Politics, Economics, and Justice: The Case of Drug Testing and Welfare

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Dedication

The author wishes to dedicate this thesis to the women at the Beacon of Life shelter in Des Moines, Iowa, who deserve to live in a society that does not discriminate against them for being poor but embraces them for what they have to offer and gives willingly what they need to escape from poverty.
Acknowledgements

The author wishes to acknowledge her parents, Vicki and Gary Owens, for instilling in me work ethic, an open mind, and the firm belief that we should all help each other out more. I also wish to recognize Tanner Stransky for being my kindred spirit and Alisa Chester for repeating “You got this!” as many times as I needed.

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Abstract of Thesis

Politics, Economics, and Justice: The Case of Drug Testing and Welfare

Forty-four states have considered legislation in the last six years that would test some portion of their welfare populations for drug use. This number compares to just ten states that proposed testing-related legislation immediately following passage of the 1996 law that gave states the authority to test welfare recipients for drug use. In the last 16 years, legislators have considered four rationales for imposing drug testing on welfare recipients — workplace readiness, budget concerns, justice for taxpayers, and bettering the lives of families on welfare by providing treatment for drug users and assuring that financial aid for children was not diverted to drug purchase. This project illustrates that none of these rationales holds up following closer examination, yet several states have enacted drug-testing legislation in the last two years.
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Chapter 1: Introduction

States have had the ability to impose drug testing on welfare recipients for almost sixteen years, yet this issue has only recently become prominent on the state agenda. Forty-four states have considered legislation in the last six years that would test some portion of the welfare population for drug use despite recent evidence that welfare recipients do not use drugs any more than the general population. Just ten states proposed testing-related legislation immediately following passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in August 1996, and those proposals largely did not seek universal testing without suspicion like today’s initiatives. The attention states gave to their new authority represents a fraction of contemporary enthusiasm, but neither now nor then have we explained why legislators seek to test welfare recipients.

PRWORA fundamentally changed the system of welfare distribution in the United States. The new law created the Temporary Assistance for Needy Families (TANF) program, which forced poor, single mothers to work outside the home and to name the fathers of their children. Welfare distribution moved from a program that helped mothers to stay home with their young children through cash grants to one that supposedly offered assistance to those mothers to enter waged work as soon as possible. The law gave states great latitude to administer aid, supported by a block grant of federal money with no obligation to supply aid when the limited pot of money ran out.

Congress granted the authority to the states to test welfare recipients for drug use at a time when studies showed that welfare recipients had a higher rate of substance

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abuse than the rest of society. As Chapter Three will illustrate, House Republicans included a drug-testing provision in each of their welfare reform bills during the Clinton presidency and received little pushback from Democrats. Clinton’s decision to support the provision during his 1996 campaign ended the limited national debate on whether states should be given the authority. A discussion on how the provision would be used by states never took place. In addition, few scholars or advocates, including those who identified themselves as feminist or progressive, paid attention to the inclusion of the drug-testing provision.

Almost sixteen years later, drug tests for welfare recipients has gained attention from the media and a few advocacy organizations because of the nationwide push in state legislatures to impose the tests. The Office of the Assistant Secretary for Planning and Evaluation in the U.S. Department of Health and Human Services highlighted this trend in a recent issue brief, “Drug Testing Welfare Recipients: Recent Proposals and Continuing Controversies.” The brief (2011) said that during 2010 and the first half of 2011, 82 bills on testing welfare recipients for drugs were proposed in state legislatures and Congress. More states are considering whether to test welfare recipients for drugs than at any other point since enactment of PRWORA.

The increase in drug-testing legislation at the state level has sparked conversation about efforts to test recipients of other social programs. Republicans in Congress tried to pass a proposal this year that would have tested all unemployment insurance applicants

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for drug use, but, in a compromise with Democrats, they scaled back the legislation so that tests will be required only of those who lost their jobs due to a drug test or who are looking for jobs that would require a drug test.⁴

In the sixteen years since TANF has permitted drug testing, three states have used the provision to its full authority by enacting policies where all welfare recipients are or can be subjected to drug tests. Two of those three have faced legal challenges from the American Civil Liberties Union. The U.S. Court of Appeals for the Sixth Circuit upheld in 2003 a district court judge’s decision to overturn Michigan’s random drug-testing program, and the state of Florida currently faces a legal challenge to its mandatory drug-testing policy, which went into effect in 2011. Georgia passed its mandatory drug-testing policy in April 2012 and it has yet to go into effect.

**Explanation of Drug Testing**

Drug testing here refers exclusively to urine, blood, or hair samples, not written or oral “screenings” for drug or alcohol use. The constitutional challenges and most of the recent legislative proposals in the states have all involved drug testing, although various actors sometimes conflate testing and screening. PRWORA gave states the authority to conduct drug tests and to sanction welfare recipients who fail a drug test, but each state has great latitude over its specific program. Some test welfare recipients, or applicants, or both. Some states test only upon suspicion of drug use, while others employ random testing, and still others test everyone. Many states have attempted to use both written

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screenings and drug testing, with the screening employed to seek signs of a substance abuse problem and to flag that person for testing.

The distinction between screening and testing helps frame a conversation about what states and legislators aim to achieve with drug-testing proposals. Screenings seek signs of substance abuse or dependence, including both alcohol and drugs. Drug tests detect only recent drug use and typically do not show alcohol abuse, which is the most commonly abused substance among Americans. The tests also do not measure impairment but evaluate whether illegal drugs are in someone’s system. Thus, casual drug users who are able to work could test positive along with addicts who need treatment before they are work-ready.

**Drug Testing in the Workplace**

The federal government has long been a leader on drug testing, although its biggest push took place a decade prior to PRWORA. Since 1986, the federal government has mandated that all federal employees be drug-free and that all federal branches have comprehensive drug-free workplace programs. These programs include urine tests of job applicants and random tests of federal employees. This requirement does not include testing for alcohol use/abuse. Just the Department of Transportation employs alcohol testing and does so only for safety-sensitive employees in transportation industries including aviation, trucking, railroads, mass transit, and pipeline.

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9 Division of Workplace Programs, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, “Frequently Asked Questions,” March 2005, accessed April 11, 2012,
As far as private employers, the Drug-Free Workplace Act of 1988 requires employers with federal contracts worth at least $100,000 and any recipient of a federal grant to institute a comprehensive drug-free workplace program.\textsuperscript{10} Beyond federal contracts, the American Management Association formerly conducted an annual survey that asked U.S. companies if they tested their employees for illegal substances. In survey results from 1995 to 2001, the percentage of companies that tested peaked at 81 percent in 1996, the year of PRWORA’s passage. The other years saw 78 percent of companies testing in 1995, 74 percent in 1997 and in 1998, 70 percent in 1999, 66 percent in 2000 and 67 percent in 2001. The survey then skipped three years and found 62 percent of companies tested in 2004, the last year the survey was conducted.\textsuperscript{11}

Since at least 1996, the federal government’s National Survey on Drug Use and Health has shown that most illicit drug users age 18 and older work. According to the most recent (2010) survey, 65.9 percent of the 20.2 million current illicit drug users were employed either full or part time. Unemployed adults in 2010 had a higher rate of drug use — 17.5 percent — compared to 8.4 percent for those employed full time and 11.2 percent for those employed part time. The survey in 1996 said 73 percent of all illicit drug users aged 18 and older (8.1 million adults) were employed.\textsuperscript{12}

\textbf{Rationales for Drug Testing}

Legislators considered four rationales for imposing drug testing on welfare recipients — workplace readiness, budget concerns, justice for taxpayers, and bettering

\textsuperscript{11} American Management Association, “Medical Testing 2004 Survey.”
the lives of families on welfare by providing treatment for drug users and assuring that financial aid for children was not diverted to drug purchase — in drug-testing proposals in PRWORA and the state legislation that followed. An analysis of how and when legislators employed these rationales will help us to understand why legislators sought to test welfare recipients for drug use.

A review of the legislation showed that workplace readiness served as a rationale because the TANF program represented the first federal welfare legislation to mandate work for recipients and the federal government has had a history of pairing drug tests and employment. The second rationale — budget concerns — stems from the timing of states’ recent push for drug testing, which began as the economy soured in 2007 and state governments faced budget cutbacks and shortfalls. Removing drug users from the benefit rolls decreased the amount of money states had to spend on welfare.

The third option — justice for taxpayers — traces back to the American ideal that everyone can succeed with hard work and the expectation that money given will be used properly. Thus, some legislators argued that it was not fair to taxpayers to use their money to support a drug habit. The final rationale, bettering the lives of families on welfare, makes reference to the fact that TANF benefits aimed to support children and that those children would be better served by parents who received help for drug problems.

With these rationales in mind, this project will address the following research questions:

- How and why do legislators seek to impose drug testing on welfare beneficiaries?

  Has that rationale shifted over time?
Why was drug testing a part of federal welfare policy in 1996 and why did it take the form it did?

Which states have considered testing or enacted legislation to test welfare recipients for drugs?

Overview of the Project

Through its final analysis, this project aims to fill two voids: first, to construct a comprehensive critical history of drug testing’s inclusion in federal welfare policy and state legislation and the rationales for doing so; second, to make the case for feminist and progressive critiques of drug testing as it is used on welfare recipients. The second chapter of this project provides the literature review, which details the various schools of thought that led to welfare reform in 1996 and illustrates how TANF overall is imposed on welfare recipients.

The third chapter chronicles the welfare waivers granted by the George H.W. Bush and Bill Clinton administrations that helped lay the groundwork for the drug-testing provision and the multiple welfare reform bills proposed during the Clinton presidency leading up to and including PRWORA. This chapter also draws in relevant studies on welfare recipients and substance abuse, President Clinton’s online library on welfare reform, references to drug testing for welfare recipients in congressional hearings, and newspaper coverage of statements on welfare and drug testing made by Clinton and his 1996 Republican challenger Sen. Robert Dole that effectively ended the debate and allowed the drug-testing provision to go forward.

The fourth chapter takes a look at relevant studies and the myriad of legislative attempts to connect substance abuse and welfare recipients from 1996 to 2006. The
chapter also includes fiscal reports generated by states that evaluated adding drug testing to their policies and court documents from the legal challenge to the drug-testing provision in Michigan in 1999. Journalists’ accounts fill out the legislative rationale in key states. The fifth chapter uses similar sources to explore the reemergence of drug testing for welfare recipients from 2007 through April 2012, including the court challenge in Florida in 2011. The sixth and concluding chapter uses the knowledge gleaned from the preceding chapters to thoroughly evaluate each of the four rationales given for drug testing — workplace readiness, budget concerns, justice for taxpayers, and bettering the lives of drug-abusing families — and to provide a call to action for feminists and progressives.

Despite the pending legal challenge in Florida, states show no sign of halting legislative proposals, and some Republican members of Congress continue to express interest in mandating drug tests for unemployment insurance and for the entire welfare population. The time is ripe to understand why these proposals continue to crop up — and whether their purpose serves to help in any way.
Chapter 2: Literature Review

The literature on welfare and the poor that preceded PRWORA laid the groundwork for provisions in the TANF program that mandate work and enforce time limits, but it did not make the case for drug testing. However, an understanding of the way PRWORA works on welfare recipients as a whole provides useful insights on how and why legislators seek to impose drug testing. Feminists such as Gwendolyn Mink and Mimi Abramovitz and professors across disciplines, including Sanford Schram in social policy and Martin Gilens in politics, have identified PRWORA as discriminatory on the basis of gender, race, and in attitudes toward the poor. In her book *Welfare’s End* (1998), Mink called PRWORA more “intrusive and patriarchal than any national welfare policy we’ve ever known.”¹³

Most of the thousands of books and articles on welfare reform do not address the drug-testing provision. A small number of scholars have cited a handful of reasons for the inclusion of drug testing in PRWORA — such as the campaign between President Bill Clinton and Robert Dole, polls on societal attitudes on welfare recipients, and substance abuse as an obstacle to welfare recipients’ participation in the workforce — but the information has not been synthesized, nor has there been an exploration of other stakeholders and how their motivations factored into the debate.

Prior to PRWORA, scholars across the political spectrum tended to agree that the very nature of welfare — or a handout to the poor — violated American culture and norms because our society expects people to work and to support themselves and their families. The view of welfare recipients as undeserving and simply not trying hard

enough to make ends meet played out in many provisions of PRWORA, including mandatory work and time limits.

**Research that Influenced PRWORA**

**Undeserving Poor**

Conservative scholars Lawrence Mead and Charles Murray helped form the line of punitive thinking on welfare and to frame the poor as undeserving. In *Losing Ground* (1984), Murray made the case that welfare had essentially ruined the poor. He noted a paradigm shift in the latter half of the 1960s where society grew to blame the system for poverty, therefore absolving the poor of responsibility.\(^{14}\) He argued that this shift in attitude led to further pauperization because it ignored three premises: People respond to incentives and disincentives, people are not inherently hard-working or moral, and people must be held responsible for their actions.\(^{15}\) Murray concluded that the system of helping the poor actually disincentivized the poor to better their lives, but offering aid eased elites’ guilt because they were doing something.\(^{16}\) Many poor people’s lives would be better if income supports were dismantled, Murray said.\(^{17}\)

Where Murray helped spur the line of thinking that viewed welfare recipients as lazy, Mead’s 1992 book *The New Politics of Poverty: The Nonworking Poor in America* made the case for linking welfare receipt with work. Mead argued that the failure to look for work or to work causes dependency and destitution.\(^{18}\) Social barriers do exist, but they explain only inequality among workers, not failure to work at all.\(^{19}\) Mead

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\(^{15}\) Murray, *Losing Ground*, 146.

\(^{16}\) Murray, *Losing Ground*, 235.

\(^{17}\) Murray, *Losing Ground*, 229.


specifically addressed the gendered nature of poverty by saying that family poverty has risen mainly because poor single mothers fail to work regularly.\textsuperscript{20} Further setting up what came to play in PRWORA, Mead said that a good welfare system would require waged work outside the home.\textsuperscript{21} In addition, Mead put forth the idea that workfare serves not to raise earnings, although that would be desirable, but to simply get people to work, a goal he supported for its potential to change what he called the passive nature of welfare.\textsuperscript{22}

**Work Requirements and Time Limits**

David T. Ellwood’s *Poor Support* (1988) argued that because welfare did not reflect or enforce America’s basic values, the welfare system needed to be replaced to align with those values.\textsuperscript{23} Ellwood laid out five features of a new system: Ensure that everyone has medical protection, make work pay, adopt a uniform child support assurance system, convert welfare into a transitional system designed to provide short-term aid, and provide minimum-wage jobs to those who have used up their transitional support.\textsuperscript{24} Ellwood’s idea of welfare as a transitional system came to fruition in PRWORA but without any of the aid he had paired with it.

The push to make work requirements a part of poor relief has existed since at least the 1930s, Frances Fox Piven and Richard A. Cloward assert in *Regulating the Poor: The Functions of Public Welfare* (1993). Similarly, the origin of resentment toward those who receive relief has a long history. The open economic system causes Americans to treat success as a matter of individual merit, making those who fail personally and morally

\textsuperscript{24} Ellwood, *Poor Support*, 238.
This hostility grows as expenditures on welfare grow, making relief expansions limited and only possible when they are needed to moderate mass disorder, Piven and Cloward wrote. Once the disorder subsides, welfare functions to regulate the labor force. Welfare keeps a supply of low-wage labor available through making relief seem so untenable that those in low-wage jobs carry on for fear of ending up on welfare.

**Gendered Nature of Welfare**

The idea of the undeserving poor gained momentum in part because most welfare recipients were women and, once again, the structure of welfare delivery violated norms, Mimi Abramovitz lays out in *Regulating the Lives of Women: Social Welfare Policy from Colonial Times to the Present* (1996). Abramovitz opined that because welfare benefits subsidize, and possibly legitimize, the female-headed household, some see welfare as undermining the male-breadwinner, female-homemaker family structure. Welfare originated as assistance for widowed mothers, which did not challenge norms. But in the late 1950s welfare came under assault because the recipient pool had moved beyond widows to single mothers, many of whom were black, and therefore welfare contributed to undermining patriarchal family structures.

Eva Feder Kittay noted in Gwendolyn Mink’s *Whose Welfare?* (1999) that women’s expanding role in the workforce opened the door for the dialogue that all unemployed poor women are undeserving. The invisibility of the remaining injustices —

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26 Piven and Cloward, *Regulating the Poor*, 457.
27 Piven and Cloward, *Regulating the Poor*, 3-4.
29 Abramovitz, *Regulating the Lives of Women*, 351.
such as gendered wage inequity, family caretaking, and spousal and sexual abuse in the workplace — boosted the case for blame of poor women.  

Racialized Poverty

Martin Gilens validated the notion that society views the poor as undeserving in his book *Why Americans Hate Welfare: Race, Media, and the Politics of Antipoverty* (2000). Gilens wrote then that “welfare bashing” had been a staple in American politics for 30 years and argued that politicians commonly employ this discourse because it strikes a chord with the American people. Gilens argued that Americans see welfare as necessary but advocate policies that restrict welfare benefits due to their belief that most people who receive welfare are undeserving. Gilens said the negative attitudes about welfare became paired with the stereotype that blacks are lazy in the 1960s after poor blacks first came to the widespread attention of the American media via the civil rights movement. The United States also at that time saw a population shift of African-Americans moving to northern cities. Gilens alleged those negative racial attitudes are at the core of popular opposition to welfare. He concluded that PRWORA represents a small step toward moving welfare policy more in line with Americans views’ by responding to that desire to cut benefits to the undeserving.

Politics around PRWORA

Dependency

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34 Gilens, *Why Americans Hate Welfare*, 175.
The idea that welfare increases dependency became solidified through PRWORA. The Republican House staff member who drafted PRWORA, Ron Haskins, wrote in *Work Over Welfare: The Inside Story of the 1996 Welfare Reform Law* (2006) that research overwhelmingly showed that welfare reduces work. Haskins, who worked for the House Ways and Means Human Resources Subcommittee, noted that welfare allows people to make mistakes like having children outside of marriage, dropping out of school, and refusing to work. Haskins divulged that the GOP subcommittee leaders instructed witnesses at the hearings leading up to PRWORA to emphasize that welfare reduced work and marriage, led to illegitimacy, and lured young mothers into dependency. The subcommittee also asked witnesses to advocate that welfare recipients must work and to highlight that births outside marriage were wrong. Haskins maintained in his book that welfare reform put the nation on a path to ending dependency and increasing self-reliance as well as helping struggling families. Haskins makes only the briefest mention of the drug-testing provision, saying that the welfare “revolution” severely restricted or eliminated welfare for several groups including drug addicts and alcoholics. Haskins did not discuss how states came to have the authority to test welfare recipients for drugs.

**The Welfare Queen**


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noted that this bipartisan support also represented a lack of allegiance to welfare recipients and a consensus that welfare recipients were not capable of taking political action and therefore not meant to be heard.\textsuperscript{41} The undeserving “welfare queen” identity was used to justify preventing welfare recipients’ participation in political discourse.\textsuperscript{42}

Holloway Sparks’ “Queens, Teens, and Model Mothers: Race, Gender, and the Discourse of Welfare Reform” (2003) also drew attention to the political discourse’s lack of inclusion of welfare recipients. Sparks said congressional hearings and the media mostly marginalized and excluded welfare recipients.\textsuperscript{43} Sparks wrote that commentators instead used racist and gender-biased images of welfare queens out to cheat taxpayers as justifications for the 1996 welfare reform. The problem of welfare was framed as a problem with welfare dependency, and poor women of color were presented as lazy and irresponsible and therefore to blame for being poor. In addition, legislators and welfare advocates repeatedly linked welfare use and drug abuse in poor women.\textsuperscript{44}

PRWORA undid most of what activists fought for in the welfare rights movement of the 1960s, Felicia Kornbluh wrote in \textit{The Battle for Welfare Rights: Politics and Poverty in Modern America} (2007). That movement — notable in part because it kept low-income women at the center — argued that mothers should not be forced to work outside the home but deserved a guaranteed income that would keep them free of dependence on men and a fickle labor market.\textsuperscript{45} Yet the engagement of welfare recipients

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\textsuperscript{42} Hancock, \textit{The Politics of Disgust}, Chapter Two.


\textsuperscript{44} Sparks, “Queens, Teens, and Model Mothers,” 178-179.

\end{flushleft}
in this movement did nothing to dispel popular opinion of them as lazy and unengaged.\footnote{46} In addition, the welfare recipients were blamed for tight city and state budgets in the early 1970s,\footnote{47} a trend that, as will be explored later, has provided some of the rationale for testing welfare recipients for drugs today.

**Regulating Women and Families**

Through her role on the feminist Women’s Committee of 100, Gwendolyn Mink fought against PRWORA as it was being formulated, and Mink has since drawn attention to the race, gender, and class biases in the policy. Mink criticized PRWORA in her book *Welfare’s End* (1998) as legislation that disabled poor single mothers’ citizenship, deepened inequalities among women, and set back gender justice.\footnote{48} PRWORA represented an example of how the strength of specific entitlements often depends on what we think of the people claiming them. Older people are seen as having earned their Social Security benefits, so they do not face the same stigma as welfare recipients.\footnote{49} Mink wrote that since the 1940s those advocating for welfare reform have been less worried about the fact that mothers are poor than that they are single, culminating with PRWORA, which tells poor single mothers that they must surrender their right to care for their children because they did not follow the traditional family structure.\footnote{50} PRWORA insists single mothers are worth more outside their homes than in them.\footnote{51}

Liberal and feminist scholars commonly voice the idea that government post-PRWORA regulates the lives of poor women. In Mink’s *Whose Welfare?*, Dorothy

\footnotesize{\begin{itemize}
\item 47 Kornbluh, *The Battle for Welfare Rights*, 162.
\item 50 Mink, *Welfare’s End*, 103.
\item 51 Mink, *Welfare’s End*, 113.
\end{itemize}}
Roberts pronounced that PRWORA represented a new social role for welfare where government aid to the poor was no longer charity but a way to modify the poor’s behavior, with reforming poor mothers as its chief objective.\textsuperscript{52} Through family caps PRWORA interfered with women’s right to bear children, and work requirements limited their ability to raise the ones they had.\textsuperscript{53} PRWORA treats poor women as less deserving to become mothers and have secure relationships with their children.\textsuperscript{54}

Abramovitz wrote in “Neither Accidental, Nor Simply Mean-Spirited: The Context for Welfare Reform” (2006) that policymakers’ two goals in reform were to enforce work and to restore the traditional one-earner, one-homemaker, heterosexual family unit. Welfare reform regulates the marital, childbearing and parenting choices of poor women and stigmatizes single motherhood as deviant.\textsuperscript{55}

\textit{Racial Discrimination}

In addition to welfare policy betraying society’s attitudes about the poor (undeserving) and single mothers (challenging the traditional family), scholars have also tackled the racialized nature of PRWORA. In \textit{Poverty Knowledge: Social Science, Social Policy and the Poor in Twentieth-Century U.S. History} (2001), Alice O’Connor declared that discussions about poverty became ideologically realigned by poverty research in the 1980s. Prior to that research, poverty and welfare were seen as “transitory” conditions that could be mitigated with a better system of income support; welfare recipients were not yet the “other.” But in the 1980s, a shift occurred following writings including a 1983

(unpublished) paper by Mary Jo Bane and David Ellwood that reported a key demographic difference between welfare’s short- and long-term recipients: Bane and Ellwood said short-termers were more likely to be white, divorced, and relatively well-educated. The long-term recipients were more likely to be never-married single mothers, high school dropouts and black. These demographic differences drove home that some poor people were not “like us” after all.56

African-Americans first came to be included in social welfare programs in the 1960s after the welfare rights movement. Roberts argued that starting with blacks’ inclusion, welfare recipients came to be stigmatized as dependent and blacks’ welfare use became proof of their lack of work effort. The image of the welfare recipient changed from that of a worthy white mother to an immoral black welfare queen, Roberts wrote in *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (1997).57

**White norms**

In *Words of Welfare: The Poverty of Social Science and the Social Science of Poverty* (1995), Sanford Schram suggested that welfare policy draws its foundation from white, middle-class norms and objectives, including the nuclear, two-parent household — traditionally associated with white, middle-class families.58 Schram pointed out that welfare offers female-headed households benefits but does so under stigmatizing conditions that reinforce that female-headed families are wrong and two-parent

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households are better.\textsuperscript{59} The welfare policy discourse constructs poverty as a problem of family structure.\textsuperscript{60}

Anna Marie Smith’s \textit{Welfare Reform and Sexual Regulation} (2007) declared that all 50 states’ decisions to develop similar TANF programs using PRWORA’s guidelines illustrated the widespread demonization of people on welfare. Across the board, the blame for poverty rests with the “deviant mother” who is constructed as black, unmarried, heterosexual and sexually promiscuous.\textsuperscript{61} Women on welfare are policed through the family cap, provision of family-planning materials and services, payment of TANF incentives to mothers who give their children up for adoption, abstinence education, and the promotion of marriage in state and federal welfare law. All of these work to discourage childbearing and to move women into heterosexual marriages.\textsuperscript{62} By receiving TANF and entering into that contract with the state, these women are expected to give up privacy rights.\textsuperscript{63}

\textit{Women’s Bodies}

In \textit{Our Bodies, Our Crimes: The Policing of Women’s Reproduction in America} (2009), Jeanne Flavin highlighted several instances of women’s bodies being regulated through the law and criminal justice system. Sometimes the regulation relates to crime, but other times it is entirely about transgressions against norms — as in welfare reform. Through restricting access to abortion and gynecological care for some women, telling other women not to procreate and pressuring them to be sterilized, prosecuting some

\textsuperscript{59} Schram, \textit{Words of Welfare}, 143.

\textsuperscript{60} Schram, \textit{Words of Welfare}, 157.


\textsuperscript{62} Smith, \textit{Welfare Reform and Sexual Regulation}, 147.

\textsuperscript{63} Smith, \textit{Welfare Reform and Sexual Regulation}, 211.
women who use drugs and become pregnant, and by not supporting incarcerated and battered women in efforts to rear children, the law and criminal justice system have established what a good woman or fit mother should look like.\textsuperscript{64} Flavin wrote that the public welfare system reinforces the distinction between bad girls and good girls by barring women who use drugs from societal benefits and protections.\textsuperscript{65}

**Effects of PRWORA**

**Reduced Welfare Rolls**

Haskins, writing this time in *The New World of Welfare* (2001), said most families leaving welfare have done well, with the legislation providing the necessary push to move mothers off welfare.\textsuperscript{66} Yet his co-editor, Rebecca Blank, in a chapter with Lucie Schmidt, wrote that some of the positive effects perceived from TANF at the time of the book were likely due to the good economy and that the end of economic growth might leave some poor mothers unable to find private sector work or public support.\textsuperscript{67}

Jason DeParle concluded in *American Dream: Three Women, Ten Kids, and a Nation’s Drive to End Welfare* (2004) that PRWORA had succeeded in moving people into jobs but did not offer much social mobility. He claimed that PRWORA proved that antipoverty policy can have a measure of success but also wrote about mothers who worked full time and who still did not earn enough to feed their children.\textsuperscript{68}

**Hungry Families**


\textsuperscript{65} Flavin, *Our Bodies Our Crimes*, Conclusion.


Sharon Hays’s *Flat Broke with Children: Women in the Age of Welfare Reform* (2004) also noted working women still could not feed their families after PRWORA. Hays said that the work requirements do not elevate the majority of families above the welfare line.\(^{69}\) Hays said the assumption that single mothers do not already have a work ethic is wrong\(^{70}\) and that if we really want welfare recipients to be full members of society — treated equally to men and the middle class — welfare policy cannot use bureaucratic methods to “mentor and inspire” them.\(^{71}\) Hays briefly mentioned drug abuse in that it is seen as one of the central problems of welfare recipients, yet almost all researchers say disabilities and domestic abuse are bigger problems. The drug abuse that does exist is often linked to mental health problems.\(^{72}\)

**Drug Testing**

An exhaustive search for literature that directly addressed the rationale for the drug-testing provision in PRWORA yielded nothing. More recent literature on drug testing and welfare, prompted by the flurry of state activity, noted that legislators added the federal drug-testing provision with little fanfare. In fact, literature barely exists pre-PRWORA on how big of a barrier substance abuse represents to welfare recipients.

**Self-Sufficiency**

One of the handful of pre-PRWORA studies done on welfare and drug abuse — “Prevalence of Alcoholism and Drug Abuse Among Female AFDC Recipients” by Carol B. Sisco and Carol L. Pearson from *Health and Social Work* (1994) — said no study at that point had looked at substance abuse among female welfare recipients to determine

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\(^{70}\) Hays, *Flat Broke*, 35.

\(^{71}\) Hays, *Flat Broke*, 49.

\(^{72}\) Hays, *Flat Broke*, 199.
how it affected their need for public assistance. The study found that a third of its sample were substance abusers or had experienced social problems relating to drug and alcohol abuse. The article reported that substance abuse may present a significant obstacle to welfare recipients’ self-sufficiency and ultimate exit from public assistance. However, the article also noted the existing welfare program’s deficiency in addressing treatment for recipients with substance abuse problems.

_Treatment_

The limited research available on substance abuse’s role in welfare receipt before PRWORA’s implementation did not recommend that welfare recipients be tested for drugs and sanctioned. The common response involved enrolling substance abusers into treatment programs. An _American Journal of Public Health_ article, “Alcohol and Drug Use, Abuse, and Dependence Among Welfare Recipients” (1996), by Bridget F. Grant and Deborah A. Dawson called for programs and services that would treat alcohol and drug problems among welfare recipients and foster the goals of work, responsibility, and the reduction of dependency as being discussed in the proposed (at that time) reform.

_Time on Welfare_

A 1998 article in the _American Journal of Public Health_, “Substance Abuse and the Course of Welfare Dependency” by Laura Schmidt, Constance Weisner, and James Wiley, studied substance abuse among welfare recipients in a large northern California county in 1989 and 1995, before PRWORA was passed (although the article came out after the law). The researchers set out, in what they referred to as the first examination of

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74 Sisco and Pearson, “Prevalence,” 76.
the subject, to determine whether substance abuse predicts welfare dependency. The researchers found that substance abuse was not a significant determinant of how long a recipient stayed on welfare or of repeat welfare use, but that background (such as race) and family-related factors were strong determinants of welfare use. The authors concluded that the strongest determinants of welfare were the factors that PRWORA’s predecessor, the Aid to Families with Dependent Children (AFDC) program, was created to address — the economic hardships of single parents with young children. In addition, the article said limited research existed on how substance abuse affects people’s experiences on welfare, with only about 14 percent of the states administering AFDC asking about drug or alcohol abuse in their assessment process. The authors also provided some insight as to why welfare recipients have been targeted for drug testing, saying that the link exists because some believe substance abuse problems may limit welfare recipients’ ability to obtain and hold steady jobs, and because of a belief that AFDC’s open-ended entitlements may have encouraged abuse of the system.

A study by the U.S. Department of Health and Human Services shortly after PRWORA’s implementation, “Progress and Promise of TANF Implementation: Findings of the National Needs Assessment” (1998), noted, in fact, that a large number of states did not have caseload data about welfare recipients with substance abuse. Yet the article noted that the majority of the states ranked clients with substance abuse problems as one of the most challenging issues.

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Sanctions

Interestingly and without explanation, most of the studies done post-PRWORA about welfare and substance abuse did not mention states’ ability to test and sanction welfare recipients for drug use. Published in 2002 but using pre-TANF data, the Social Problems article “Addiction and Welfare Dependency: Interpreting the Connection,” also noted that only a handful of states had evaluated their welfare recipients for drug and alcohol addiction. The authors, Laura A. Schmidt, Daniel Dohan, James Wiley, and Denise Zabkiewicz, determined that welfare recipients with substance abuse problems in a large northern California county were more likely to exit quickly for “unstable” reasons, such as family problems or administrative sanctions like failure to file paperwork or to participate in work programs.

Employment

V.L. Brown and Isaac Montoya concluded in their 2009 study, “The Role of Employment in Preventing Continued Drug Use Among Welfare Recipients” in the Journal of Social Service Research, that employment could provide a drug-prevention strategy for TANF recipients. The study found that higher employment hours during one period predicted decreased substance abuse during the next time period. Yet the article did not discuss how this strategy might be affected by states’ decision to test recipients and sanction them for drug use.

The article “Self-Perceived Job Skills and Employment Barriers Among Non-Drug Using and Chronic Drug Using Welfare-to-Work Participants” by John Atkinson,

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Doohee Lee, Cheryl Dayton-Shotts, and Catherine French, published in the *Journal of Drug Issues* in 2001, said drug users will have more barriers to employment than nonusers and that addressing those barriers will be essential in getting those welfare recipients to work. This article also did not mention states’ ability to test welfare recipients for drugs. The article said most states adopted a work-first policy under TANF that puts work before addressing needs like substance abuse problems.

**Cause of Welfare Participation**

Studies on the relationship between welfare recipients, substance abuse, and employment seemed to gain momentum after the passage of PRWORA, which branded welfare recipients as likely substance abusers. Robert Kaestner’s “Drug Use and AFDC Participation: Is There a Connection” (1998) in the *Journal of Policy Analysis and Management* studied whether drug use causes welfare participation. Kaestner found that marijuana use positively correlates with welfare participation in that women who used marijuana in the last year were more likely to participate in welfare in the next four years than those who did not use marijuana. The correlation remained when other variables, including education, work experience, past welfare participation, and marital status, were considered. Kaestner said causation could not be inferred from the results; he also stressed that cocaine use was not found to relate to future welfare participation.

Kaestner noted that his analysis suggested that although reducing drug use may be a worthwhile goal of public policy, it may not be effective welfare policy. He questioned

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whether money spent on reducing welfare dependency should instead be spent on reducing drug use.  

**Drug-Testing Trend**

The article “Welfare Reform, Employment, and Drug and Alcohol Use Among Low-Income Women” (2006) by Ellen Meara, published in the *Harvard Review of Psychiatry*, said in the 10 years since PRWORA passed, no literature focused on women with substance use disorders who try to gain employment under TANF. Meara argued that more needs to be done to understand what happens to these women because they leave welfare as fast as or faster than other women and have increased their income and earnings less than other women without substance use disorders. Additionally, Meara provided some context around PRWORA not addressed in most other literature: PRWORA was one of four pieces of legislation passed in 1996 that specifically addressed women with substance use disorders. In addition to the ability of states to test for drugs and to impose sanctions through TANF, the Gramm amendment in PRWORA imposed a lifetime ban (although states can opt out) on eligibility for TANF for those who receive drug felony convictions; another piece of legislation ended Social Security and Supplemental Security disability benefits for those addicted to drugs and alcohol; and finally public housing legislation allowed the expulsion of people convicted of the possession or sale of drugs.

**Incentives**

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Substance abuse, welfare, and employment came under the microscope again through Hope Corman, Dhaval M. Dave, Nancy E. Reichman, and Dhiman Das’ June 2010 article as part of the National Bureau of Economic Research Working Paper Series. Their paper concluded that welfare reform led to declines in illicit drug use and increase in drug treatment for women at risk for relying on welfare. Those effects were produced through both TANF drug sanctions and work incentives, the authors said. The results, gathered through looking at a multitude of national surveys, argue that limiting cash assistance and encouraging work lead women to refrain from socially unfavorable behaviors. Yet the authors cautioned that more research is needed before basing policy on the findings because most of the effects were produced during a strong economy.

The authors said a survey of state TANF agencies in 43 states and the District of Columbia showed that half refer clients who screen positive for drugs to substance abuse treatment and require those individuals to participate in treatment as a condition of receiving benefits.

**Drug Testing Critique**

With all of the activity around drug testing and welfare at the state level, scholars have just begun to critique different aspects of drug testing’s inclusion in PRWORA. The existing critiques discuss the legality of the provision, the stigmatization of the poor, the neglect in the screening process of possible mental health problems, and the costs associated with drug testing.

**Violates State Constitutions**

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Corinne Carey’s “Crafting a Challenge to the Practice of Drug Testing Welfare Recipients: Federal Welfare Reform and State Response as the Most Recent Chapter in the War on Drugs,” published in the *Buffalo Law Review* (1998), noted that states were “quietly granted” the ability to test welfare recipients for drug use through a “mere sentence in this mammoth and historic legislation.”92 The law said, under Title IX-Miscellaneous, Sec. 902, “Notwithstanding any other provision of law, States shall not be prohibited by the Federal Government from testing welfare recipients for use of controlled substances nor from sanctioning welfare recipients who test positive for use of controlled substances.”93

Carey cited years of presidential rhetoric against drugs as instrumental to the creation of a climate where drug testing would become a part of welfare policy. The presidential rhetoric against drugs kicked off with Richard Nixon’s war on drugs, followed by Ronald Reagan’s commitment to end the drug problem at all costs, Nancy Reagan’s “Just Say No” campaign, and George Bush’s zero-tolerance approach. Bill Clinton followed with an increased focus on drug testing, where he proposed the expansion of the death penalty for drug dealers, drug testing federal parolees, longer mandatory prison sentences, and mandatory testing of high school athletes.94 In addition, other bills, such as PRWORA’s predecessor, the Family Support Act, and a Job Training Act, had drug-testing provisions that did not make it through.95 Carey said drug-testing

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95 Carey, “Crafting,” 292.
plans likely violate state constitutions and serve to demonize drug users and push them further to the margins of society.  

*Fourth Amendment Violation*

Jordan C. Budd’s “Pledge Your Body for Your Bread: Welfare, Drug Testing, and the Inferior Fourth Amendment,” published in a 2011 *William and Mary Law Journal*, challenges drug testing of welfare recipients without reasonable suspicion as an invasion of privacy and violation of the Fourth Amendment. The provision applies without suspicion to an entire class of welfare applicants and recipients and makes no provision for the recipient’s privacy during the testing process or with the test results, and it also offers no recourse for those who test positive, Budd wrote.  

Budd noted that the court ruling in Michigan, though ending random drug testing there, may have served to encourage rather than deter future policies because it was an evenly divided decision.  

Budd also highlighted drug testing’s demonization of the poor, saying that welfare recipients are understood to possess characteristics that evoke suspicion and disdain from broader society. Empirical data on drug use and the poor played little role in drug testing being added to PRWORA, Budd wrote.

*Neglects Mental Health*

A 2002 article published in *Women’s Health Issues*, “Drug Testing Welfare Recipients: False Positives, False Negatives, Unanticipated Opportunities,” drew attention to the fact that some welfare recipients who are drug users experience other

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96 Carey, “Crafting,” 335.  
98 Budd, “Pledge,” 755.  
99 Budd, “Pledge,” 773.  
100 Budd, “Pledge,” 776.
mental and behavioral health problems that drug testing will not identify. In addition, the article by Harold A. Pollack, Sheldon Danziger, Rukmalie Jayakody, and Kristin S. Seefeldt noted that drug testing does nothing to determine whether those people are drug-dependent or have simply used drugs. The article advocated for testing welfare recipients for depression, PTSD, and other psychiatric disorders that would hinder welfare recipients from working, instead of focusing specifically on substance abuse as the primary obstacle to welfare recipients’ ability to work.

**Social Control**

Although no books on drug testing and welfare exist, Kenneth Tunnell’s *Pissing on Demand: Workplace Drug Testing and the Rise of the Detox Industry* (2004) made a useful, related argument when he calls drug testing a form of social control for job applicants and workers. Tunnell argued that drug testing has gained popularity due to governmental mandates and initiatives and that the government has coerced most states into offering financial benefits to employers who participate in workplace drug testing.

Tunnell’s arguments point out that government is not new to having a role in drug testing, despite it being, as Tunnell says, a violation of people’s Fourth Amendment rights.

Vast holes exist in the research on drug testing and welfare: This provision’s inclusion in PRWORA becomes more of a puzzle through the review of the literature — none of which makes a case for such a provision. However, the scholarship on societal attitudes toward poor, single mothers and the image of the welfare queen raise the

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105 Tunnell, *Pissing on Demand*, 10.
question of whether the motivation for including drug testing in welfare represents an
extension of those attitudes and another way to punish welfare recipients. The given
rationales behind legislators’ proposals to test welfare recipients for substance abuse will
be explored in the next three chapters.

Bill Clinton’s pledge during the 1992 presidential campaign to “end welfare as we know it” placed welfare reform on the legislative agenda for both parties. However, Clinton did not call for drug testing then, in speeches during his presidency, or in his proposed welfare legislation. Throughout the debate that led to PRWORA, the American public never participated in a discussion on drug testing and welfare, and nonprofits that worked on welfare did not engage in advocacy around substance abuse, with only the U.S. Chamber of Commerce on record in support of drug testing.

Instead, drug testing found its way into PRWORA quietly, with House Republicans’ welfare proposals from 1993 on containing a provision that at the very least gave states the ability to test identified drug users. The Congressional Record from the mid-1990s showed that no more than a handful of politicians ever spoke on the floor concerning testing welfare recipients for substance abuse. The 1996 presidential campaign brought drug testing for welfare recipients to national attention briefly as the two candidates entered the conversation, but the issue faded after Republican challenger Robert Dole and Clinton both made it known that they preferred to give states the authority to decide whether to test welfare recipients for substance abuse.

Prior to PRWORA, a handful of states had requested waivers related to substance abuse under the regulations that governed Aid to Families with Dependent Children (AFDC), a provision of the original Social Security Act passed in 1935 that had become known as “welfare.” Legislators had endeavored to overhaul AFDC for decades amidst concerns that it promoted welfare “dependency” by not requiring recipients to work for
wages. Starting in 1961, Congress made incremental changes to the program to promote work, culminating in the 1988 Family Support Act’s creation of the Job Opportunities and Basic Skills Training Program (JOBS). This program required mothers with no children younger than 3 to participate in education, work, or training.\textsuperscript{106} Clinton fueled efforts to mandate work for welfare recipients and to legitimize the idea that they were abusing the system through his call to end welfare as it existed.

**1992 to 1994: State Waivers and Failed Legislation**

The connection between welfare receipt and substance abuse had already been made when Clinton took office in 1993. President George H.W. Bush approved welfare waivers for Utah and Oregon in 1992 that involved substance abuse treatment. Utah’s waiver allowed the state to require participation in drug and alcohol programs and counseling among other activities.\textsuperscript{107} The state counted participation in substance abuse treatment as an activity under the JOBS program. Utah also hired specialized workers to aid families who needed additional assistance in making the transition from welfare to work. Some state welfare offices opted to conduct substance abuse and mental health counseling in-house.\textsuperscript{108}

Through the JOBS for Oregon’s Future program, welfare recipients in Oregon had to participate in substance abuse or mental health treatment if evidence showed those issues kept them from becoming self-sufficient. If evidence did not exist but recipients


did not meet the JOBS program requirements, they were given the option to undergo an assessment to determine if substance abuse treatment was needed before they were sanctioned for not meeting program requirements. To identify welfare recipients who were chemically dependent, Oregon used the Substance Abuse Subtle Screening Inventory (SASSI), a one-page screening test that could be given and scored in 20 to 25 minutes.\footnote{Ibid.}

At the time these states implemented their welfare waivers, evidence existed that AFDC recipients had a higher rate of substance abuse than the general population. An article in the \textit{Journal of Policy Analysis and Management}, “Drug Use and AFDC Participation: Is There a Connection?” (1998), referenced a National Institute on Drug Abuse study that, using figures from the 1991 and 1992 Household Surveys on Drug Abuse, reported that 15.5 percent of all female AFDC recipients were impaired by drugs, alcohol, or both — twice the rate of those not receiving AFDC.

Shortly after Clinton took office, House Ways and Means Committee Republicans Reps. Clay Shaw (FL), Nancy Johnson (CT), Fred Grandy (IA), and Rick Santorum (PA); House Minority Leader Robert Michel (R-IL); and House Minority Whip Newt Gingrich (R-FL) introduced the first of a series of GOP bills during the Clinton presidency that connected AFDC recipients, substance abuse, and sanctions. Their bill, introduced February 2, 1993, said that AFDC applicants and recipients found to be addicted to alcohol or drugs must participate in addiction treatment and that failure to do so would result in a two-year expulsion from AFDC. On February 2, Congress sent the bill to the Committees on Ways and Means (Chairman Dan Rostenkowski, an Illinois
Democrat); Agriculture; Education and Labor; Energy and Commerce; Banking, Finance and Urban Affairs; and the Judiciary. No committee voted on it.\(^{110}\)

Sen. Dole, the man who would challenge Clinton for the presidency in 1996, worked on welfare reform throughout the first term of Clinton’s presidency. On January 25, 1994, 16 Senate Republicans including Dole introduced the Welfare Reform Act of 1994.\(^{111}\) This bill required that each applicant or recipient whom the state determined to be addicted to alcohol or drugs must participate in an appropriate addiction treatment program and must submit to random tests for the presence of alcohol or drugs during and after the program. Failure to comply would result in lack of eligibility for aid for two years.\(^{112}\) This bill was referred to the Committee on Finance and killed by Chairman Daniel Moynihan (D-NY).\(^{113}\)

The Clinton welfare reform group included questions about alcohol and drugs in a national survey conducted April 26-27, 1994. The results reported on May 20, 1994, showed that the public unanimously supported a welfare program that would provide job training and child care and would require an individual to go to work after two years. The poll, by Greenberg Research Group, also demonstrated that almost three-quarters (71 percent) favored cutting benefits to those who abused alcohol and drugs. The poll said


voters wanted policies that focused on individuals taking responsibility for their actions.\textsuperscript{114}

President Clinton introduced his welfare bill in mid-1994, which, despite the survey results, did not include sanctions for those who abused alcohol or drugs. Clinton laid out his bill, the Work and Responsibility Act, on June 14, 1994, in Kansas City, Missouri; Rep. Sam Gibbons (D-FL) introduced it in the House and Sen. Moynihan introduced it in the Senate on June 21. The proposal emphasized that the welfare system must change to get people back to work and demanded that people work after two years. The bills also stipulated that states could require free treatment for those whom substance abuse provided a barrier to employment. The state could also enforce consequences for failure or refusal to accept treatment.\textsuperscript{115}

On the day Clinton unveiled his welfare plan, GOP House leaders Gingrich, Michel, Santorum, Bill Archer (TX), and Tom DeLay (TX) sent a memo to House Republicans that outlined five areas in which they said Clinton’s plan was deficient. The fifth area said that Clinton’s plan did little to stem welfare payments to drug addicts. The GOP leaders asserted that “House Republicans want to administer random drug tests and end the benefits of any addict using illegal drugs; the federal government must stop the policy of giving money to people who use illegal drugs.” The memo noted that addiction to crack cocaine and other drugs had become increasingly common among welfare recipients.\textsuperscript{116}


A June 1994 report from the National Center on Addiction and Substance Abuse (CASA) at Columbia University found that 28 percent of adult AFDC recipients abused drugs or alcohol, as compared to 20 percent of the general population. Looking at just women, the study found that women receiving AFDC were nearly twice as likely to abuse or be addicted to alcohol and drugs than women not using AFDC, a comparison of 27 percent to 14 percent. The study also found that substance abuse was one of the main impairments preventing AFDC recipients from leaving welfare and successfully completing job training. However, this study advocated that substance abuse treatment — not drug testing — be a critical element of any welfare reform plan in order to reduce dependence.\textsuperscript{117}

The article “Implementing Welfare Reform: Solutions to the Substance Abuse Problem” (1997) through the Annie E. Casey Foundation described four studies on substance abuse and welfare reform that were available prior to PRWORA, including the National Institute on Drug Abuse study and the CASA study. The four studies found that anywhere from 15.5 percent to 39.2 percent of welfare recipients were affected by substance abuse. The other two studies in the article were a National Institute of Alcohol Abuse and Alcoholism study using data from the 1992 Longitudinal Alcohol Epidemiologic Survey and an Urban Institute examination of the National Longitudinal Survey of Youth. All of the studies found substance abuse to be more common among welfare recipients than nonrecipients.\textsuperscript{118}

\textsuperscript{118} Young, “Implementing Welfare Reform.”
On July 8, 1994, Sen. Moynihan invited U.S. Secretary of Health and Human Services Donna Shalala to participate in a July 13, 1994, Senate Finance Committee hearing on the administration’s welfare reform legislation, the Work and Responsibility Act of 1994. Democrats had a majority — 11-9 — on the committee, which had jurisdiction over all welfare-related programs under the Social Security Act and included Sen. Dole. The briefing book included the note that Sen. Max Baucus (D-MT) might request the administration’s view of the CASA study of substance abuse among welfare recipients. The administration thought Baucus had concerns that a two-year time limit might prove to be a problem for those welfare recipients who did not have treatment available.

Shalala prepared to answer these questions: “Do you think the administration’s proposal addresses the problem of substance abuse by AFDC recipients sufficiently? Why are the administration’s estimates of substance abuse among AFDC recipients so much lower than those of Joseph Califano’s Center on Addiction and Substance Abuse (CASA)?” Shalala’s prepared answer said that the administration’s estimates of substance abuse among welfare recipients focused on impairment — seen as the inability to participate in education or training — whereas the CASA study measured drug use in the past year or heavy alcohol use twice in the past month. The briefing sheet said that the administration believed that the impairment analysis was more applicable for welfare reform and noted that HHS estimated 4.5 percent of adults receiving AFDC had substance abuse problems severe enough to keep them from immediately participating in
education or training. The administration said that one-time or occasional drug or alcohol use did not indicate addiction or functional impairment.\textsuperscript{119}

In response to a question at the hearing from Sen. John Chaffee (R-RI) about targeting education and training at those most likely to benefit, Shalala noted that the CASA study had found 28 percent of welfare recipients had used in an illegal drug in the past year or had five or more drinks in a row in the last month. Shalala said those broad definitions did not get at who is impaired and may require treatment. Shalala said the administration had chosen to focus instead on the extent of alcohol or drug use as well as impairment, leading to what they believed was a more accurate figure of the problem within the AFDC population. Shalala shared the HHS statistic that 4.5 percent of AFDC recipients have substance abuse problems seen to be sufficiently debilitating as to prevent participation in employment or training and said another 10.5 percent with moderate impairments would likely need substance abuse treatment as a supportive service. To address this issue, Shalala explained that the administration included a provision on substance abuse in its welfare reform proposal, giving states the flexibility to require recipients to participate in substance abuse treatment and to impose sanctions for nonparticipation provided that treatment and support like child care are available.\textsuperscript{120}

Clinton’s welfare reform proposals both died in committee. In the Senate, Finance Committee Chairman Moynihan did not bring it to a vote after the hearings. The House bill did not come up for a vote in the Committee on Agriculture, Committee on Education

and Labor (Chairman William Ford, a Democrat from Michigan), and the Committee on Ways and Means (Chairman Gibbons).

The administration granted Connecticut a welfare waiver for its A Fair Chance program in August 1994, the first waiver Clinton approved that referenced substance abuse. The Connecticut waiver said that AFDC applicants and recipients could be required to participate in substance abuse treatment programs. Failure to comply without good cause would result in a sanction. Substance abuse treatment could also be substituted for the work requirement for a temporary amount of time if approved by the state. The sanctions for failure to participate in the JOBS program resulted in a 20 percent reduction of monthly AFDC benefits for the first instance, 35 percent for the second, and 50 percent for all following.  

In addition, drug testing for public benefits came up in both Florida and New York in 1994. In Florida, drug testing became a campaign issue when Jeb Bush, the Republican challenger, argued that a welfare plan ought to force welfare recipients to be randomly tested for drugs. Bush did not win the election. In New York, the New York City mayor and state governor expressed interest in drug testing. New York City Mayor Rudolph Giuliani’s (R) new work-for-welfare plan sought to require single, childless people who said they could not work for medical reasons to undergo a drug test in order to receive benefits. The plan was set to begin in January 1995, and Giuliani said welfare recipients who tested positive for drugs would be required to enroll in a drug treatment program. However, the plan applied only to those in the state’s Home Relief

program for impoverished single adults, not those part of AFDC. Giuliani said an expansion to AFDC recipients would be considered after the effect on the Home Relief program was evaluated.

Prior to the 1994 midterm elections, the Republican members of the House of Representatives released a document of legislative priorities that they referred to as the Contract with America. The contract, authored by Rep. Gingrich, listed ten bills that they pledged to bring to the House floor in the first one hundred days of the 104th Congress. A welfare reform bill called the Personal Responsibility Act appeared third on the list. A Republican takeover of both houses of Congress in the 1994 midterm elections placed emphasis on the contract and on welfare reform overall.

Democratic advisors put out an analysis of Republicans’ proposed bill on November 23, 1994. The bill included periodic testing of those addicted to drugs or alcohol. The Democratic analysis noted that no comparable provision existed to the drug-testing provision and said that Oregon’s JOBS program came closest. The analysis said that Democrats’ welfare reform proposal allowed but did not require that states make participation in substance abuse treatment a requirement for the AFDC recipients whose employability required it. Also related to the Republican proposal, House Human Resources Subcommittee Chairman Shaw put out a press release December 30 announcing five Contract with America hearings on welfare reform. The second of the

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five, titled “Illegitimacy and Welfare,” said the subcommittee would hear testimony about the relationship between illegitimacy and drug use, among other factors.\textsuperscript{125}

**1995: The Republican Takeover of Congress**

House Republicans introduced the Personal Responsibility Act of 1995 on January 4, 1995. The bill contained Title VII, mandatory substance abuse treatment for welfare recipients if determined by the state to be addicted to alcohol or drugs. AFDC applicants or recipients determined to be addicted to drugs would also be tested for drugs periodically. The applicant could be kicked off welfare for two years for failure to comply.\textsuperscript{126}

In addition to Shaw’s hearings, the subcommittee’s parent committee, the Committee on Ways and Means, held hearings on the Contract with America. On the second day of hearings, January 10, 1995, Rep. Philip English (R-PA) quizzed Secretary Shalala about the position of the administration on encouraging through federal legislation the random testing of welfare recipients for drugs. Shalala expressed concern for whether that was legal. She said that the administration had supported a requirement that welfare recipients with drug addictions participate in drug treatment programs, noting that most of them involve testing. “Anything beyond that I understand — and I am not a lawyer — raises some constitutional issues,” she continued, “and we would be happy to explore that with the committee.”

During that same hearing, New York Gov. George Pataki (R) spoke about welfare programs in New York, noting that those deemed unemployable because of drugs or


alcohol are referred to treatment programs. English replied that he was delighted with the governor’s testimony and conveyed that he and many others considered responsible behavior to be a capstone of welfare reform. English expressed his view that drug testing may be one of the provisions needed to accomplish that end.

Also during that January 10 hearing, Samuel J. Simmons, with the National Caucus and Center on Black Aged, Inc., testified that the various welfare reform proposals attacked three groups — legal immigrants, alcoholics and drug addicts, and disabled children. Simmons argued against a cutoff of benefits for alcoholics and drug addicts, saying that their conditions are treatable and that eliminating benefits would only make the situation worse and likely more costly in the long run.

The Navajo nation also submitted a statement on the bill for the January 10 hearing. The statement declared that the Navajo nation supported the idea of welfare reform but had particular concern with the drug-testing provision, saying it provided states with enormous authority to determine who is an addict, what is appropriate treatment, and what is satisfactory participation in treatment. A final mention of drugs and welfare recipients at the January 10 hearing came from Jeffrey H. Joseph at the U.S. Chamber of Commerce, a supporter of welfare reform. Joseph said that welfare recipients must be drug-free as a condition of employment and as a condition of receiving benefits.

The January 20 Contract with America subcommittee hearing included the testimony of former education secretary William J. Bennett, now representing Empower America, a group that promoted conservative policies. Rep. David Camp (R-MI) asked Bennett how the current welfare system had contributed to the rising crime and drug abuse in America. Bennett answered that any police sergeant in the United States would
observe that the day welfare checks go out is a big day for drug buys and that those who have reached the bottom use what money is available to buy drugs.\textsuperscript{127}

CASA President and former secretary of health, education, and welfare Joseph Califano explicitly drew the connection between drugs and welfare in a January 1995 New York Magazine article called “It’s Drugs, Stupid.” Califano argued that putting welfare mothers to work would do little to make employable the “hundreds of thousands of welfare recipients who are addicts and abusers.” Califano recommended that welfare payments be cut off for drug addicts and alcoholics who refuse to seek treatment and to pursue after-care, putting children of those parents into foster care or orphanages, and subjecting inmates, parolees, and welfare recipients with a history of substance abuse to random drug tests.\textsuperscript{128} Rep. Gerald B.H. Solomon (R-NY) entered this article into the February 3, 1995, \textit{Congressional Record}, saying it contained several solutions.

During remarks made to the U.S. Chamber of Commerce on February 9, 1995, Shaw said the House Republicans’ bill would stop the “perverse incentives of the welfare system today.” Shaw described AFDC as a government program that offers a guaranteed income for people to drink or drug themselves into a stupor so that they cannot work.\textsuperscript{129} On March 24, 1995, the House voted 234-199 to approve the Shaw-sponsored reform bill.\textsuperscript{130}

A 1995 Legal Action Center study identified substance abuse in welfare recipients as a problem that needed to be addressed. The study reported that 99 percent of state and

\textsuperscript{129} Bruce Reed-Welfare Reform Collection, “Shaw.” \textit{Clinton Library.} http://www.clintonlibrary.gov/assets/DigitalLibrary/BruceReed/WelfareReform/Box%2034/612964-shaw.pdf
local welfare directors classified alcohol and drug treatment as extremely or somewhat important to assist welfare recipients in getting off welfare. The Legal Action Center also found that most state and local welfare directors believed that up to one-third of the adults in their caseload were limited in their job training, search, and retention by alcohol or drug problems. The center did not argue for drug testing but said a welfare proposal needed to be flexible and to offer a variety of services to address welfare recipients’ diverse needs.131

On the Senate side, Dole introduced the Work Opportunity Act of 1995 on August 3, 1995.132 The bill did not include any push to test for drugs or to allow states to do so. However, Dole halted consideration of his bill on August 8 after just two days of debate due to disagreement within the Republican party (fellow presidential candidate Sen. Phil Gramm of Texas led the charge for a tougher bill that would cut off unmarried teenage mothers and immigrants who had not become citizens), partisan politics, and limited time before recess.133 The Senate resumed debate September 6.

The Women’s Committee of 100 Plus, which formed after the Republicans swept Congress in November 1994, worked with other women’s organizations to make the case that the Dole-led welfare reform proposed in 1995 was a war against poor women and that a war against poor women is a war against all women. The committee said that the welfare reform proposal in Congress drew its foundation from myths about women and welfare, but the committee did not specifically mention substance abuse.134

Sen. Christopher Bond (R-MO) brought drug testing into Dole’s bill through an amendment proposed on September 8, 1995. The amendment said the federal government would not prevent states from sanctioning welfare recipients who tested positive for controlled substances. Bond said on the Senate floor on September 8 that the Missouri welfare program had attempted to get people off welfare, but some recipients placed in employment failed drug tests. The state of Missouri under AFDC could not sanction these people, Bond said, and so failing a drug test made an easy way for someone to not work and stay on welfare.135

Recognizing that many states did not have adequate addiction treatment programs, Sen. Jeff Bingaman (D-NM) introduced an amendment on September 8 that would have provided funding for state programs for drug and alcohol treatment. This amendment failed 41-58 on September 15.136 The Senate agreed to the Bond amendment on September 15 by voice vote. The Senate passed the Work Opportunity Act of 1995 (87-12) on September 19.

As Congress worked on welfare reform in 1995, drug testing also came up in a job-training bill. Sen. John Ashcroft (R-MO) introduced an amendment137 to the Workforce Development Act of 1995 on October 10, 1995. Ashcroft’s amendment required individuals to submit to drug tests to ensure that applicants and participants made full use of benefits given through workforce employment activities. On October 11, Ashcroft communicated that he proposed the amendment to allow the government to

focus job-training resources on those likely to use them most effectively. Ashcroft said
the National Institute for Drug Abuse indicated that $140 billion is lost each year to drug-
addicted workers.\textsuperscript{138}

Sen. Ted Kennedy (D-MA) spoke out October 11 against Ashcroft’s amendment.
Kennedy characterized the amendment as an “unwarranted and unprecedented intrusion
into the privacy of thousands of ordinary Americans” as well as a costly unfunded
mandate. Kennedy opined that routine testing is too extreme, especially considering it is
not done in other government programs, and he questioned why job-training recipients
would be singled out for this stigma.\textsuperscript{139}

The Senate approved the amendment 54-43 on October 11, 1995. The bill would
have left details such as the numbers of individuals tested and the frequency to localities.
However, the Senate ultimately ended up incorporating some provisions of the
Workforce Development Act into the House’s Workforce and Career Development Act
of 1996, and it passed that measure instead and without Ashcroft’s drug-testing
amendment.\textsuperscript{140}

Following the passage of welfare reform in both houses of Congress, the two
chambers negotiated a compromise, but President Clinton and most Democrats called the
bill unacceptable. As a result, Republicans instead pushed welfare legislation through as
part of the budget reconciliation bill. The Balanced Budget Act of 1995 passed the House
on October 26 (227-203) and the Senate on October 27 (52-47). The bill as agreed to by
both chambers did not contain a provision that would have allowed states to test welfare

\textsuperscript{139} Congressional Record, U.S. Senate, Workforce Development Act of 1995, October 11, 1995.
\textsuperscript{140} U.S. Senate, Workforce and Career Development Act of 1996, H.R. 1617, 104\textsuperscript{th} Congress, May 11,
1995.

Clinton’s veto prompted GOP legislators to return to their previous welfare legislation, with votes on the conference report on December 21 in the House (passed 245-178) and on December 22 in the Senate (passed 52-47). The welfare bill that Congress sent to the president contained the Bond amendment language permitting states to sanction recipients who failed drug tests.\footnote{U.S. House of Representatives, Personal Responsibility Act of 1995, H.R. 4, 104th Congress, January 4, 1995.} Clinton vetoed the bill on January 9, 1996, and explained that it did too little to move people from welfare to work and that the budget cuts were too deep.\footnote{Public Papers of William J. Clinton, “Message to the House of Representatives Returning Without Approval Legislation on the Welfare System,” January 9, 1996.}

**1996: The Presidential Campaign**

The year 1996 saw an increased interest in welfare waivers that involved substance abuse provisions. First up, Texas’ Achieving Change for Texans waiver, granted in March 1996, required that adult applicants and recipients sign a personal responsibility statement. The statement contained required abstinence from the use or sale of marijuana, controlled substances, and the abuse of alcohol. The waiver said recipients would face periodic reviews after signing the waivers, where they would be asked whether any caretaker relative or parent in the household had been convicted of or had deferred adjudication for a criminal offense involving marijuana, a controlled substance, or alcohol since signing the personal responsibility statement. If so, the Texas program
could impose a penalty that would reduce the recipients’ benefit payments by $25 until
the next periodic review.\textsuperscript{144}

The Ohio First welfare waiver, finalized in May 1996, said that pregnant AFDC recipients had to cooperate with substance abuse assessment and/or treatment or face a sanction. A local alcohol and drug addiction provider certified through the state made the decision as to whether to require treatment. Those providers also determined compliance with the treatment program. Those AFDC recipients who did not comply faced ineligibility for AFDC payments for the longer of either a month or until the behavior ceased for the first and second offenses, the longer of either up to two months or until the behavior ceased for the third offense, and the longer of either until the failure ceased or six months for the fourth failure.\textsuperscript{145}

The last of the waivers prior to PRWORA, the Clinton administration approved South Carolina’s welfare waiver in May 1996. The South Carolina Family Independence Act of 1995, which created the need for a welfare waiver, mandated participation in an alcohol or drug treatment program if a welfare recipient was determined by a case manager to be in need of treatment, was convicted of an alcohol or drug-related offense, or had given birth to a child who tested positive for drugs. The welfare recipients agreed to participate in treatment if needed as part of their Individual Self Sufficiency Plans signed with the state.\textsuperscript{146} The White House said that the South Carolina waiver allowed states to randomly test welfare recipients identified as having drug problems and to take away welfare benefits for those who fail to comply. Still, South Carolina Gov. David

Beasley (R) said he had wanted the authority to cut people off from welfare if they were caught more than once using drugs, but the administration would not allow denial of benefits as long as the individual was in treatment, the Washington Post reported.  

The Clinton team often touted its approved welfare waivers as evidence of the administration’s flexibility in helping states meet needs. A May 1996 Department of Health and Human Services press release noted that the Clinton team had approved waivers that freed 37 states to pursue innovative welfare reforms covering 75 percent of welfare recipients nationwide. The administration had approved more welfare waivers than any previous administration.

The state of Pennsylvania successfully enacted a welfare reform measure as Congress worked on PRWORA that strongly resembled substance abuse provisions in South Carolina’s and Texas’ welfare waivers. The Pennsylvania law created a system whereby applicants had to sign an agreement that set forth the person’s obligations to achieve self-sufficiency, including an obligation to remain alcohol- and drug-free if that person had had a substance abuse problem that was a barrier to employment. To ensure these people were drug- and alcohol-free, the law required that they complete a drug and alcohol program and submit to periodic drug testing. Those who failed to cooperate with the agreement were ineligible for assistance.

Also in May, the Urban Institute put out the report “Personal and Family Challenges to the Successful Transition from Welfare to Work,” which evaluated

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http://www.legis.state.pa.us/WU01/LI/LI/US/HTM/1996/0/0035..HTM
substance abuse among other potential barriers to employment of welfare recipients. The report for the Office of the Assistant Secretary for Planning and Evaluation and the Administration for Children and Families noted that estimates of the prevalence of substance abuse among welfare recipients ranged from 6.6 percent to 37 percent depending on the definition of abuse and the population studied.\textsuperscript{150}

May also saw drug testing and welfare come to the national stage briefly — the only time it would do so during the reform proposals that led to PRWORA. Drug testing came up as Dole and Clinton pushed competing welfare proposals. Dole was set to unveil his welfare reform proposal on May 21 in Fond du Lac, Wisconsin, because Gov. Tommy Thompson (R) had recently proposed sweeping reforms.\textsuperscript{151} Clinton had also embraced Gov. Thompson’s welfare reform plan, which did not include drug testing, leading the Dole campaign to accuse the Clinton camp of stealing the welfare issue.\textsuperscript{152}

News outlets including \textit{Newsweek} and the \textit{Wall Street Journal} reported in advance of Dole’s speech that he might propose mandatory drug testing for all welfare recipients.\textsuperscript{153}

Dole’s pending welfare proposal caused the Clinton campaign to prepare answers to several questions related to welfare reform, including questions about how Clinton’s welfare bill did not explicitly advocate drug testing. The response prepared by the Clinton team said that Clinton’s welfare reform plan would allow states to decide whether to implement drug testing. The response also noted the waivers granted to Connecticut,

\textsuperscript{153} Thomas Hardy, “Dole touts GOP Policy on Reforming Welfare; Senate is mum about speech today about get-touch policy for welfare recipients,” \textit{Austin American-Statesman}, May 21, 1996, A4.
Ohio, Oregon, South Carolina, and Texas around substance abuse and that Clinton’s 1996 welfare plan would require personal responsibility contracts with welfare recipients that could include drug testing.154

Prior to Dole’s speech, the Philadelphia Inquirer suggested that Dole might face a legal challenge if he required welfare recipients to take drug tests. A May 21, 1996, article from the Inquirer’s Washington bureau said that such a mandate would be highly controversial and would likely raise questions about civil liberties and how practical it is to regularly test 5 million people.155

When Dole made his speech on May 21, he did not propose mandatory drug testing. Instead, he reinforced his position that the decision-making should be left to the states. He said his administration would recognize that states have the right to sanction welfare recipients who test positive for drugs. He cited the CASA report, saying that mothers receiving AFDC are nearly three times as likely to abuse alcohol and illegal drugs as other mothers. Dole also recognized Sen. Bond’s role in the inclusion of states’ ability to test welfare recipients for drugs. Dole said that Bond had pointed out that some welfare recipients are turned down for work because they failed employers’ drug tests and then the recipients use the test results to prove that they are looking for work and therefore still entitled to welfare. States should have the right to deny these claims, Dole said.156


Dole called out Clinton in his speech for not fulfilling the campaign promise to “end welfare as we know it.” Dole also said it was an absence of presidential leadership that forced states to ask for welfare waivers in the first place. South Carolina Gov. Beasley told the Washington Post that his state had wanted to test those who admitted to an addiction, gave birth to an addicted child, or were convicted of a crime involving drugs or alcohol, and that those people who got caught with drugs a second time would have been cut off. The Clinton administration denied that request, Beasley complained.158

A Philadelphia Inquirer article following Dole’s welfare proposal reported that some governors said drug-testing would be impractical and a civil rights violation. The article on May 22 quoted Gov. Bob Miller (D-NV) as saying, “If you’re going to do it for welfare recipients, does it mean you should do it for every senior citizen who gets Medicare, or every poor person who gets Medicaid?”159 A Washington Post article the day after Dole’s welfare proposal included Gov. Thompson’s reaction to Dole’s statement that states should have the right to test welfare recipients for substance abuse. The article described Thompson’s reaction as lukewarm. Thompson said he supported the concept of giving states the right to do so and said he would consider it, but also made clear that his welfare reform plan prioritized work, not drug testing.160

Following Dole’s speech, aides said Dole had rejected mandatory drug testing because it ran inconsistent to his view that such details should be left to the states. The Dole campaign also continued to accuse Clinton of taking credit for Republican ideas.

158 Balz, “White House and Dole Campaign Duel.”
159 Thomma and Gallman, “Have States Run Welfare.”
According to a May 23 *Washington Post* article, Dole said that Clinton did not even have to make speeches anymore; he just had to listen to Dole’s speeches, and say “Me too.” In response to Dole’s speech, White House Press Secretary Mike McMurry said the president’s welfare reform bill specifically authorized drug testing, prompting the Dole campaign to check. The Dole campaign discovered that the only reference to drugs was giving states the authority to provide substance abuse treatment to welfare recipients. The White House then responded, the *Post* reported, by saying that the president’s welfare reform did not specifically authorize states to test for drugs but allowed states to seek personal responsibility pledges that states could construct to include drug tests. Presidential adviser Bruce Reed maintained that Clinton’s bill and the Republican bills did the same thing in allowing the states to decide.\(^{162}\)

The day after Dole made his speech the Senate took up a nonbinding budget resolution amendment sponsored by Dole and Ashcroft that said states should be allowed to test welfare recipients for substance abuse.\(^{163}\) In advocating for the amendment, Ashcroft classified as an affront a situation where American people support drug habits through welfare payments and asserted that the flow of money does not help those on drugs. The amendment, passed by an overwhelming 92-8 on May 22, read: “In recognition of the fact that American workers are required to be drug-free in the workplace, it is the sense of the Congress that this concurrent resolution on the budget assumes that the States may require welfare recipients to be drug-free as a condition for receiving such benefits and that random drug testing may be used to enforce such

\(^{162}\) Balz, “White House and Dole Campaign Duel.”

\(^{163}\) U.S. Senate. S. Amdt. 4030 to S. Amdt. 4000 to S. Con Res. 57, 104\(^{th}\) Congress, May 22, 1996.
requirements. Following passage of the amendment, Dole said in a statement: "I am pleased the Senate has overwhelmingly lined up behind my proposal to allow states to sanction welfare recipients who test positive for drugs. Basic compassion and common sense dictate that the government must stop being the 'enabler' of those who abuse drugs."

The House Subcommittee on Human Resources again held hearings on welfare reform in the months leading up to the passage and signing of PRWORA. During a May 22, hearing, Rep. John Ensign (R-NV) said that when AFDC checks are distributed, local casinos and drug dealers see more business. He argued that benefits in the form of cash mean they do not go to the children they are intended to help but instead go to fostering an underground economy and drug culture.

During that same hearing, Rep. English questioned Mary Jo Bane, assistant secretary for families and children at the U.S. Department of Health and Human Services, about whether drug addiction or alcoholism would qualify an individual for exemption from the welfare bill’s work requirements. Bane said drugs or alcohol would not automatically necessitate an exemption and that the Americans with Disabilities Act determined exemptions. English said in response that the House GOP wished to work with the administration on a welfare proposal that would allow states flexibility to address their poverty problems locally.

Clinton again proposed a welfare reform bill in 1996, this one called the Work First and Personal Responsibility Act. Rep. Gibbons again introduced the bill in the

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House on June 11, 1996, and Sen. Moynihan introduced the Senate bill on June 5, 1996. Similar to his 1994 effort, Clinton’s 1996 welfare proposal gave states the option under personal responsibility agreements with welfare recipients to require an individual to undergo substance abuse treatment. The Senate bill died in the Committee on Finance, chaired by Sen. William Roth Jr. (R-DE). The House bill was referred to the Committee on Ways and Means, with provisions to be evaluated by the Committees on Agriculture, Banking and Financial Services; Economic and Educational Opportunities; the Judiciary; Commerce; the Budget; National Security; International Relations; and Government Reform and Oversight. Ways and Means Committee Chairman Bill Archer (R-TX) did not bring it up for a vote.

At a June 19 welfare and Medicaid reform hearing before the U.S. Senate Committee on Finance, Arnold R. Tompkins, overseer of the Ohio Department of Human Services, testified to his disappointment over the president’s veto of welfare reform and expressed his hope that something would be passed that gave states welfare block grants. Tompkins said five Ohio counties had spent tremendous time developing community-based welfare strategies that included drug testing for recipients and that the state needed a federal block grant to test these strategies.


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again used the language from the Bond amendment, saying states would be allowed to
test and sanction welfare recipients for drug use.¹⁷¹

Despite the Clinton administration’s repeated citations of state waivers as
evidence of their flexibility on drug testing and welfare, the Republican Governors
Association’s monthly news update from July 1996 said that the governors felt
Washington was sending conflicting signals. The article, by Govs. John Engler of
Michigan and Steve Merrill of New Hampshire noted that South Carolina had submitted
a waiver to drug test welfare recipients but then the administration made the waiver
ineffective through pre-conditions. The article said that Clinton then stated two weeks
later that he was for drug testing.¹⁷²

The Republican governors also put forth the article “Republican Welfare Reform
Meets the Clinton Administration,” in a larger publication called Republican Ideas in
Action, Governors, and the Case for Republican Government that said Washington
continued to slow down welfare reform in the states. The governors said the waivers were
never approved within the promised 30 days, and again cited South Carolina as an
example of the Clinton administration preventing a state welfare overhaul.¹⁷³ As the
governors made their push, legislation failed in New York in summer 1996 that would

¹⁷² Bruce Reed-Welfare Reform Collection, Republicans 4 box. Clinton Library
¹⁷³ Bruce Reed-Welfare Reform Collection, Republicans 4 box. Clinton Library
have allowed local governments within the state to test welfare recipients and applicants and to require treatment as a condition to receive benefits.\textsuperscript{174}

On July 18, 1996, Ashcroft offered an amendment to PRWORA that would have made random drug testing a condition of receiving benefits.\textsuperscript{175} States again would have had the power to sanction welfare recipients who tested positive for illegal drug use. In introducing the amendment,\textsuperscript{176} Ashcroft said the American people should not be spending hard-earned money to support drug habits.\textsuperscript{177} Sen. Kennedy said that the amendment inappropriately sought to single out poor people for a stigmatizing, intrusive procedure. Another Senate Democrat, Joseph Biden (D-DE) said he supported random drug tests but did not support Ashcroft’s attempt to make them mandatory and unfunded. Biden said the decision should be left up to the states.\textsuperscript{178} The Senate rejected (50-47) the Ashcroft amendment.\textsuperscript{179}

Sen. Bond again referenced drug testing in his time on the Senate floor July 18 to urge passage of the measure. Bond said the state of Missouri needed to be able to sanction welfare recipients found to be using drugs. He said it was unfair to the children of the drug users that the current system gave their parents no incentive to change and to the taxpayers funding the drug habit. Also on July 18, Rep. Gary Franks (R-CT) may have made the only reference on the floor of Congress to a percentage of welfare recipients who abuse drugs. Franks said, without citation, that 25 percent of welfare

\textsuperscript{177} Congressional Record, U.S. Senate, Personal Responsibility and Work Opportunity Reconciliation Act, July 18, 1996.
\textsuperscript{178} Ibid.
\textsuperscript{179} Ibid.
recipients are drug users. That same day, July 18, PRWORA passed the House in a 256-170 vote. The bill passed the Senate (74-24) on July 23.

Just before Clinton signed welfare reform into law, he approved a state waiver related to drug testing. Kansas received a waiver on August 19, 1996, for the KanWork program, allowing it to require that all KanWork participants who were diagnosed with an alcohol or drug addiction problem had to participate in and complete a substance abuse treatment program. Refusal to comply resulted in termination of a portion or all benefits. The penalties for refusing to comply were the same as sanctions for other welfare recipients who did not comply with the requirements of the program.

The KanWork pilot program did not mandate universal screening of all TANF applicants for alcohol and drug abuse but also did not prohibit localities from making drug testing a part of their intake procedures. Wichita was the only area to initially conduct up-front screening. Wichita did drug testing for TANF recipients who planned to be in specific employment projects where they would be required to be drug free. The Wichita office used urinalysis to test the TANF recipients before referring them to these projects.

However, Kansas’ waiver did not go as far as allowed under PRWORA, which Clinton signed three days later, on August 22, 1996. The bill contained the Bond amendment language, allowing states to test and sanction welfare recipients for drug use. When Clinton signed PRWORA, roughly 10 states had either requested a waiver

181 Young, “Implementing Welfare Reform.”
183 Young, “Implementing Welfare Reform.”
related to substance abuse and welfare or had indicated that they wished to test welfare recipients for substance abuse. None of the states that had received waivers had the authority that PRWORA gave states to test universally and without suspicion.

Seven states—Connecticut, Kansas, Ohio, Oregon, South Carolina, Texas, and Utah—had received welfare waivers that allowed them to incorporate substance abuse provisions into their welfare plans. Most of the waivers, including those in Utah, Oregon, and Ohio, required that welfare recipients participate in drug treatment programs or face sanctions through JOBS program. Those states used screening to determine whether a welfare recipient needed diagnosis and treatment.185

**Late 1996: Looking Forward**

As PRWORA headed toward implementation, no one seemed to have a sense of how many states would take advantage of the ability to universally or randomly test welfare recipients for substance abuse without suspicion—and it is not clear that anyone deeply cared. Seemingly pushed aside were Secretary Shalala’s 1995 worry that random drug tests without suspicion could face constitutional challenges and Sen. Kennedy’s concerns over testing only one population of recipients of government beneficiaries.

In fact, some journalists thought the U.S. government had merely become a part of a larger trend. A *Florida Times-Union* story, “St. Johns OKs Welfare Drug Test,” from September 11, 1996, about a Florida county opting to test welfare recipients for drugs said that the county’s decision made it part of a national trend requiring drug-free welfare recipients. The article quoted Merrill Matthews of the nonpartisan Domestic Policy of the National Center for Policy Analysis in Dallas as saying that more than 40 state

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governments were seeking waivers from the federal government to allow them to require that welfare recipients be drug-free.¹⁸⁶

A *Washington Post* article from September 18, 1996, also reported that drug testing of welfare recipients was likely to become a trend. The article said that governors in Alabama, California, Kansas, Missouri, North Carolina, and Ohio had expressed interest in drug tests for welfare recipients.¹⁸⁷ Finally, Arthur Caplan with *The Albany Times Union* argued that the drug-testing provision in PRWORA served as Congress’ way of hopping on board the newest big business — drug testing — and a way for states and counties to trim their budgets.¹⁸⁸

But regardless of Congress’ intent with the drug-testing provision, PRWORA left the power up to the states. Welfare reform in the mid-1990s had moved from GOP bills that would have automatically expelled for two years drug-using welfare recipients who failed to participate in treatment (H.R. 741, 1993) or required random drug tests for those participating in and following completion of addiction treatment (S. 1795, 1994) to a law that gave states the discretion to do these things — or almost anything else that they wanted.

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Chapter 4: States Show Limited Interest in Drug-Testing Authority (1996-2006)

Despite newspaper reports that suggested PRWORA would kick off a trend of drug tests for welfare recipients, most states took limited action initially on the authority given by Congress to impose drug testing on welfare recipients. The majority of states instead opted for screening their applicants and recipients, often through a pencil-and-paper test. The 10 years following PRWORA also brought one court battle\textsuperscript{189} over the constitutionality of testing welfare recipients without suspicion and new evidence from states with drug-testing provisions that showed welfare recipients abuse illegal substances no more than the general population.

1996-1997: States Turn to Screening Over Testing

PRWORA gave states the authority to test welfare recipients for drug use in August 1996. Yet that year, just Maryland and New York saw legislative proposals to test welfare recipients for drugs, with both states continuing consideration into 1997. States had until July 1, 1997, to submit their new welfare plans to the federal government under PRWORA. In addition to the legislative activity, 1996 marked the completion of a federal government study on substance abuse and welfare that reported rates of substance abuse among welfare recipients to be no different from those of the general population.

As seen in the preceding chapter, the handful of pre-PRWORA studies that connected substance abuse and welfare recipients showed substance abuse to be more common in welfare recipients. However, National Institute on Alcohol Abuse and Alcoholism researchers released a study in October 1996 that said proportions of welfare

recipients using, abusing, or dependent on alcohol or illicit drugs were consistent with the U.S. population in general. The study found that 4.3 to 8.2 percent of welfare recipients abused or depended on alcohol, and 1.3 to 3.6 percent abused or depended on drugs; rates for the general population were 7.4 percent for alcohol and 1.5 percent for drugs.\textsuperscript{190}

After enactment of PRWORA, Maryland sought to be the first state to require drug tests for all welfare recipients. A bipartisan legislative panel proposed such an initiative in December 1996. Co-chairman of the panel Sen. Martin G. Madden (R) said the legislation intended to ensure that the mother received treatment and that the state could be sure the money reached the children and did not go to subsidizing someone’s addiction. The bill would have required those who tested positive to complete treatment or face a reduction in benefits. All cash benefits would have been denied to those who refused a drug test. The estimated cost to test all welfare recipients for drug use was $1.2 million.\textsuperscript{191} The Center for Law and Social Policy (CLASP) raised concern in December 1996 that such a policy would be unconstitutional. CLASP also questioned why welfare parents were being singled out.\textsuperscript{192} Criticism of the proposal mounted as state analysts noted that the state’s Medicaid-funded drug treatment programs already had waiting lists. The drug-testing proposal had the potential to double the number of annual patients, according to a county addiction program director.\textsuperscript{193} New York Gov. George Pataki (R) released a welfare overhaul plan in November 1996 that would have tested all welfare recipients and ended cash benefits for those who tested positive for drugs. Pataki said the

\textsuperscript{192} Ibid.
plan overall aimed to use the money saved through benefit cuts and other restrictions to put welfare recipients to work.\textsuperscript{194} The Democratic-controlled Assembly vowed immediately to block portions of Pataki’s welfare plan, but many said the proposal to test welfare recipients for drugs should be considered.\textsuperscript{195} In 1997 both Maryland and New York abandoned their plans, calculating that screening would be less costly and more effective.\textsuperscript{196}

However, in 1997 Louisiana became the first state to pass a bill that involved drug testing without suspicion. In addition, Ohio enacted legislation that targeted pregnant women and caregivers in certain counties, and Oklahoma passed legislation to study drug testing. Post-PRWORA welfare plans in Connecticut, Minnesota, New Jersey, and Virginia targeted those convicted of drug-related crimes for drug testing. Pennsylvania opted to study drug testing and welfare, and the states of Kansas, Oregon, South Carolina, and Texas all had substance abuse provisions under waivers. None of the states imposing drug testing planned to cut off benefits to those who tested positive without giving them a chance to enroll in treatment. Additionally, a national study released in 1997 made the case for substance abuse treatment as a part of any drug-testing proposal.

Drug screenings proved to be much more popular among the states than drug tests. Fifteen states conducted drug screenings: Delaware, Kansas, Maryland, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, South Dakota, Vermont, and West Virginia. The state of Maine

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required those who could not fulfill work requirements because of drug and alcohol to enter a treatment program.\textsuperscript{197}

Many states also chose to use PRWORA’s flexibility to reference substance abuse in their personal responsibility contracts with welfare recipients. The states of Alaska, Colorado, Georgia, Mississippi, Pennsylvania, Texas, and West Virginia used personal responsibility contracts. In Michigan’s contract, recipients who could not meet goals because of substance abuse were required to participate in treatment and to submit to any periodic drug testing within the treatment program.\textsuperscript{198} The emphasis on treatment also stemmed from PRWORA, which authorized substance abuse treatment as part of an individual responsibility plan for welfare recipients.\textsuperscript{199}

Maryland legislators had dropped their plan to make the state the first to test all welfare recipients amid concerns about cost and fairness. On January 29, 1997, legislators proposed instead that applicants be interviewed about drug use and denied benefits if they admitted to drug use and then refused treatment. All applicants would not, however, be subjected to a urine test. The state would save $2.4 million a year by using screening instead of urinalysis.\textsuperscript{200} The drug-screening plan passed through the General Assembly on its last night, in April, and Gov. Parris Glendening (D) signed the bill in May.\textsuperscript{201}

New York initially remained committed to linking drug testing and welfare. In February 1997, Terrance M. McGrath, a spokesman for the New York State Department

\textsuperscript{197} Carey, “Crafting a Challenge,” 336.
\textsuperscript{198} Carey, “Crafting a Challenge,” 338.
of Social Services said the state’s No. 1 priority was to get people off welfare and into jobs, which could not be done if they had drug problems. McGrath also noted that welfare money should not be used for drugs. The New York plan would have sent those who tested positive to drug treatment. However, Gov. Pataki’s plan did not overcome cost concerns among the divided General Assembly, which ultimately passed a welfare overhaul that would test only those who caseworkers thought were using drugs. The bill went into effect in New York in November 1997 decreeing that all of those receiving or applying for welfare be asked nine questions about whether they abused drugs or alcohol. Those who admitted to an addiction lost cash benefits while they completed treatment.

Louisiana’s sweeping welfare reform had the administration randomly testing for drugs anybody who received anything of economic value from the state, including welfare recipients. The bill declared a state of emergency in Louisiana due to spiraling increases in substance abuse by its residents and the state therefore had a compelling interest in safeguards to prevent misuse of benefits. Those who failed the test would have to complete an education and rehabilitation program. Louisiana Gov. Mike Foster (R) signed the bill into law July 15, 1997. The bill was scheduled to go into effect in summer 1998.

The state of Oklahoma also sought to test welfare recipients without suspicion. The bill required tests for all applicants for public assistance. Those who failed or refused

204 New York, SB 5788, 1997.
to take the test would be denied assistance. The state would pay for the drug test.\textsuperscript{207} State Rep. Wayne Pettigrew (R) said prior to introducing the measure that his goal with welfare overhaul was to shift Oklahoma’s system from one of cash handouts to education, job preparation, and child care.\textsuperscript{208} That bill did not pass, but a bill to study drug testing, this one co-authored by Pettigrew, did become law. The bill required that the state’s Department of Human Services and Department of Mental Health and Substance Abuse Services conduct a study to determine the degree to which substance abuse interfered with TANF recipients’ ability to work and maintain employment. The study needed to include the extent of the substance abuse problem among public assistance recipients, availability of treatment, consideration of the use of drug testing, sanctions and other tools in successful interventions, and the safety of any children involved.\textsuperscript{209}

The state of Ohio enacted a bill that expanded on the state’s welfare waiver. The bill tested participants in the Ohio TANF program who were the caregivers of children receiving assistance in certain counties and tested pregnant women who were receiving medical assistance. The bill, which also moved Ohio’s welfare program from AFDC to TANF, became law on July 2, 1997.\textsuperscript{210}

The states that connected drug testing and drug-related crimes — Connecticut,\textsuperscript{211} Minnesota,\textsuperscript{212} New Jersey,\textsuperscript{213} and Virginia\textsuperscript{214} — reacted to another provision in

\textsuperscript{207} Oklahoma. HB 1294, February 3, 1997.
\textsuperscript{209} Oklahoma. HB 2170, February 3, 1997.
\textsuperscript{210} Ohio. HB 408, July 2, 1997.
\textsuperscript{211} Connecticut. HB 8003, June 18, 1997.
\textsuperscript{212} Minnesota, SF No. 1, January 7, 1997.
PRWORA that said states, unless they opted out, would deny welfare benefits to those who received felony drug convictions on or after August 22, 1996. Rather than cut those people off entirely, these four states chose to hinge those individuals’ eligibility on drug testing.

Neither North Carolina nor Pennsylvania succeeded in passing state laws regarding drug tests for welfare recipients in 1997. North Carolina’s welfare reform proposal would have given counties with up to 15.5 percent of the state’s welfare caseload the discretion to devise their own public assistance programs, which could have included drug testing. The state of Pennsylvania also evaluated a proposal in 1997 that would have charged state officials with developing a drug-testing program for public assistance recipients. Those who tested positive or refused would not have received benefits until they tested negative or submitted to the test unless they participated in a treatment program. No bill made it out of committee.

The 1997 study that argued for substance abuse treatment, done by the Center for Substance Abuse Treatment, a division of the Federal Substance Abuse and Mental Health Services Administration in Rockville, Maryland, reported that women treated in federally funded programs increased their employment and decreased their use of welfare. The number of women who reported being employed in the year after treatment increased 25 percent. In addition, income rose 6 percent, while the number receiving public assistance decreased 8 percent.


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216 Pennsylvania HB 1256, April 8, 1997.
217 Rubinstein, “Steps to Success.”
With states having completed their PRWORA-required welfare plans the year before, 1998 saw much less activity related to drug testing and welfare. In fact, the U.S. Department of Health and Human Services’ first annual report to Congress since TANF implementation did not mention drug testing among its review of trends and characteristics in the different state programs.218 The DHHS’ Administration for Children and Families, Office of Family Assistance, did find in July, though, that more than half of states reported struggling with clients with substance abuse problems. The year also saw important legislative developments in Louisiana and Florida. Louisiana followed decisions made in Maryland and New York and opted for screening instead of testing. Florida moved forward with a pilot drug-testing program that represented the strongest effort thus far to fully use PRWORA’s authority.

A 1998 law directed the Florida Department of Children and Family Services to set up the pilot program as soon as possible in 1999 with an end date of June 30, 2001. The pilot program, set for two regions in the state, would screen each welfare applicant and test for drug use those believed to engage in use of controlled substances. The department aimed to provide treatment for anyone who failed, subject to funding. Those who failed were also to be ineligible for benefits for an unspecified amount of time, although their children could still receive assistance. At the end of the pilot program, the state would evaluate funds expended, problems encountered, and the impact on employability.219

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219 1998 Florida Statute, Chapter 414.70.
Slated to begin drug testing in summer 1998, Louisiana shifted gears and did drug screening instead with a set of twenty yes/no questions when a person applied to or tried to renew welfare. Those thought to have problems were referred for a drug test and then to counseling if they tested positive. The state director of the alcohol and drug abuse office said the program could cost his office $4 million annually when all of the testing, counseling, and treatment are factored in. Louisiana changed from testing to screening after a task force set up to carry out the law determined that questionnaires were more effective in detecting substance abuse problems.

In Michigan, Gov. John Engler (R) proposed "Operation Zero Tolerance" in his 1998 State of the State address, a plan that would require welfare applicants and recipients to undergo drug testing. A positive test result would lead to a referral to drug treatment, and failure to accept and complete treatment would result in the loss of benefits. Michigan did not enact any drug-testing legislation in 1998.

A July 1998 DHHS survey found that 53 percent of states reported struggling with clients with substance abuse problems. Clients with substance abuse problems ranked among the top five concerns for states. Yet the report noted that despite ranking substance abuse problems as a top concern, most states did not have caseload statistics on substance abuse problems.

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222 Carey, “Crafting a Challenge,” 338.
224 Hercik, “A Look at State Welfare Reform Efforts,” 19
The state of Michigan enacted a pilot program in 1999 that looked remarkably similar to Florida’s with one major exception: Michigan aimed to test all applicants without screening first. Rep. Alan Richmond (R) said the bill intended to help by allowing more children to grow up in drug-free environments. The law went as far as Louisiana’s had intended, but Michigan carried through with it. Otherwise in 1999, states continued with or initiated drug screening and tests based on reasonable suspicion, and a Legal Action Center report showed 53 percent of states had a form of screening in place.

The Michigan pilot program, signed into law in April, set out to test welfare applicants in at least three counties for drug use and to randomly test others already receiving benefits from those locations. Those who refused to be tested would lose their benefits, as would those who tested positive and then refused treatment. The law said the Legislature intended that this program would be in place statewide by April 1, 2003, following an evaluation of the pilot program.

In May, with the program to begin October 1, the American Civil Liberties Union weighed a legal challenge. Kary L. Moss, executive director of the ACLU of Michigan told the New York Times, “The state is starting from the assumption that the poor are criminals. The state is saying that if you want money for food and shelter you have to give up the Fourth Amendment rights that others have.” The day before the program began, the ACLU filed a class-action lawsuit on behalf of all Michigan welfare recipients.

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229 Meredith, “Testing Welfare Applicants.”
saying that the Fourth Amendment guarantees no person can be subjected to a
government search unless there is reasonable suspicion of a crime. The lawsuit included
two named plaintiffs, Tanya L. Marchwinski and Terri J. Konieczny, both single mothers
on welfare, and Westside Mothers, an advocacy organization. The ACLU sought for the
program to be halted immediately and declared unconstitutional.230

The ACLU noted a recent University of Michigan study that said Michigan’s
welfare population has "unusually high levels of some barriers to work, such as physical
and mental health problems, domestic violence, and lack of transportation, but relatively
low levels of other barriers, such as drug or alcohol dependence." The study revealed that
3.3 percent of the welfare recipients in the sample met the criteria for drug dependence
and 2.7 percent for alcohol dependence.231 The lawsuit referred to Michigan’s drug-
testing program as the first program in the United States to test for drugs all adult
members of a general population distinctive only for their lack of financial resources. The
lawsuit noted that welfare recipients did not fit into any of the categories previously
identified as subject to governmental drug testing, including those who perform
dangerous tasks, work with sensitive government operations, or handle classified
information.232

The drug-testing program in Michigan proved to be short-lived. Following the
ACLU lawsuit, a district court judge temporarily halted the program on November 10.
The judge said she did so because the tests were likely unconstitutional. In the roughly 40

230 ACLU of Michigan, “Michigan ACLU Seeks Halt to Nation’s First Mandatory Welfare Drug Testing
aclu-seeks-halt-nations-first-mandatory-welfare-drug-testing-program
231 Sandra Danziger, Mary Corcoran, Sheldon Danziger, Colleen Heflin, Ariel Kalil, Judith Levine, Daniel
Rosen, Kristin Seefeldt, Kristine Siefert, and Richard Tolman, “Barriers to the Employment of Welfare
days that the drug-testing program existed in Michigan, 379 applicants were tested at the three pilot sites. The state offered results of 258 of those tests as the law was being put on hold, and said that 8.1 percent of those tests showed drug use, or a total of 21 positive drug tests. No one refused to take the test.233

The Legal Action Center’s 1999 “Steps to Success” report also noted that studies of national data before PRWORA estimated that 10 to 20 percent of adult welfare recipients had drug or alcohol programs and said that Kansas had collected its own data. Kansas’ data found in 1997 that at least 50 percent of their welfare recipients had alcohol or drug problems.234 The report highlighted the point that prior to PRWORA welfare agencies did not often refer recipients into alcohol and drug treatment programs, with only 7.2 percent of referrals to publicly funded treatment programs coming from welfare agencies in 1995. Yet despite the increase in screening taking place with PRWORA, providers reported no increase in referrals from welfare agencies.235

In addition, the “Steps to Success” report indicated some problems with the treatment requirements in state welfare plans. Florida’s TANF program required recipients to participate in treatment and work requirements simultaneously, leading providers to report that clients experienced trouble trying to complete both. California allowed for substance abuse treatment to replace work requirements, but communication issues led to difficulties coordinating treatment there as well.236

The year 2000 brought a continued battle in Michigan over whether drug testing without suspicion violated the Constitution, and, perhaps because of that, most other

states did not seek to advance drug-testing proposals. Just an Iowa bill came up — and failed — that aimed to test all welfare applicants and randomly test recipients for drugs. Ten states in 2000 — Florida, Kansas, Minnesota, Nevada, New York, North Carolina, Ohio, Pennsylvania, South Carolina, and Wisconsin — reported testing under certain circumstances.

The Michigan court case received the green light to go forward in April. Victoria Roberts, the same district court judge who temporarily halted the state’s drug-testing program, ruled that the lawsuit could proceed despite the state’s attempt to have the suit dismissed. In September 2000, the U.S. District Court for the Eastern District of Michigan, Northern Division, issued a preliminary injunction that declared Michigan’s law unconstitutional. The ruling said the state’s desire to address substance abuse as a barrier did not justify a departure from the Fourth Amendment requirement of individualized suspicion and said the program would set a dangerous precedent. The ruling classified as misplaced the state’s argument that it needed to test welfare recipients for drugs in order to ameliorate child abuse and neglect. The ruling also noted that if the state were allowed to make this argument for welfare recipients, that excuse could be used for testing parents of children who receive Medicaid, state emergency relief, educational grants or loans, public education, or any other state benefit. The state of Michigan appealed.

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238 Hercik, "A Look at State Welfare Reform Efforts."
In 2001, legislative activity around drug testing and welfare remained virtually nonexistent. Florida wrapped up its pilot drug-testing program with the recommendation that it not be continued. Still more than half of the states engaged in some form of screening for substance abuse.

A report done by the Mount Sinai School of Medicine, New Jersey Department of Human Services, the Council on Alcohol and Drug Dependence—New Jersey, and Rutgers University evaluated the effectiveness of two types of drug screening in New Jersey. The report, “Specialized Screening Approaches Can Substantially Increase the Identification of Substance Abuse Problems Among Welfare Recipients,” suggested that a generic approach to screening welfare recipients for substance abuse — or what was done by most states — was useful but not as effective as specialized screening. The generic approach involved caseworkers using pencil-and-paper measures to screen recipients. The report indicated that specialized screening programs could substantially increase identification of substance abuse problems. Specialized screening involved the use of trained staff to interview groups at high risk for having a substance abuse problem with interviews focused on rapport and self-disclosure. The report found that specialized screening more than doubled the rate of referral for assessment, at a rate of 10.3 percent in one New Jersey county compared to 4.4 percent in New Jersey counties using the generic approach.241

At the conclusion of Florida’s pilot program, a Florida State University researcher under contract to evaluate the program did not recommend continuation or statewide

expansion of the project. Findings showed little difference in employment and earnings between those welfare applicants who tested positive and those who tested negative. Researchers concluded that the cost of the pilot program was not warranted. During the project, 8,797 applicants or recipients were tested. Of those, 335 applicants tested positive for a controlled substance.

The year 2002 brought big news in the court battle in Michigan with a three-judge panel of the U.S. Court of Appeals for the Sixth Circuit reversing the lower court’s decision. The October court opinion said that safety needed only to be a factor in the state’s special need for suspicion-less drug testing and not the whole reason as had originally been argued. The opinion also said that the nature of welfare assistance means the recipients already have a diminished expectation of privacy. This combined with Michigan’s strong interests in making sure the assistance goes to the children of welfare recipients led the court to rule that the plaintiffs had not demonstrated that their privacy interests outweighed the interests of the state. The ACLU successfully sought to have the case reheard by the full, twelve-member U.S. Court of Appeals for the Sixth Circuit.

Also in 2002, the Legal Action Center provided an update on state policies and practices in place to address alcohol and drug problems among TANF recipients. The paper from June, “The State of State Policy on TANF & Addiction” discussed findings of a survey conducted during winter 2001-2002 that received responses from TANF

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agencies in 43 states and D.C. As the organization found in 1999, more than half of the responding states said they screened TANF recipients for drug and alcohol abuse. Yet just one-quarter of the states had data about the number of TANF applicants or recipients screened, and only one-quarter of those had data about how many screened positive. Six states — Maryland, Nevada, New Jersey, New York, Oklahoma, and Washington — had both sets of data.

The results from these six states varied widely in both percent of applicants screened and the percent that screened positive. Maryland screened 60 percent of its applicants and found 11 percent screened positive; Nevada screened 132 applicants (no percentage of total applicants given) and found 47 percent screened positive; New Jersey screened 4.7 percent with 74 percent screening positive; New York screened 8 percent with 1-2 percent screening positive; Oklahoma screened 90 percent and 5 percent screened positive; Washington screened 94 percent and 20 percent screened positive.

Out of the 43 responding states and D.C., 50 percent reported that they required treatment as a condition of continuing to receive benefits if a recipient screened positive. Eighty percent of states responding reported that TANF workers conducted the screenings. In addition, 73 percent of states reported they were considering moving beyond screening and taking greater steps to address recipients with drug and alcohol problems.

In 2003, the ACLU challenge to Michigan’s drug-testing pilot program came to a conclusion. The U.S. Court of Appeals for the Sixth Circuit decided in January to grant

an en banc hearing in the Michigan court case, *Marchwinski et al. v. Howard et. al.*\(^{250}\) In April 2003, the full court split 6-6 on the issue. Thus, Judge Roberts’ ruling that the testing violated the Constitution stood. The two-page order from the appeals court contained no reasoning.\(^{251}\) The court battle came to a final conclusion when the ACLU reached a settlement in December with the state’s Family Independence Agency. The settlement said the state could require drug testing only if reasonable suspicion existed.\(^{252}\) A failed proposal in Vermont to implement a pilot drug-testing program of all applicants in three counties represented the only other state legislative activity in 2003.\(^{253}\)

A 2003 paper by Robert E. Crew Jr. and Brenda Creel Davis, “Assessing the Effects of Substance Abuse Among Applicants for TANF Benefits: The Outcome of a Demonstration Project in Florida,” said state hearings held before Florida created its pilot drug-testing program led legislators to conclude that potential employers had the opinion that welfare recipients were on drugs, making them less employable, which posed a problem with PRWORA’s new work requirements. Florida legislators wanted to impose statewide drug tests then but decided amid concerns that included legality to study a sample of the welfare population first. The study aimed to use the results of Florida’s pilot program to answer whether welfare applicants were likely to abuse drugs and whether abuse affected employment, earnings, and use of benefits.\(^{254}\)

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Crew and Creel Davis studied the results of the screenings and tests in Florida from January 1, 1999, to May 31, 2000, and focused on the 6,462 applicants who took the pencil-and-paper test and ultimately received assistance. The test referred 1,447 of these people for urinalysis and of the available results (on 1,432 of those people), 76.6 percent showed no substance abuse problem. This means that 23.4 percent, or 335 failed the urine test. This figure represents 5.1 percent of the total population screened.\textsuperscript{255} Crew and Creel Davis noted that part of the reason the screening, called SASSI, overestimated is that it is designed to look for drug and alcohol problems, while the urinalysis only seeks drug use.\textsuperscript{256}

Crew and Creel Davis also discovered in their study very little difference in employment, earnings, or reliance on benefits between those who screened positive and those who did not and between those who tested positive on urinalysis and those who did not.\textsuperscript{257} The authors said the findings demonstrated the difficulty of determining the extent of drug use among welfare beneficiaries and said the findings suggest that states may not need to test for drug use among welfare beneficiaries because there were no substantial behavioral differences.\textsuperscript{258}

A federal government study came out in 2004 that indicated substance abuse caused much less of a problem among welfare recipients than previously thought. The Office of the Assistant Secretary for Planning and Evaluation in the U.S. Department of Health and Human Services synthesized the results of a series of studies conducted in 2001 that focused on barriers to employment. Those studies took place in Colorado, the

\textsuperscript{255} Crew and Creel Davis, “Assessing the Effects,” 45.
\textsuperscript{256} Crew and Creel Davis, “Assessing the Effects,” 46.
\textsuperscript{258} Crew and Creel Davis, “Assessing the Effects,” 52.
District of Columbia, Illinois, Maryland, Missouri, and South Carolina. In 2004, ASPE staff merged the data from the six studies to create the paper “Potential Employment Liabilities Among TANF Recipients: A Synthesis of Data from Six State TANF Caseload Studies.” The analysis of the data found chemical dependency to be “very low at 3 percent” for the total sample. The authors of the paper noted that this figure was comparable to national rates of all adults, but lower than estimates of dependency among welfare recipients.

In 2005, Congress dealt with TANF reauthorization through the Deficit Reduction Act of 2005 and one chamber of Congress opted to include mandatory drug testing in its proposal. The House bill of what ultimately became the Deficit Reduction Act, introduced by Rep. Jim Nussle (R-IA) in November 2005, would have made drug testing of welfare recipients mandatory in all 50 states. The bill would have required welfare recipients and applicants to submit to a physical test for the use of controlled substance. Assistance would have been suspended until the person tested negative. This bill would have required that states participate in this program or face reduction of 5 to 10 percent in their state family assistance grant. However, the Senate bill as introduced did not have that language.

With the debate on drug testing moving briefly to the national level, a couple of policy organizations weighed in on mandatory drug testing. The National Governors Association wrote to the House Human Resources Subcommittee in April 2005 and

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spoke out against mandatory drug testing. The letter said that states had concerns that implementing the mandatory requirement would be prohibitively expensive and that to force states to do this without necessary funding would rob states’ rights and responsibility to make policies that best meet local needs.²⁶²

The Center on Budget and Policy Priorities also advocated against drug testing following the introduction of Nussle’s bill. The organization’s critique of the bill said it would impose costly drug-testing mandates and harsh penalties on families without giving states the resources for substance abuse treatment or drug tests.²⁶³ The Senate version of the Deficit Reduction Act of 2005 — sans drug-testing provision — became law in February 2006 and reauthorized the TANF program through September 30, 2010.²⁶⁴

A study released in 2006, “Welfare Receipt and Substance-Abuse Treatment Among Low-Income Mothers: The Impact of Welfare Reform” showed that the proportion of low-income, substance-abusing mothers who received cash assistance declined from 54 percent in 1996 to 38 percent in 2001. This drop proved to be much larger than that experienced by low-income, non-substance-abusing mothers, whose cash assistance receipt went from 37 percent to 31 percent in that same time period. The authors, Harold Pollack and Peter Reuter, said welfare can be a major access point to identify and serve low-income, substance-abusing mothers, but the post-reform welfare program reaches a much smaller proportion of these women. The authors said the falling

numbers could mean these women are becoming disconnected from welfare without achieving self-sufficiency.²⁶⁵

Chapter 5: Drug Testing Reemerges on State Agenda (2007-2012)

For the first time since 1997, 2007 saw several states attempt to link drug testing and welfare. Not only did 2007 kick off a spate of drug-testing proposals, but it also brought a shift toward drug testing without suspicion — an aspect of Michigan’s 1999 drug-testing legislation that led to a legal challenge.\(^{266}\) The timing of the proposals followed the national housing downturn and just preceded the economic recession that began in December 2007, supporting theories that public policy toward the poor grows harsher during such time periods.\(^{267}\) Legislators primarily cited the need to ensure proper use of taxpayer dollars as their rationale for drug-testing proposals in 2007.

2007-2010: States Show Renewed Interest in Drug Testing

Five states took up drug testing of all welfare recipients without suspicion in 2007 — Georgia, Minnesota, Oregon, Pennsylvania, and Tennessee — and all efforts were unsuccessful. The bills’ universal testing made them broader than Michigan’s pilot program of random testing of recipients.\(^{268}\) Bills in Georgia, Oregon, Pennsylvania, and Tennessee involved sanctions for welfare recipients who tested positive, although just Georgia’s bills and Pennsylvania’s involved immediate termination of benefits.\(^{269}\) Only bills in Oregon and Pennsylvania required referral to treatment — with Pennsylvania’s free of charge — a change from legislation just after PRWORA when most states emphasized treatment.

\(^{266}\) Budd, “Pledge,” 784.
\(^{267}\) Budd, “Pledge,” 783.
\(^{268}\) Budd, “Pledge,” 785-786.
\(^{269}\) Georgia. S.B 268, March 1, 2007.
In Tennessee, Republican legislators in both the House\textsuperscript{270} and Senate\textsuperscript{271} introduced bills to test welfare recipients for drugs. Both said welfare recipients needed to be held accountable and should not be using government money for drugs. The bills would have required anyone who tested positive to automatically be retested. Anyone who failed the second test would have had the opportunity to appeal the resulting denial of benefits. The bill’s fiscal note, prepared by the state Bureau of TennCare and state Department of Human Services, under a Democratic governor, said the bill would have no fiscal impact because it would be illegal under federal law, which the note said prohibited public assistance programs from using substance abuse testing as a condition of eligibility.\textsuperscript{272} However, this assessment was false as this is exactly what PROWRA permitted.

A February 2007 \textit{Knoxville News Sentinel} article quoted Senate sponsor Tim Burchett (R) as saying, “It just seems to me that if somebody is sitting at home smoking pot, with no ambition to get a job, then we shouldn’t be paying them with tax dollars when we’ve got people working hard to make a living who can’t get health insurance.” The article also quoted Burchett as saying he was not necessarily deterred by the assessment that his bill would be illegal; Burchett said state action could be a wake-up call in Washington.\textsuperscript{273}

The bill in Pennsylvania would have terminated cash assistance for those testing positive but allowed them to retain medical benefits until they completed drug treatment.

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\textsuperscript{271}Tennessee. SB 102, January 3, 2007.
\textsuperscript{272}Tennessee, HB 588, February 7, 2007.
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The bill would have paid for treatment and for the drug tests. The Pittsburgh Tribune-Review quoted House Minority Policy Chairman Mike Turzai, one of 17 GOP legislators who announced the bill at a March press conference, as saying, "We need to root out welfare fraud, get people back to work and control spending." Turzai said the Democratic governor’s welfare department had turned a blind eye to welfare fraud.

State Sen. David Nelson (R) submitted the bill in Oregon at the request of Umatilla County Sheriff John Trumbo. The bill required the Department of Human Services to refer anyone with a positive drug test to treatment, and recipients would have continued to receive cash benefits during treatment. Aid would have terminated after three positive test results. The bill was in the Senate Health and Human Services Committee when the Legislature adjourned.

The sanctions in the bill in Georgia denied benefits for two years to any applicant who refused to submit to a test for drugs or whose drug test came back positive. A Minnesota bill would have required that the applicants and recipients pay for the cost of the drug tests, the first instance of such a charge in state legislation following PRWORA.

The year 2008 brought more state legislative activity around drug testing and welfare — though nothing passed — and a failed bill in the U.S. Senate to mandate drug testing. Thirteen states — Arizona, California, Indiana, Kentucky, Maryland, Michigan, Mississippi, Missouri, Oklahoma, Tennessee, Virginia, Washington, and Wyoming —

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277 Georgia. SB 268, March 1, 2007.
and the District of Columbia considered bills with drug testing in 2008. Of those, only the bills in D.C., Washington, and Virginia required suspicion prior to testing. Additionally, bills in Arizona, Kentucky, Maryland, Michigan, Oklahoma, Tennessee, and Wyoming sought to test the entire welfare population.\(^{279}\) Tennessee marked the only state to take up drug testing in 2007 and in 2008.\(^{280}\)

Legislators in many of the 13 states cited justice for taxpayers and budget concerns as the rationales behind their proposals. In addition, fiscal analyses accompanied a handful of the bills, with the states of Arizona, Maryland, and Virginia showing significant costs to drug testing. Indiana, on the other hand, projected a cost savings. Missouri’s bill, proposed by Rep. Kevin Wilson (R), represented the first instance of a bill that aimed to test the General Assembly for drug use along with welfare recipients. Legislators who refused to take a test would have been considered guilty of using a controlled substance. Mandatory treatment accompanied a positive test.\(^{281}\)

The Arizona bill would have mandated treatment for those who tested positive. Those who failed to complete drug treatment or failed a second drug test would no longer have been eligible for assistance.\(^{282}\) The Arizona bill’s accompanying fiscal analysis said it could not determine a net cost for the drug testing because the costs of drug testing and the number of recipients who would be eliminated from welfare were unknown. However, the analysis said that based on fiscal year 2008 caseloads, roughly 85,000 TANF recipients and 1,400 general assistance recipients would have to be tested, leading to an annual cost of drug tests, if the state were to pay, of $3.4 million. The fiscal analysis

\(^{279}\) Budd, “Pledge,” 785-786.

\(^{280}\) Tennessee. HB 2648, January 14, 2008; Tennessee, SB 2731, January 14, 2008.

\(^{281}\) Missouri. HB 2342, March 4, 2008.

\(^{282}\) Arizona. HB 2678, February 2008.
also noted that the state’s Department of Health Services had estimated that 2.9 percent of Arizona’s general population was estimated to depend on or abuse drugs in 2005. According to the *Arizona Capitol Times*, supporters of the bill said it would encourage people to get clean and would save the state money at a time of tight finances. Despite the fiscal analysis, Rep. Russell Pearce (R), a sponsor of the bill, said the state would see a net savings due to the number of people disqualified for drug use.

Legislators in Maryland, Kentucky, and Virginia all cited as rationales the idea of justice for taxpayers in the sense that welfare recipients would not be spending taxpayer dollars on drugs and that welfare recipients would face drug tests like some other people do at their places of employment. Republican Delegate James King introduced the bill in Maryland and, according to the *Maryland Gazette*, said drug tests would treat welfare recipients like employees in some private companies. King said welfare recipients who use drugs constitute state-funded drug abuse. King’s bill would have denied cash benefits to those who tested positive until they completed a substance abuse treatment program or, if a program was not available, tested negative for drugs 90 days after the initial test. An accompanying fiscal and policy note said the bill could have cost the state $2.1 million in fiscal year 2009 spent on hiring more staff to meet the increased workload and for drug assessment and testing.

286 Maryland. HB 1300, February 8, 2008.
Two bills in Kentucky would have denied benefits to recipients and applicants who either refused to take a drug test or tested positive. The author of one of the bills, Rep. Melvin Henley (D), said he filed the bill after hearing concerns from working-class constituents who viewed people on welfare as not having to abide by any rules while people who work have to pass employers’ drug tests. The bill encountered strong opposition amidst fears that it was unconstitutional and that it would harm children through taking away benefits.

The bill in Virginia called for drug tests after failed screenings. Those who failed drug tests or refused to take them would have had to complete substance abuse treatment. Failure to pass a test a second time would have resulted in denied benefits for one year. The bill passed the Senate on a 40-0 vote February 12, 2008, but did not make it out of committee in the Republican-led House. The bill’s sponsor, Sen. Phillip Puckett (D), said that there is no place for those receiving public benefits to use them on illegal activities. State officials had said it would cost about $460,000 just for the administrative costs of the drug tests, plus the roughly $50 per test. Roughly 13,000 Virginians received TANF benefits at that time.

The California bill sought to subject welfare recipients to drug testing on a random selection basis. Those who failed drug tests would have been required to complete one-year treatment programs. The California bill came to be after state Sen. John Benoit (R) held the contest “There Ought to Be a Law,” and teen R.J. Feild won
with the drug-testing proposal. Feild’s mother used drugs while pregnant and on public assistance. The bill failed to pass out of a Democratic-led Assembly committee after a state analysis for the Committee on Human Services reported concerns about constitutionality, cost, and effectiveness.

The Indiana bill said that individuals who tested positive for drugs after an initial and a secondary verification test would be removed from TANF, food stamp, and Medicaid assistance. The bill would have chosen recipients at random for testing. A fiscal impact statement that accompanied the bill estimated that testing 5 percent of the state’s welfare recipients, with a small percentage of them expected to require a second test, would cost $103,000 annually at $6.50 per test. The impact statement estimated a savings of between $41,000 and $63,000 due to some recipients failing two drug tests.

Despite losing the court battle over drug testing in 2003, a bill in Michigan in 2008 would have required drug tests every six months paid for by the welfare recipient. Bills in Mississippi, Oklahoma, and Wyoming sought to deny assistance to those who tested positive or refused to take a test. The bill in Washington said that if recipients’ assessments prior to job referral produced reliable information that the person’s reliance on public assistance could be attributed, even in part, to substance

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294 California. AB 2389, Bill Analysis, April, 1, 2008. ftp://leginfo.ca.gov/pub/07-08/bill/asm/ab_2351-2400/ab_2389_cfa_20080328_150951_asm_comm.html
abuse dependency, the person’s individual responsibility plan then should include periodic drug testing.\textsuperscript{301}

As states started to see more activity around drug testing and welfare, so did Congress. Sen. David Vitter (R-LA) introduced the Drug Free Families Act of 2008 in July. The bill would have required states to implement a program to test TANF recipients and applicants for drugs. Assistance would have been denied to those who tested positive or were convicted of drug-related crimes. The bill, with Sen. John Ensign (R-NV) as its only cosponsor, did not make it out of the Democratic-led Committee on Finance, which Max Baucus (D-MT) chaired.\textsuperscript{302}

The extensive activity in 2008 drew the attention of the ACLU, who released a statement advocating against drug testing of welfare recipients as scientifically and medical unsound, fiscally irresponsible, and likely unconstitutional.\textsuperscript{303} The ACLU’s arguments seemed to go ignored as 2009 saw even more states propose to test welfare recipients for drug use.

In 2009, 22 states considered legislative proposals that would have required at least a portion of their welfare populations to be tested for drug use. Just Arizona’s proposal to test for drug use with suspicion became law, representing the first bill to have success since the reemergence of drug tests for welfare recipients. Additionally, bills in Kansas, Louisiana, and Oklahoma came up for votes — more traction than seen in the previous two years.

\textsuperscript{301} Washington. HB 3209, January 24, 2008.  
In total, the states of Arizona, Arkansas, California, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, and West Virginia considered bills. Most bills failed because of cost estimates, although many of the bills’ sponsors gave budget concerns as their rationale for proposing the bills and the cost savings rationale helped pass Arizona’s bill. In March, the press noted the growing trend and attributed the cluster of proposals to the economy, saying many of the lawmakers said they wanted to be sure these people could support themselves as the economy recovered.\textsuperscript{304} The U.S. Senate also again considered a bill that would have mandated the testing of all welfare recipients, but Senate Democrats killed it.

Of the 22 states that took up drug testing and welfare, most — Arkansas, California, Illinois, Indiana, Iowa, Kansas, Louisiana, Mississippi, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas and West Virginia — considered bills that would have tested welfare recipients for drugs without suspicion. Bills in Arkansas, Illinois, Kansas, Louisiana, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, and Texas sought to impose the tests on the entire welfare population. Two-thirds of the states on the 2009 list differed from those with drug-testing proposals in 2008. Just Arizona, California, Indiana, Kentucky, Mississippi, Missouri, and Oklahoma repeated. Those seven states all sought drug testing without suspicion in 2008, with Arizona and Missouri moving to suspicion-based testing in 2009.

\textsuperscript{304} Associated Press, “Lawmakers in some states want recipients to submit to random testing,” March 26, 2009.
The Missouri bill’s sponsor, Rep. Ellen Brandom (R), said her bill intended to deal with the taxpayer having to subsidize drug use.\textsuperscript{305} Brandom’s bill passed the House but met opposition in an April hearing of the Senate Progress and Development Committee in the form of objections to the cost of treatment and the fact that the state had a waiting list of 3,000 people for drug treatment.\textsuperscript{306} The Senate ultimately decided not to advance the bill due to concerns about punishing children for parents’ sins and the shortage of drug treatment programs.\textsuperscript{307}

The Missouri bill provided the model for the 2009 Arizona House bill that became law. Estimates had the Arizona bill saving the state $1.7 million, which lawmakers said was important in tough economic times and to prevent taxpayers from subsidizing illegal drug use.\textsuperscript{308} The Arizona bill differed significantly from the 2008 bill considered, with its inclusion of reasonable cause, no focus on treatment, and immediate denial of benefits to those who tested positive. The Arizona bill passed the House (35-11) on July 31 and the Senate (16-8) on August 12 in party-line votes. Gov. Jan Brewer (R) signed the bill on September 4, 2009. The bill authorized such a program only for fiscal year 2009-2010.\textsuperscript{309}

Kansas state Rep. Kasha Kelly (R) said her drug-testing bill aimed to help those who needed treatment and to protect taxpayer dollars.\(^ {310} \) The bill would have required that approximately one-third of the cash assistance recipients be tested annually. Those who tested positive were to be sent for a drug evaluation, followed by a mandatory education or treatment if necessary. The bill passed the House 99-26, with 26 Democrats, or more than half of the Democrats, in favor. All but three Republicans voted for it. The Senate deferred consideration of the bill to 2010.\(^ {311} \)

Louisiana state Rep. John LaBruzzo (R) proposed to test welfare recipients for drug use as a cost-savings measure. The bill would have expanded the state’s existing law on drug testing and welfare, which allowed for testing of TANF recipients that failed a screening, to test all welfare recipients for drugs.\(^ {312} \) An accompanying analysis said the legislation would increase expenditures by roughly $790,000 in the next fiscal year.\(^ {313} \) LaBruzzo did not dispute the cost assessment but said it failed to consider the cost savings in other public programs because of reduced drug use. An analyst hired by the state and representatives of the state’s Department of Social Services said LaBruzzo’s assumption could not be proven. The state’s House Appropriations Committee attacked the merits and cost of the bill and rejected it 11-5.\(^ {314} \)

An Oklahoma Senate bill that sought to test welfare recipients for drug use as a condition of eligibility moved forward in the Senate despite concerns from the state


\(^{312}\) Louisiana. HB 137, April 27, 2009.


Department of Human Services’ policy and legislative relations coordinator. The coordinator, Sandra Harrison, said that the bill put the state at risk for losing federal stimulus money because its eligibility standards were stricter than federal law. Sen. Randy Brogdon (R) disagreed and said the bill aimed to reunite families and solve problems for those dependent on drugs or alcohol. This bill passed both chambers of the Oklahoma Legislature, but the issue died when the conferees were unable to agree on a final bill. The bill had passed the Senate 43-0 and passed the House 96-3. The legislation apparently stalled over whether to deny benefits upon a positive drug test or to allow benefits to continue during treatment. Republicans controlled both houses.

Bills in Hawaii, Iowa, Mississippi, Oregon and Pennsylvania would have removed from assistance those who tested positive. The bill in Texas would have denied financial assistance to the entire family for six months if a recipient tested positive. One Illinois bill merely provided for a drug-testing program, while a second House bill specified that a recipient who tested positive would be cut off from benefits for six months. An Ohio bill denied benefits to those found to be using drugs for at least 30 days. A bill analysis said that drug testing not based on suspicion raised a constitutional issue.

316 Oklahoma. SB 390, February 2, 2009.
322 Texas. HB 830, January 28, 2009.
324 Ohio. SB 178, May 12, 2009.

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Bills in Kentucky, Missouri, and New Mexico would have tested with reasonable suspicion. The Kentucky bill’s fiscal note estimated a cost of $1.2 million annually for the program. A fiscal impact report said the bill in New Mexico would come with significant costs and a delay in the provision of needed services.

Bills in South Carolina and West Virginia would have denied public assistance to those who failed two drug tests. West Virginia Delegate Craig Blair (R) said his bill was motivated by compassion for getting addicts off drugs and preventing children from being born on drugs. However, members of the House Select Committee on Health largely ignored the bill amidst questions about its cost, practicality, and the potential harm to children if parents are cut off.

Unsuccessful bills in California, New York, and North Carolina mandated tests and treatment for those who tested positive. A justification with New York’s bill said that too often people take advantage of New York’s public assistance programs and try to pocket extra money or purchase items they are not supposed to such as drugs. The bill did not make it out of the Democratic-led Assembly Social Services Committee.

An Arkansas House bill did not give any specifics beyond granting permission to test welfare recipients for drugs. The Senate bill, however, would have offered a one-year treatment program to those who failed drug tests as a way of continuing their

326 Missouri. HB 949, March 5, 2009.
335 Arkansas. HR 1281, 2009.
benefits.\footnote{Arkansas. S 216, 2009.} An Indiana bill introduced in 2009 would have required treatment upon first positive drug test and elimination of benefits upon third positive drug test. Two other bills from the same session would have made a recipient immediately ineligible upon a positive drug test.\footnote{Indiana. HB 1717, January 22, 2009; Indiana. HB 1186, January 12, 2009; Indiana. SB 268, January 7, 2009.}

At the federal level, Sen. Vitter introduced the same bill, now called the Drug Free Families Act of 2009, in January. Chairman Baucus killed the bill in the Committee on Finance.\footnote{U.S Senate. Drug Free Families Act of 2998, S. 97, 111th Congress, January 6, 2009.} Also in 2009, the National Center on Addiction and Substance Abuse (CASA) at Columbia University continued its interest in and scholarship on substance abuse and welfare with the paper “CASASARDSM: Intensive Case Management for Substance-Dependent Women Receiving Temporary Assistance for Needy Families.” This CASA study tested the effectiveness of intensive care management for substance-abuse dependent female welfare recipients. The intensive-care management model goes beyond screening and referral to treatment in welfare programs to offer a system of coordinated social and health care services and long-term support and monitoring.\footnote{National Center on Addiction and Substance Abuse at Columbia University (CASA), “CASASARDSM: Intensive Case Management for Substance-Dependent Women Receiving Temporary Assistance for Needy Families” (New York: 2009), 3.} The study evaluated substance abuse-dependent women at two urban New Jersey welfare offices from September 1999 to May 2002; women were randomly assigned to either usual care or intensive-care management.\footnote{CASA, “Intensive Case Management,” 4.}

Those in the latter group received services for almost twice as long and spent almost five times as long with caseworkers. The study showed that after two years, the women who received intensive care were twice as likely (22 percent versus 9 percent) to...
be employed full time.\textsuperscript{341} The study advocated that all states should adopt a model of intensive and ongoing case management for female welfare recipients with substance abuse problems. CASA also advocated that the federal government should allow treatment to count as a full-time work activity.\textsuperscript{342}

Also notable, the report’s accompanying statement, written by Chairman and President Joseph Califano, argued for treating substance abuse and dependence problems of women on welfare because of economic reasons. Califano wrote that, according to CASA research, each unemployed female welfare recipient with a substance use disorder who becomes substance-free and self-supporting provides a $48,000 annual economic benefit to society by her earning a salary and paying taxes and by eliminating the need for welfare, health care and criminal justice costs. Califano also noted that best estimates indicated 8 to 20 percent of women on TANF have substance abuse problems and that he believed that estimate to be low.\textsuperscript{343}

The year 2010 saw a drop-off compared to 2009 in the number of states with proposals on drug testing and welfare. Fourteen states — Alaska, Georgia, Iowa, Idaho, Kansas (held over from 2009), Louisiana, Minnesota, Missouri, Mississippi, New Hampshire, Oklahoma, Virginia, West Virginia, and Wisconsin — took up proposals. Just Idaho’s bill to study drug testing became law. The drop-off in legislative proposals can likely be attributed to the fact that the recession had ended and budgetary concerns were not as prominent. Indeed, legislators rarely cited budget concerns as the rationale for their proposals in 2010.

\textsuperscript{343} CASA, “Intensive Case Management,” i.
Just seven of the fourteen states — Iowa, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, and West Virginia — also had proposals in 2009. Mississippi, Missouri, and Oklahoma had now considered proposals the last three years. Of the fourteen states with proposals, Alaska, Missouri, and Virginia would have required reasonable suspicion before testing. Alaska’s bill also marked the first instance of a state proposing to test for alcohol use as well as drug use.

The state of Idaho passed a law that asked the Department of Health and Welfare to study the cost of implementing random drug testing on adults receiving public assistance. The concurrent resolution said that substance abuse impairs personal responsibility and self-sufficiency and therefore results in welfare costs that burden the state’s taxpayers. The bill passed the House 55-11 and the Senate 19-16 and was signed by Gov. Butch Otter (R).344

Bills in Kansas and Louisiana had some momentum for the second year in a row but ultimately failed. The Kansas Senate took up Rep. Kelley’s House-passed drug-testing bill in 2010. Kelley made comments prior to consideration that said adults needed to be held accountable for use of tax dollars.345 The majority (5-4) of the Senate Public Health and Welfare Committee voted to table the bill in March. Four Republicans and one Democrat voted to table, following the motion made by Democrat Laura Kelly, who said she could not justify spending more than $1 million on drug tests when testimony indicated they would not detect more drug use than the screening already in place.346

Louisiana state Rep. John LaBruzzo (R) introduced two unsuccessful bills regarding welfare and drug testing in 2010. The first sought to test all welfare recipients for drug use. The bill said it endeavored to affirm the importance of ensuring that Louisiana’s residents were ready to work, therefore needing to be drug-free, and that state funds were not misappropriated.\footnote{Louisiana. HB 611, March 16, 2010. http://www.legis.state.la.us/billdata/streamdocument.asp?did=685350} The other bill introduced by LaBruzzo sought first to test 50 percent of recipients of cash assistance and ultimately dropped down to 20 percent via an amendment.\footnote{Louisiana. HB 617, March 16, 2010. http://www.legis.state.la.us/billdata/streamdocument.asp?did=685359} The second bill passed the House (61-27) on April 28 with 15 Democrats voting yes and two Republicans voting no. The legislation stalled in the Democrat-controlled Senate.

The bill in Alaska said that the Legislature found the use of public assistance for the purchase of alcohol and illegal drugs to be a statewide threat to public safety and therefore sought to establish a program of random and suspicion-based testing. The bill said those who tested positive or refused a test could be denied benefits or suspended.\footnote{Alaska. HB 259, January 20, 2010. http://www.legis.state.ak.us/PDF/26/Bills/HB0259A.PDF} A statement written by Republican state Reps. Wes Keller and Carl Gatto, the sponsors of the bill, said that the bill was introduced because it is not appropriate to provide assistance without knowing whether that assistance will be fueling an addiction. The sponsors identified substance abuse as causing crime, child abuse, broken homes, domestic violence, costs to businesses, auto and industrial accidents, poor productivity, and chronic health problems.\footnote{Alaska. HB 259 Sponsor Statement, January 20, 2010. http://housemajority.org/spon.php?id=26HB259}
packet said that alcohol and drug abuse cost Alaska $614 million annually.\textsuperscript{351} The bill did not come for a vote in the House Health & Social Services Committee.

Some of the other failed bills, including those in Georgia,\textsuperscript{352} Iowa,\textsuperscript{353} and West Virginia,\textsuperscript{354} sought to test broader populations receiving benefits. One West Virginia bill also posed drug testing for members of the Legislature.\textsuperscript{355} A bill in Minnesota would have required a negative drug test before extension of welfare benefits and random drug testing for recipients.\textsuperscript{356} In Mississippi, two House bills and two Senate bills sought to randomly test welfare recipients.\textsuperscript{357} The Oklahoma Legislature did not move three bills that sought to test welfare recipients in 2010.\textsuperscript{358} The state of Missouri had four failed bills related to welfare and drug testing in 2010, all involving reasonable suspicion,\textsuperscript{359} with one that included elected officials.\textsuperscript{360} These bills were also identical to Missouri’s 2009 effort and similar to the state’s 2008 effort.\textsuperscript{361}

The New Hampshire General Court failed to bring to the floor a bill that would have randomly tested all applicants or recipients and sanctioned those who failed a test

\textsuperscript{352} Georgia. HB 1163, February 11, 2010.
\textsuperscript{353} Iowa. HF 2250, 2010.
\textsuperscript{356} Minnesota. HF 3698, March 17, 2010.
\textsuperscript{357} Mississippi. HB 122, January 5, 2010; Mississippi. HB 675, January 13, 2010; Mississippi. SB 2853, January 18, 2010; Mississippi. SB 2990, January 18, 2010.
\textsuperscript{358} Oklahoma. HB 2532, February 1, 2010; Oklahoma. SB 1392, February 1, 2010; Oklahoma. SB 2112, February 1, 2010.
twice or refused to take a test. A fiscal note said the program came with a price tag of roughly $360,000. The bill did not make it out of the House Health, Human Services, & Elderly Affairs Committee after they concluded following a hearing that the bill would be inexpedient to legislate.\(^\text{362}\)

The state of Virginia had resolutions that would have provided for a study of the costs and benefits of testing TANF recipients to try to reduce costs associated with substance abuse.\(^\text{363}\) The Legislature there also considered bills that would have tested recipients with probable cause, as determined by screening.\(^\text{364}\) A failed Senate bill in Wisconsin sought to impose the strictest sanction seen yet in a bill related to welfare and drug testing. The bill would have permanently denied assistance to any public assistance recipient or applicant who tested positive for a controlled substance.\(^\text{365}\)

**2011-2012: Seven States Enact Drug-Testing Legislation**

The drop-off in legislative proposals in 2010 did not suggest long-term waning interest in drug testing and welfare but more of a regrouping and a shifting of rationales. The year 2011 saw 34 states put forth more than 40 proposals. Five states — Arizona, Florida, Michigan, Missouri, and Pennsylvania — enacted legislation, making this the year of the most major reforms since PRWORA’s first years of existence. Just Florida’s law put suspicion-less drug testing in place — a first since the U.S. Court of Appeals for the Sixth Circuit ended that practice in Michigan. In addition, the U.S. Congress has a Senate bill from Vitter again with new efforts consisting of three House bills. All of the

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\(^{363}\) Virginia. HJR 87, January 12, 2010.


bills have few cosponsors and Ways and Means Committee Chairman David Camp (R-MI) has not brought any of the House bills up for a vote.

The states that considered testing welfare recipients for substance abuse in 2011 were: Alabama, Arizona, California, Connecticut, Florida, Georgia, Hawaii, Iowa, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, and West Virginia. Ten of the fourteen states that had bills in 2010 again took up drug testing in 2011, with Alaska, Idaho, Kansas, and Virginia as the four that dropped off.

Of those that considered bills, virtually all (twenty-eight)—Alabama, California, Connecticut, Florida, Georgia, Iowa, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, and West Virginia—took up bills that involved testing without suspicion. Three bills, one in Hawaii, one in Michigan, and one in Nebraska, sought to study drug testing and welfare. In addition, an Idaho state department studied drug testing and welfare in 2011 and opted against recommending it due to cost. Making welfare recipients and applicants pay for their drug tests upfront—to be reimbursed if the tests came back negative—also became a trend in 2011 bills and was enacted in Florida’s legislation.

The renewed interest in drug testing in Florida came from Gov. Rick Scott (R), who announced drug testing as one of his proposed sweeping reforms when he entered
During the debate on the reform on the House side, bill sponsor Rep. Jimmie Smith (R) made the case for the bill by noting that he had learned via conversations with constituents that they did not want their tax money being spent on people who could use it to buy drugs. A bill analysis and fiscal impact statement with the bill noted Florida’s drug-testing pilot program from 1999 to 2001 and said that evaluation of the program did not recommend continuation or statewide expansion of the project. The 2011 analysis said drug tests would likely cost $10 per person with a confirmation screening at $35 per person. The analysis also said the impact on the state was unclear because it was not known how many people would test positive and because benefits would be continued to children, therefore not producing extensive savings.367

The bill as passed by the Florida House (78-38) and by the Senate (26-11) required all welfare applicants to be tested. One Democrat voted for the bill in the House, and no Democrats voted for it in the Senate. Those who fail a drug test are ineligible for one year, or for six months if they complete a substance abuse treatment program. The law also said the state would provide a list of substance abuse providers, but not pay for treatment. Gov. Scott signed the bill on May 31, 2011, and went into effect on July 1, 2011.368

The ACLU sued in September on behalf of welfare recipients, including plaintiff and father Luis Lebron.369 Lebron refused to submit to the drug test, saying he did not

wish to waive his Fourth Amendment rights against unreasonable search and seizure.\textsuperscript{370} Newspaper accounts reported some initial results of Florida’s drug-testing mandate in September 2011. An Associated Press story said that just 2.5 percent of 2,000 applicants had tested positive since the law went into effect in July. The press reported that 2 percent had declined to take the test. The story compared the 2.5 percent figure to a 6 percent rate of drug use in the general population, a figure provided by the Justice Department. The article noted Gov. Scott and other supporters had said that this law would save Florida money by weeding out people who just want welfare for drug money.\textsuperscript{371} A report by the conservative Foundation for Government in September found that Florida’s drug-testing plan could save the state $9 million in a year. The report referenced the number of people already denied because they refused to take a drug test.\textsuperscript{372} On October 24, a federal judge blocked Florida’s law, saying it violated the Fourth Amendment and that the state had failed to prove “special need” for such a violation.\textsuperscript{373} Gov. Scott filed an appeal to the federal judge’s temporary injunction on November 3, 2011, saying that the judge had blocked a common-sense and constitutional law.\textsuperscript{374} The case has not been decided.

Arizona’s successful welfare legislation reauthorized its 2009 version, requiring the state to test adult recipients whom they reasonably suspect are engaging in illegal use


\textsuperscript{371} Kaczor, “Fla. welfare recipients.”


of controlled substances. This bill put testing in place for fiscal year 2011-2012. Those who test positive lose benefits for one year.\footnote{Arizona. SB 1620, March 15, 2011.} A fact sheet that accompanied the bill said the drug tests would be paid for by the state with the money saved in the reduction of recipients.\footnote{Arizona. Fact Sheet for SB 1620, March 15, 2011. http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/50leg/1r/summary/s.1620approp.doc.htm&Session_ID=102} Gov. Jan Brewer (R) signed the bill into law on April 6, 2011.

Like Arizona, Missouri’s successful legislation put in place drug testing following suspicion. State Rep. Ellen Brandom (R) continued to drive the state’s efforts to test welfare recipients, saying the federal government clearly had no intention of including drug users in cash benefits.\footnote{The Associated Press, “House Oks drug tests for Missouri welfare recipients,” The News Tribune, January 27, 2011. Accessed April 22, 2012. http://www.newstribune.com/news/2011/jan/27/house-oks-drug-tests-welfare-recipients/} Brandom’s bill required that each TANF applicant or recipient be screened and that those the state had reasonable cause to believe used a controlled substance would submit to a urine test. The Senate passed the bill (29-5) on April 28 and the House passed (113-34) the final version on May 10. No Republicans voted against the bill in the Senate, while three Democrats in the Senate voted for it. Eighteen House Democrats voted for the bill, and one Republican voted against it. Gov. Jay Nixon (D) signed it into law on July 12.\footnote{Missouri. HB 73, July 12, 2011.} In a fiscal note that accompanied the bill, the estimated cost for the first 10 months of operation was roughly $562,000 to $895,000.\footnote{Missouri, HB 73 Fiscal Note, June 1, 2011. http://www.moga.mo.gov/Oversight/OVER11/fishtm/0434-05T.ORG.htm}

The Republicans in the Michigan House of Representatives introduced a drug-testing provision as part of a welfare reform package in March 2011. One of the members who introduced the bill, Rep. Ken Horn, said drug testing aimed to help people overcome
their addictions and to let them know their assistance cannot be used on drugs instead of food for their children.\(^{380}\) However, the House Families, Children, and Seniors Committee amended the bill to make it simply initiate a study of the feasibility of implementing a substance-abuse testing program. The bill passed the Senate 24-12 and the House 73-34.\(^{381}\) The state Department of Human Services had completed the study by the end of 2011 and the findings recommended a pilot program that begins with drug screening (and referral to testing) and is grounded in the overall goal of making families financially independent via removal of barriers to employment. The state department said this new approach meets legal standards.\(^{382}\)

GOP legislators in Pennsylvania pushed random drug testing for those convicted of drug offenses as part of a welfare reform package in 2011 aimed at rooting out fraud and saving money on welfare to be used instead on education programs cut in the proposed budget of Gov. Tom Corbett (R).\(^{383}\) A Democrat and a Republican worked together to draft the bill in the Pennsylvania Senate. Sen. John Wozniak, the Democrat, said the taxpayers deserved to see their dollars were not going to illegal drugs.\(^{384}\) A fiscal note estimated that the bill’s net cost would be $192,000, with a prediction of $536,000 in savings due to an estimated 100 people who would not apply for benefits following the

enactment of this bill.\footnote{Pennsylvania. HB 1297 Fiscal Note, April 27, 2011.} Corbett signed the reform package, which implemented testing of felons in one county as a pilot, into law in June.\footnote{Peter Hall. “Welfare drug-test program expands; Northampton County will take part in pilot, requiring random tests for those applying for aid.” The Morning Call, April 20, 2012, pg. A5.}

Unsuccessful bills in Maine\footnote{Maine. HB 778, March 15, 2011.} and Massachusetts\footnote{Massachusetts. HB 585, February 9, 2011.} also sought to test convicted felons. In Massachusetts, those who tested positive would receive drug treatment under the state’s mandatory health insurance program. State Rep. F. Jay Barrows (R) said his bill aimed to help, not punish.\footnote{Ron Barnett, “States consider tying jobless benefits to drug tests,” USA Today, April 18, 2011, 3A.} The state of Wisconsin already mandated drug tests for those convicted on felony drug charges after PRWORA became law, with benefits reduced by up to 15 percent for those who tested positive. The state’s unsuccessful 2011 bill would have increased that number to at least 25 percent but less than 50 percent.\footnote{Wisconsin. AB 172, 2011. https://docs.legis.wisconsin.gov/2011/related/proposals/ab172}

A bill in Alabama and a bill in South Dakota did not move forward due to concerns about constitutionality. Rep. Kerry Rich (R) withdrew his bill in Alabama,\footnote{Alabama. HB 157, March 3, 2011.} which would have involved the Department of Human Resources testing those who seemed suspicious, after he said he learned it could face constitutional challenges. Rich said in August that he intended to introduce another bill in 2012, possibly modeled after Florida’s policy. Rich said he did not think the state should pay for anyone’s drug habits.\footnote{M.J. Ellington, “Rep. seeks drug tests for welfare recipients,” The Decatur Daily, August 29, 2011.} A failed Alabama Senate bill would have tested all applicants.\footnote{Alabama, SB 496, May 24, 2011.}

In South Dakota, a bill by Rep. Mark Kirkeby (R) aimed at all public assistance recipients found no support from the state’s secretary of the Department of Social Services, Kim Malsam-Rysdon, who said that the bill could be unconstitutional and that
her staff was not qualified for drug testing. The bill failed in an 8-5 vote in the House Health and Human Services Committee. The South Dakota House also considered a bill that would have tested welfare recipients with reasonable suspicion. The bill’s sponsor, Rep. Mark Venner (R), said this bill was for the taxpayers, after he heard by going door to door the repeated concern that TANF recipients were using the money to buy illegal drugs. The bill failed by a 32-36 vote. No Democrats voted for it, and 18 Republicans voted against it.

Louisiana state Rep. John LaBruzzo (R) once again put forth two welfare proposals in 2011. However, he continued to scale down the percentage of welfare recipients that he wanted to be tested. This time, LaBruzzo sought to require that at least 20 percent of recipients of cash assistance through the state welfare program would be tested prior to receiving benefits. Amid concerns of the cost of drug testing, LaBruzzo’s second bill attempted to create a special treasury fund to gather donations for drug testing and treatment of public assistance recipients. The bill’s fiscal note said it would create a check-off for personal income tax refunds. The bill said it would reserve at least $250,000 of the donations for lawsuits against the state surrounding drug testing and treatment of recipients of public assistance. The remaining donations would be divided between drug testing and treatment.

397 Louisiana. HB 7, May 12, 2011.
Rhode Island, South Carolina, and Iowa considered bills virtually identical to Florida’s successful legislation, although Iowa’s bills sought to test all public assistance recipients. Rhode Island state Rep. Doreen Costa (R) said she modeled the legislation, introduced in June, after Florida’s. Costa said the bill would save money, although she did not have an exact amount. The Providence Journal pursued Costa’s claim and rated Costa’s claim false. The bill was referred to the House Finance Committee and saw no further action in 2011.

Although drug-testing legislation failed in Oklahoma in 2011, Florida’s success prompted a bill sponsor to say he would try again in 2012. The 2011 bill by Rep. Guy Liebmann (R) would have mandated a urine test of all applicants and screenings for recipients every 180 days. Liebmann said in November that the state’s Department of Human Services had deterred him in the 2011 session with assertions that Oklahoma stood to lose federal money by enacting such a bill but that Florida was less timid and has had huge success with its proposal. Liebmann said that taxpayer money should not be used to subsidize someone’s drug habit. A fiscal analysis prepared for Liebmann’s 2011 bill estimated it would likely cost $2.16 million. A second bill that failed in the Oklahoma House would have instituted random drug testing and mandated treatment for those who tested positive.

399 Rhode Island. HB 6249, June 14, 2011.
400 South Carolina. HB 4358, June 2, 2011.
405 Oklahoma. HB 1083, February 7, 2011.
406 Oklahoma. SB 538, February 7, 2011.
Unsuccessful bills in California, Connecticut, Georgia, New Hampshire, and New Jersey sought to randomly drug test recipients. Bills in Maryland, New Mexico and North Carolina would have required tests and mandated treatment for those who failed. Again in 2011, Mississippi saw bills in both chambers that sought to impose random tests with one of two house bills seeking to address something not yet seen in all of the various states’ welfare bills: testing for welfare recipients age 13 and older. Oregon would have tested welfare applicants for drugs and then retested them every six months following. The state of Ohio saw a Senate bill that would have tested all applicants to need-based programs.

A handful states saw multiple failed bills with varying degrees of testing and sanctions. The state of Tennessee considered the most bills in 2011 — eight. Some of the bills would have tested with reasonable cause while others would have done periodic drug testing for all welfare recipients. Another bill would have mandated substance-abuse testing as a condition of public assistance overall. Indiana’s three bills included

410 New Hampshire. HB 484, March 17, 2011.
413 New Mexico. HB 210, January 27, 2011.
416 Mississippi. HB 660, January 13, 2011.
417 Oregon. SB 538, January 10, 2011.
420 Tennessee. HB 1289, February 16, 2011; Tennessee. SB 1677, February 17, 2011.
421 Tennessee. SB 0983, 2011.
testing upon reasonable suspicion and universal testing. In January, Indiana’s Office of Fiscal and Management Analysis concluded the state would save between $57,000 and $87,000 with a drug-testing proposal.

Kentucky had two House bills in 2011, one that aimed to test all recipients and applicants and one that would have tested those whose answers to a pencil-and-paper screening indicated possible substance abuse. The state of New York had four bills in 2011, two that would have mandated treatment for those who tested positive and two that would have denied assistance to those who tested positive.

A bill in Illinois would have created a drug-testing pilot program in three counties. Those who failed a test would have been ineligible for benefits if not participating in treatment. A second bill would have instituted random testing and have tested those nominated for state senate or house. West Virginia’s drug-testing proposal also would have tested recipients and state legislators.

The Idaho Department of Health and Welfare studied the financial sustainability of requiring drug testing in 2011 and decided against the idea because the tests were found to not save any money. The study estimated that the costs of tests and treatment for those who tested positive would be $1.2 to $1.3 million and estimated savings at

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423 Emery, “Drug-testing for welfare unlikely to save money.”
$1.13 million. In addition, the study noted that the cost of legal action related to the legislation could exceed the costs of the tests and treatment.\footnote{John Miller, “Welfare drug tests have pitfalls: Study conducted for Idaho Legislature concludes testing assistance recipients would not be cost effective,” \textit{Lewiston Morning Tribune}, February 14, 2011.} Hawaii and Nebraska had failed legislation that posited to study drug testing.\footnote{Hawaii. HCR 246, 2011. \url{http://www.capitol.hawaii.gov/session2011/Bills/HCR246_.PDF}; Hawaii. HR 209, 2011. \url{http://www.capitol.hawaii.gov/session2011/Bills/HR209_.PDF}.} Another bill in Nebraska sought to impose suspicion-based drug testing.\footnote{Nebraska. LB 221, January 10, 2011. \url{http://nebraskalegislature.gov/FloorDocs/Current/PDF/Intro/LB221.pdf}}

In the U.S. Congress, Sen. Vitter introduced in January another version of his Drug Free Families Act, which would require all 50 states to test all TANF program applicants and recipients for drug use. The bill has no cosponsors and was referred to the Committee on Finance, chaired by Democrat Baucus.\footnote{US. Senate, Drug Free Families Act of 2011, S. 83, 112\textsuperscript{th} Congress, January 25, 2011.} Rep. Charles Boustany (R-LA) introduced the companion bill, the House Drug Free Families Act, in May with one cosponsor. The House bill is in the Ways and Means Committee.\footnote{U.S. House of Representatives, House Drug Free Families Act, H.R. 1769, 112\textsuperscript{th} Congress, May 5, 2011.}

Also in Congress, Rep. Stephen Fincher (R-TN) introduced in December 2011 the Welfare Integrity Act of 2011, a bill that aims to randomly test not less than 20 percent of the number of people who applied for assistance the year before. This bill acknowledges the constitutional issues associated with testing welfare recipients for drug use. The bill says people would only be tested after they signed a waiver of their constitutional rights with respect to testing. This bill also denies assistance to those who test positive or are convicted of a drug-related crime. In addition, the bill imposes a penalty on states that fail to implement drug-testing programs, with a reduction by 10 percent of the grant payable to the state. The bill has seven cosponsors and is in the Committee on Ways and
Means. In introducing the bill, Fincher said that he wished to discuss the gross misuse of taxpayer money through the provision of TANF benefits to those who test positive for illegal drug use or are convicted of drug-related crimes. Fincher said this legislation aims to eliminate abuse of taxpayer money as Congress is trimming budgets.

Rep. Steven Pearce (R-NM) also introduced a bill to test welfare recipients for drug use in October 2011. The Putting Drug Free Families First Act of 2011 seeks to test all recipients and applicants and strongly resembles the successful legislation in Florida. Those who test positive would receive benefits again in 180 days if they complete drug treatment and tested negative. This bill retains benefits for children whose parents had tested positive. Like the Fincher bill, this bill also imposes a 10 percent reduction on states if they fail to do this program. This bill does not mention constitutionality. It also seeks to make welfare recipients pay for their drug tests; they will be reimbursed if the tests are negative. The bill has eight cosponsors and lies in the House Committee on Ways and Means.

Also of note at the federal level, the National Conference of State Legislatures (NCSL) noted its continued support for leaving it to states to address drug use among TANF recipients. NCSL opposed any federal mandates and said states had a variety of innovative programs, such as screening, treatment, and testing. In addition, the Center for Law and Social Policy (CLASP) fully engaged in anti-drug-testing advocacy in 2011. The organization spoke out against measures like Florida’s, saying they are based on

stereotypes and noting that welfare applicants often cannot afford the drug tests they are now being forced to take.\textsuperscript{438} In addition to the costs of the tests, CLASP said random drug tests are an inefficient way of identifying TANF recipients in need of treatment and that sanctions can put vulnerable children at risk through a denial of assistance.\textsuperscript{439}

The Florida think tank that said the state could save millions of dollars through its drug-testing policy advocated for an expansion of such policies at a 2011 presentation to the Health and Human Services Task Force of the American Legislative Exchange Council, a group of public and private sector leaders. The Foundation for Government Accountability’s presentation said other states should look to Florida for free-market reforms that expand the safety net yet save taxpayers money.\textsuperscript{440}

As of April, the year 2012 had seen fewer proposals than 2011 but also had had two successful legislative attempts, in Georgia and in Utah. The widely publicized court challenge in Florida could have something to do with a potential slow-down in proposals, yet the bills that have come up in 2012 represent the strictest set of bills since states first renewed interest in testing welfare recipients for drug use in 2007 and many of the proposals are almost identical to Florida’s law, including Georgia’s successful legislation.

Alabama, California, Georgia, Hawaii, Iowa, Indiana, Illinois, Kansas, Kentucky, Maryland, Minnesota, Mississippi, Nebraska, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, and Wyoming — 21 states — have considered drug testing and welfare legislative proposals as of April.


\textsuperscript{439} Lewis and Kenefick, “Random Drug Testing.”

No decision has been reached in the ACLU lawsuit against the state of Florida, but four states have signed amici curiae briefs in support of Florida’s position. The states of Alabama, Kansas, Michigan, and Oklahoma filed a brief in January 2012 that said legitimate government interests justify a drug test’s limited intrusion on the applicant’s privacy. Those legitimate interests consist of the deterrence of drug use within the TANF population and allowing states to eliminate drug users from TANF participation. On the opposing side, six organizations — the Center for Law and Social Policy, the Center on Policy and Budget Priorities, the Michigan League for Human Services, the National Association of Social Workers, Sargent Shriver National Center of Poverty Law, and Alabama Arise — filed amici curiae in March in support of the plaintiff. These organizations said that the district court correctly determined in the preliminary injunction that no special need justifies Florida’s circumvention of Fourth Amendment protections.

Bills in California, Georgia, Hawaii, Iowa, Illinois, Mississippi, Oklahoma, South Carolina (continued consideration of a 2011 bill), Tennessee, Washington, and Wyoming all appear be virtually the same bill as the Florida law that faces suit from the ACLU. Just Georgia’s has been successful thus far. The Wyoming bill included state legislators.

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Oklahoma saw seven bills in the Senate alone related to drug testing and welfare, but just the bill similar to Florida’s moved forward. Authored by Rep. Liebmann, who pledged in 2011 to bring forward a bill like Florida’s, the bill passed the House 82-6. However, the Senate passed a scaled-back version (46-2) that would require tests following suspicion. The two chambers have yet to agree on a bill as of May.444

State Sen. John Albers (R), a sponsor of Georgia’s successful legislation, said that the bill intends to ensure that tax dollars are not spent on illegal activity, to give people a hand up not a handout, and to level the playing field for those in jobs that require them to submit to drug tests.445 Starting July 1, Georgia will test all those who apply for welfare at the applicants’ expense. Those who fail will be denied benefits for one month until they can pass a drug test, with benefits denied for longer with each failed drug test. The Senate passed this bill March 27 by a vote of 36-15 on a strictly party-line vote. The House passed the bill on March 29 by a vote of 110-56, with two Democrats crossing the aisle to vote in favor. Gov. Nathan Deal (R) signed the legislation into law on April 16.446

The ACLU of Georgia opposed the drug-testing provision during the debate but has not...


said yet whether it plans to sue.\textsuperscript{447} However, the Atlanta-based Southern Center for Human Rights has said it is preparing a lawsuit.\textsuperscript{448}

The bills that resemble Florida’s, including Georgia’s, look to institute universal drug testing, paid for upfront by the applicants/recipient. Reimbursements are generally given for negative tests. Most of these states aim to deny benefits for one year to those who fail a test, with the option to reapply in six months if they complete substance abuse treatment. The states would provide lists of substance abuse treatment, but not pay for the treatment. Some of the bills allow children to retain benefits in the event that their caretaker is denied assistance via a positive drug test. Bills in Minnesota also strongly resembled Florida’s, other than they sought to eliminate benefits for three years.\textsuperscript{449}

In Utah, the only other state to pass legislation thus far in 2012, the bill’s author drafted the legislation with the idea of preventing a legal challenge. Rep. Brad Wilson (R) said his bill avoids the situation in Florida because it imposes a written screening test first. From there, applicants can be asked to take a drug test. Wilson said his bill aims to help identify those having a problem and to ultimately get them working again.\textsuperscript{450} A positive drug test will result in required treatment and follow-up drug testing in order to receive benefits. The Republican-controlled Utah House passed the bill on March 1 in a


The state of Tennessee became in 2012 one of just a few states to estimate that drug testing would save money. A fiscal summary with Tennessee’s identical Senate\footnote{Tennessee. SB 2580, January 18, 2012.} and House\footnote{Tennessee. HB 2725, January 18, 2012. http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB2725} bills estimated that the legislation would increase expenditures by roughly $245,000 in its first year, but also decrease expenditures by $1.3 million due to sanctions. In addition, the summary noted that passage of the bill would almost certainly result in legal action against the state, with costs to exceed $100,000. Also in 2012, Pennsylvania began its pilot drug-testing program for felons. The program tests those with felony drug
convictions who apply for TANF and state general assistance and is set to run until June, with a decision likely to be made in fall 2012 about whether to expand the program.\textsuperscript{458}

Some state legislatures, including those in Iowa, Maryland, and Virginia, have seen several bills this year but have turned away from drug testing. Iowa saw three House bills in 2012, two similar to Florida’s law and one that targeted those convicted of a drug-related crime.\textsuperscript{459} The press reported that all three bills brought a chilly reception in a House subcommittee hearing January 26. No one spoke in favor of the bills and a Democratic legislator called the legislation unfair, saying no evidence exists to back up the need to test for drugs.\textsuperscript{460} The bills in Maryland aimed to test all recipients. Those who tested positive would have lost benefits until they completed treatment (if available) or after 90 days and a negative test. The bills’ fiscal note said the drug-testing program would likely cost $2.3 million for fiscal year 2013 if the plan started in October, or not even a full year. Full years ran more than $3 million. The bills were withdrawn in both chambers after unfavorable committee reports.\textsuperscript{461}

The Virginia bill came close to being law until cost concerns halted its passage. The bill passed out of the Senate in February on a tie-breaking vote by the lieutenant governor to make it 21-20. The bill would have set up screening for each welfare

\textsuperscript{458} Peter Hall. “Welfare drug-test program expands; Northampton County will take part in pilot, requiring random tests for those applying for aid.” \textit{Morning Call}, April 20, 2012, News A5.


recipient to determine if probable cause existed to believe they use illegal substances, with a drug test possible after that.\footnote{Virginia. SB 6, January 11, 2012. http://lis.virginia.gov/cgi-bin/legp604.exe?121+sum+SB6}


The Indiana Legislature has considered a bill that would create a pilot program for drug testing in three counties. The program would offer forms to welfare recipients asking for signed consent to random drug tests. This bill also set out to test Indiana legislators, who would also be given the option of consenting or being subject to random testing.\footnote{Indiana. HB 1007, January 9, 2012. http://www.in.gov/apps/lsa/session/billwatch/billinfo?year=2012&session=1&request=getBill&doctype=HB&docno=1007}
Thus far in 2012, despite a legal battle in place in Florida, states show no sign of backing down on legislation that connects drug testing and welfare, nor has there been a movement to impose testing based only on reasonable cause, which has not been challenged in court. In fact, roughly half of the states with proposals in 2012 modeled their legislation on Florida’s universal testing law.

Of the forty-four states that have taken up drug-testing proposals in the last six years, only six of those states — Arizona, Florida, Georgia, Missouri, Pennsylvania, and Utah— successfully passed legislation that will actually give the state greater authority to test welfare recipients. States often backed away due to cost, with most fiscal analyses reporting that testing welfare recipients for substance abuse would cost hundreds of thousands of dollars annually. The last six years have shown that legislators have seen it to their political advantage to propose drug-testing legislation despite a history of limited enactment of such provisions. Whether their reasons for doing so have any merit will be explored in the conclusion.
Chapter 6: Conclusion

As the preceding chapters illustrated, legislators employed all four of the rationales outlined in the introduction. Legislators made the case for drug testing using the need for recipients to be workplace-ready, out of concern for the budget, with the goal of justice for taxpayers through the government preventing improper use of their dollars, and as a way to better the lives of families on welfare. Yet the preceding chapters have also provided evidence to dispute each of these rationales and to call into question why legislators actually seek to impose drug tests on welfare recipients.

The degree to which the four rationales saw usage in the discourse shifted over time, with workplace readiness the primary rationale given for drug testing leading up to PRWORA. Bettering the lives of families did not dominate a particular time period but rather appeared intermittently throughout the years, including in debates of successful legislation in 1999, 2011, and 2012. Concern for the budget became a more prominent rationale as drug testing and welfare reemerged in 2007 and that rationale continued to be used throughout the recession, but the idea of justice for taxpayers has by far surpassed any other rationale and has largely dominated the discourse in 2011 and 2012.

Christopher Bond, a Republican senator from Missouri, made the case for drug testing’s inclusion in mid-1990s federal welfare reform efforts by citing incidents from Missouri where welfare recipients were denied jobs after they failed drug tests. Because proposed federal welfare overhauls mandated work to receive benefits, failing drug tests would have serious consequences. The other senator from Missouri, Republican John Ashcroft, and 1996 Republican presidential candidate Sen. Robert Dole (KS) used the rationale of justice in May 1996, saying that the government should not enable and
taxpayers should not support those who abuse drugs. PRWORA ultimately contained language written by Bond.

But Bond’s rationale did not translate to the states. Legislators at the state level have rarely used workplace readiness and did not do so even during TANF implementation. In 1996, shortly after PRWORA passed, Maryland legislators proposed drug testing with the objectives of bettering the lives of families through identifying substance abusers and honoring the goals of taxpayers by ensuring that welfare recipients were not buying drugs with TANF benefits.

The workplace readiness rationale rarely came up in the states after 1999, when Michigan legislators used it in their successful enactment of random drug testing of welfare recipients. Its virtual extinction as a rationale likely had two bases: In 1999, most people receiving TANF benefits were required to begin working and in 2003 a U.S. appeals court upheld a decision that deemed unconstitutional the Michigan policy that imposed testing without suspicion. In fact, the only government body to assert today that workplace readiness is the primary motivation for drug testing is the federal government. An October 2011 issue brief from the Office of the Assistant Secretary for Planning and Evaluation in the U.S. Department of Health and Human Services said states’ screening and testing efforts served to determine whether substance abuse presents a barrier to employment.469 However, the federal government’s claim does not match up with what state legislators offer as their justifications for drug-testing legislation.

The reemergence of drug testing and welfare coincided with the economic downturn in 2007. In 2008 to 2010, following the recession that began in December 2007, states such as Alaska, Arizona, and Louisiana cited budgetary concerns as the

driving reason for imposing drug testing, providing the basis for Arizona’s successful legislation in 2009. The idea of budget concerns, along with justice, helped propel successful drug-testing legislation in Georgia in 2012.

The successful Michigan legislation in 1999 and 2011 emphasized helping families, and Massachusetts used this argument in support of its failed bill in 2011. Utah relied upon it for its suspicion-based law in 2012. However, other state legislation in 2011 and 2012 almost exclusively used the rationale of not allowing taxpayers’ hard-earned dollars to fraudulently subsidize welfare recipients’ drug use. The movement toward the use of justice for taxpayers as the primary rationale perhaps makes sense only in that legislators used justice as the rationale for successful and broad-reaching drug-testing provisions in Florida and Georgia.

A couple of recent examples draw attention to the question of whether legislators’ given rationales actually reflect their true reasons for proposing drug-testing legislation. Rep. Doreen Costa, a Republican state legislator in Rhode Island, made the claim in August 2011 that drug tests save money. When pressed by the Providence Journal about her source, Costa said she did searches in Ask.com and Google. The Providence Journal ran similar searches and came up with no such results, nor could the newspaper find any evidence of savings.470 The other recent example stems from Georgia, which enacted welfare legislation in April 2012 following Florida’s model. Georgia Gov. Nathan Deal (R) said in a news release that Florida’s legislation led to a decrease in the welfare applicant pool by 48 percent and $1.8 million in savings for the state. However, Florida’s

Department of Children and Families said the drop in caseloads could not be attributed to drug testing and that the state has actually experienced a financial net loss.  

Evidence from States that Enacted Drug Testing

Although several states enacted drug-testing legislation in the last two years, the evidence that has been publicly disseminated comes from the two states that have faced court challenges of their policies, Michigan in 1999 and Florida in 2011. In both these states, the tests have shown that welfare recipients abuse drugs at rates similar to or below that of the general population, meaning few recipients were removed from benefits and making the drug-testing provision a more costly endeavor.

Michigan’s drug-testing program saw 8.1 percent of applicants test positive for drug use during its five weeks of operation in 2009. Of the 258 tests analyzed, 21 tested positive. Three of those were for cocaine, and the rest were for marijuana. No one refused to take the test. A 2002 analysis by the Substance Abuse and Mental Health Services Administration found that 6.8 percent of persons in families not receiving assistance used illicit drugs in the last month. As far as costs go, Michigan’s program came with an estimated price tag of $40 per test at a total cost of $6 million annually.

As noted in Chapter Four, Florida’s pilot drug-testing program, conducted in the Jacksonville area and parts of Putnam County between 1999 and 2001, found that 335 applicants out of 8,787, or 5.1 percent, tested positive for a controlled substance. The

472 Meredith, “Testing Welfare Applicants.”
The reported cost of the testing was $2.7 million. The fiscal note accompanying Florida’s successful drug-testing legislation in 2011 highlighted this information and reiterated that further drug-testing provisions had not been recommended following the pilot program. The fiscal note also estimated for the 2011 bill that initial tests would be $10 per person with a $25 confirmation test. The fiscal note said that it was not known whether the bill would have a positive or negative fiscal impact for the state. During the roughly three months of 2011 that Florida’s drug-testing program operated, 2.6 percent of 4,086 applicants failed their drug tests. The state suffered a net loss of $45,780 on the drug tests alone.

**Policymaking Deterrents**

From its beginnings as a welfare reform passed by a Republican Congress and signed into law by a Democratic president, drug testing of welfare recipients has not faced strong partisan ideological opposition throughout its legislative history. Although Republicans almost always introduce the proposals and Democratic opposition has certainly spelled defeat in several states — or caused legislation not to come to a vote — Democrats have not responded with vehemence to this plethora of proposals, nor have liberals identified an alternative strategy for substance abuse by welfare recipients. The legislation in Arizona, Georgia, Florida, Michigan (1999 and 2011), Pennsylvania, and Utah was all signed by Republican governors, with Missouri’s signed into law by Democratic Gov. Jay Nixon.

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Rather than strong party opposition, the costs associated with drug testing for welfare beneficiaries have proved to be the most prominent deterrent in state plans that gained traction, with instances of both Democrats and Republicans killing proposals because of costs. Outlays associated with drug testing halted proposals including the first two drug-testing proposals post-PRWORA (Maryland and New York), Florida’s pilot program in 2001, Missouri’s and West Virginia’s bills in 2009, New Hampshire’s in 2010, Idaho’s in 2011, and Maryland’s and Virginia’s in 2012. Only a few states, including Indiana in 2008, Missouri in 2009, and Tennessee in 2012, came up with proposals that said they would see cost savings. In addition, the conservative Foundation for Government said upon its enactment that Florida’s law could save $9 million a year, though the bill, as seen in the preceding section, ultimately produced no savings in its first three months.

The effect that the two drug testing-related court challenges, in Michigan and Florida, played in deterring legislative proposals on drug testing and welfare appears to be somewhat of a mixed result. As mentioned, the U.S. Court of Appeals for the Sixth Circuit split over whether Michigan’s policy was unconstitutional in 2003, thereby upholding the district judge’s ruling that the policy was unconstitutional but leaving the constitutional question in fact unresolved.

States stayed mostly quiet on drug testing and welfare following the Michigan case until 2007, but the hundreds of proposals that have come up in forty-four states since that time have shown that constitutionality does not represent a large deterrent. Constitutionality concerns have stopped only a couple of proposals, including failed bills

478 Bragdon, “The Impact of Florida’s New Drug Test Requirement.”
479 Budd, “Pledge,” 782-783.
in Kansas in 2010 and South Dakota in 2011 and an Alabama bill withdrawn by a GOP legislator in 2011. That same Alabama legislator, Rep. Kerry Rich (R), said later in 2011 that he was no longer deterred after he saw Florida’s success. In addition, the fact that Michigan again enacted drug-testing legislation in 2011, albeit just to study drug testing, likely speaks volumes to how much of a deterrent a court challenge constitutes. Florida’s 2011 and Georgia’s 2012 law, and the roughly a dozen states with bills virtually identical to them, are harsher than the 1999 Michigan law.

The handful of states beyond Florida to enact proposals in recent years — Arizona in 2009; Michigan, Missouri, and Pennsylvania in 2011; and Utah and Georgia in 2012 — have not faced legal action, although at least one group is gearing up to challenge Georgia’s law. The other policies likely have not faced challenges because they are not as expansive as Florida’s, Georgia’s, or Michigan’s 1999 law. Arizona, Missouri, and Utah test (or will test in Utah’s case) only with suspicion, while Pennsylvania’s law applies only to felons and Michigan’s 2011 law merely authorized a study of drug testing.

Legislators’ Rationales Disregard Evidence

This comprehensive critical history of drug-testing provisions in federal and state welfare policy demonstrates that the four rationales used by legislators who propose drug testing are unsubstantiated. Evidence exists to rebuke each proposed rationale.

Workplace Readiness

U.S. Health and Human Services Secretary Donna Shalala identified back in July 1994 the key argument against workplace readiness as a rationale: Drug tests merely seek the presence of drugs, not whether someone is impaired and might in fact be experiencing barriers to work. The federal government reinforced that point in October 2011, noting
that drug tests cannot measure frequency of use, severity of impairment, or whether the
substance abuse requires treatment. Since PRWORA went into effect, state legislators
seemingly have viewed workplace readiness as an invalid or ineffective rationale through
their limited use of it and their focus instead on screening, which evaluates substance
dependence and includes alcohol in its assessment, to determine welfare recipients’
barriers to employment.\textsuperscript{480}

\textbf{Budget Concerns}

Fiscal analyses accompanying the majority of state legislative proposals have
shown drug testing to be a significant expense, and Michigan’s and Florida’s laws
produced no cost savings. The federal Office of Human Services Policy estimated the
cost of drug testing in October 2011 using proposed legislation from twelve states. This
analysis estimated costs ranging from $92,487 for drug testing 20 percent of recipients
and treating 2 percent of those in Louisiana to $20 million to simply test all public
assistance applicants and recipients in New York.\textsuperscript{481} Although costs have proven to be a
strong policy deterrent, Michigan in 1999 and Florida in 2011 moved forward with
successful legislation despite unfavorable cost estimates.

\textit{Justice for Taxpayers}

The justice argument breaks down when one considers that public policy proposes
drug tests only for welfare recipients and not others receiving government benefits,
including farmers who receive crop subsidies and tuition benefits for students. Poor
mothers have been singled out for special and unfair treatment. Therefore, politicians can
say that their legislative proposals are grounded in justice, but the evidence reveals their

motivations as unjust in that they do not treat people equally. In addition, as the district court held in Michigan’s case, drug tests for welfare recipients are constitutionally questionable. No compelling reason exists as to why this population should be treated differently from all other groups receiving government benefits and experience a violation of their constitutional rights under the Fourth Amendment, which guards against unreasonable searches and seizures. Moreover, Florida’s and Georgia’s policies and all the states that modeled their policies after Florida’s require welfare recipients and applicants to pay to take drug tests, although there is no evidence that any of them used drugs (They are reimbursed if they pass.). The idea that guilt is assumed until they are found to be “innocent” directly contradicts our justice system that holds the accused innocent until proven guilty.

**Bettering Lives of Families**

Drug tests have demonstrably done nothing but make the lives of the poor — those already struggling — more difficult. Most of the bills deny benefits to those who test positive, and only half require substance abuse evaluation and treatment or provide referrals to treatment. Just a third of the recent bills provide for children and other family members to continue to receive benefits if a caretaker is sanctioned.\(^{482}\) In addition, the Center for Law and Social Policy (CLASP) reported that no study has shown that denying benefits leads people to enter into substance abuse treatment. Studies have shown just the opposite: TANF recipients need additional support through housing, transportation, and child care to complete treatment. Denying access to benefits increases barriers to economic advancement and family well-being. Not only does denying assistance harm poor mothers, but the sanctions also increase the risk that their children

\(^{482}\) Radel, “Drug Testing Welfare Recipients.”
will be hospitalized and face food insecurity. CLASP reported that families may be unable to meet children’s basic needs even if just the substance-abusing parent’s benefits are denied.483

The Challenge Ahead

Legislators’ use of Florida’s policy as a model instead of successful suspicion-based legislation in Arizona, Missouri, and now Utah further demonstrates the disregard for evidence in most drug-testing proposals. Welfare policies that test with suspicion have not faced a court challenge — in fact, the ACLU’s agreement with Michigan’s welfare program in 2003 specifically allowed the state to test with suspicion — yet states have chosen instead to propose universal testing, which almost guarantees a court challenge. Legislators’ drug-testing proposals could ultimately lead to costing their states hundreds of thousands of dollars in lawsuits.

The evidence overall to dispute drug-testing proposals’ effectiveness and to debunk legislators’ rationales for such proposals has not served to deter legislators from introducing bills nor has it produced public or political outrage. The American public and most organizations that conduct advocacy related to the poor, to women, and to welfare policy have — as was the case in 1996 — not become involved in the conversation on drug testing for welfare recipients. But with forty-four states that considered drug testing in recent years and seven states that passed successful legislation based on these faulty rationales, the momentum behind these policy proposals seems unlikely to disappear — even if the court declares Florida’s policy unconstitutional — unless feminists and progressives mount a challenge to drug testing as it is imposed on welfare recipients, just as they have challenged numerous other provisions of TANF as being harmful to women.

483 Lewis and Kenefick, “Random Drug Testing of TANF Recipients.”
and families. The attention devoted to drug-testing provisions in news accounts and in state legislatures provides an opportunity to participate in and frame that debate. Feminists and progressive advocates must highlight that legislators’ rationales for drug-testing proposals have no merit and that the proposals themselves have done nothing to help welfare recipients.
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