

Testimony of the ACLU of Kansas and Western Missouri
In Opposition to HB 2686
March 26, 2012

Thank you for the opportunity to submit testimony for the House Federal and State committee's hearing on House Bill 2686, the "Drug Testing for Cash Assistance Act." My name is Erin Besson and I am currently serving as a public policy associate for the ACLU of Kansas and Western Missouri. Founded in 1920, the American Civil Liberties Union (ACLU) is one of the nation's oldest civil rights organizations. I am submitting these comments on behalf of the nearly 2,000 ACLU members from across the state of Kansas.

HB 2686 would require the Kansas Department of Social and Rehabilitation Services (SRS) to establish a suspicion-less and mandatory drug testing program, within the limits of appropriations and subject to applicable federal law, for cash assistance recipients on or before January 1, 2013. Cash assistance recipients, as identified in HB 2686, include households receiving Temporary Assistance to Families (TAF) and General Assistance (GA). Under this bill, one-third of cash assistance recipients will be tested each year. A person testing positive for the use of an illicit substance will be required to complete an educational or treatment program before reapplying the following year. After a third positive test, the individual will no longer be eligible to receive cash assistance. The bill makes no mention of an appeals process for false positive tests. Finally, HB 2686 partially opts Kansas back into a federal program that bars individuals convicted of a drug-related felony from receiving federally funded assistance for the rest of their lives.

The ACLU opposes HB 2686 for the following reasons:

Suspicion-less drug testing policies violate the Fourth Amendment's requirement that the government have individualized suspicion before forcing someone to submit to a drug test.

- In 2011, a federal judge in Florida blocked a law requiring all applicants for the Temporary Assistance for Needy Families (TANF) program to submit to mandatory drug tests, reaffirming that application for a public benefit cannot depend on an unconstitutional condition. The federal judge ruled that "the right to be free from unreasonable searches and seizures under the Fourth Amendment is a fundamental constitutional right" and that to subject all applicants for TANF to drug testing would "cause irreparable harm" to those subject to the screening.
- In 2003, a federal court in Michigan held that mandatory, suspicion-less drug testing of applicants for public assistance violates the Fourth Amendment of the U.S. Constitution.

Suspicion-less drug testing for benefits will cost the state of Kansas considerably more money to implement than it will save.

- The fiscal note prepared by the Kansas Division of the Budget attached to HB 2686, estimates that in FY 2013 it will cost the state approximately \$1,770,634 to implement the proposed drug testing program and it will only save the state \$226,480. The net effect of the bill is a total cost of \$1,543,605. The cost of the program is projected to rise in subsequent years with an estimated cost in FY 2014 of \$2.4 million.
- The projected cost of implementing HB 2686 should not come as a surprise, these proposed laws almost always cost more to implement than they will save. A comprehensive report put out by the U.S. Department of Health and Human Services in 2011 reviewed the estimated costs of implementing various welfare drug testing programs in twelve different states. Not a single one of the legislative cost estimates showed net savings to the state as a result of a proposed drug testing program.
- Florida's suspicion-less drug testing scheme was taken to the courts mere weeks after its effective date, funneling taxpayer dollars to cover legal fees.

House Federal & State Affairs

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Attachment # 2

Applicants for public benefits do not use drugs at higher rate than the general population. In states where mandatory drug testing for benefits has been implemented, the rate of positive drug tests have been substantially lower than found in the general population, failing to uncover any significant drug abuse problem. HB 2686 is a bill in search of a problem that does not exist.

- While the Florida law was in place in 2011, just 2 percent of drug tests came back positive – a rate four times lower than the estimated drug use of Floridians older than 12, according to federal estimates.
- Only 2.02 percent of Kansans age 18+ in the general population report a dependence or regular abuse of an illicit drug, a percentage lower than Missouri, Arizona, and Florida.¹
- Indiana’s 2011 drug testing program for job training applicants fared even worse. In the first five months of the program, only 13 of the more than 1,200 applicants (a mere one percent) failed their drug test, while only three people refused to take the test.
- Arizona’s “reasonable cause” drug testing program has been in effect since November of 2009. The Arizona Department of Economic Security, the agency charged with operating the drug testing program, reported in early 2011 that since the drug testing program’s inception, only 16 individuals had been identified to take the test, with only one person declared temporarily ineligible for benefits².
- A pilot study completed in Florida reported that those who tested positive for illicit drug use were just as likely to work and use public benefits as those who tested negative. In fact, the study found that those using illicit drugs were employed at the same rate and earned roughly the same amount of money as their counterparts³.

Suspicion-less drug testing is a brazen attempt by the government to intrude upon citizens’ privacy.

- HB 2686 requires poor people to surrender their privacy in exchange for the basic necessities of life. Low-income people and communities are entitled to the same fundamental constitutional protections that all Americans enjoy.
- Mandatory drug testing programs may allow the government to retain DNA information and fail to ensure that the testing results do not reveal other highly personal information that people rightly would want to keep private, such as the existence of certain medical conditions, pregnancy status and genetic predispositions.

HB 2686 opts Kansas partially back into a federal program that bars individuals convicted of a drug-related felony from receiving federally funded assistance for the rest of their lives. This is a reversal of a policy Kansas adopted as recently as 2006.

- HB 2686 bars all individuals with a non-first time felony drug conviction from accessing cash assistance. This is a lifetime ban; the individuals impacted by this proposed ban can never receive cash assistance ever again. This is true even if they complete their sentence, complete drug treatment, or earn a certificate of rehabilitation or clemency.

For all of these reasons the ACLU of Kansas & Western Missouri urges you to oppose HB 2686.

Endnotes:

¹ Substance Abuse and Mental Health Services Administration (SAMHSA). 2006-2007 National Surveys on Drug Use and Health: 2007 State Estimates of Substance use and Mental Health: Kansas. <http://oas.samhsa.gov/2k7/State/Kansas.htm>

² Keller, R. 2011. “Arizona drug test impact proves small.” *Columbia Daily Tribune* Jan. 26, 2011. <http://www.columbiatribune.com/news/2011/jan/26/drug-testing-measure-wins-initial-house-ok/>

³ Robert E. Crew, Jr. and Belinda Creel Davis, *Assessing the Effects of Substance Abuse Among Applicants for TANF Benefits: The Outcome of a Demonstration Project in Florida*, Journal of Health & Social Policy, 2003.