD, MI, MN, MS, NE, NJ, NY, OK, SC, SD, TN, UT, VA, WA, WV, WY
TANF + Supplemental Nutrition Assistance Program only (SNAP, also known as food stamps)	6	IA, IL, MI, KY, SC, SD
TANF + Medicaid	3	GA, KY, SC
TANF + other state or local programs	4	GA, MI, MN, MS

### 2011 Legislation

At least 36 states put forth proposals in 2011 around drug testing of welfare (Temporary Assistance to Needy Families - TANF) and food stamp (Supplemental Nutrition Assistance Program - SNAP) recipients. Three states enacted legislation:

**Arizona** established a temporary requirement for fiscal year 2011-2012 requiring the department to screen and test applicants who they have a reason to believe are engaging in illegal substance use (S.1620). This bill was signed by the Governor on April 6, 2011. The state has continued this requirement through later budget requests, including 2014 HB 2705 for the 2014-2015 fiscal year.

**Florida** passed a law (HB 353) requiring all applicants for TANF benefits to be tested. Applicants must be notified of the drug testing requirement at the time of application, and are required to pay for the test. If they test negative the applicant will be reimbursed for the cost by adding the amount to their benefit check. If an applicant tests positive the applicant is ineligible for benefits for one year, but can reapply in 6 months if he/she completes an approved substance abuse treatment program. A parent's positive test result does not affect the child's eligibility for benefits; however, any benefits received must be disbursed through a protective payee who must also pass a drug test. The Governor signed the bill on May 31, 2011 and went into effect on July 1, 2011. Florida's law is the first since Michigan's pilot program was challenged in the courts and ruled unconstitutional in 2003. The American Civil Liberties Union filed a lawsuit to stop the bill from being implemented. A federal judge ordered a temporary injunction and Governor Scott has appealed the decision. In February 2013, the 11th Circuit Court of Appeals upheld the lower court's ruling to halt enforcement of the program.

**Missouri** passed HB 73 requiring the department to require a urine drug test for all applicants and recipients of TANF for whom they have reasonable cause to believe based on screening that they are engaged in illegal use. If the individual tests positive or refuses to take the test, they are ineligible for benefits for three years unless they enter and complete a substance abuse treatment program, in which case they can reapply in six months. Caseworkers are also required to report suspected child abuse as a result of drug abuse if caseworker knows they tested positive or refused to test. Governor Nixon signed the bill into law on July 12, 2011 and took effect August 28, 2011.