

DRUG TESTING FOR PUBLIC ASSISTANCE BENEFITS

LEGISLATOR NOTICE

The Legislative Services Division is required to offer a brief history on the subject matter of a bill draft request prior to drafting. (5-4-105, MCA; [Chapter 309, Laws of 2017](#)) The history must include related legislation introduced over the last five sessions and hyperlinks to the bill, hearing information, and fiscal notes. The legislation links below open to the page showing the status and history of bills introduced on this topic in the past. The bill text and any related fiscal notes can be accessed through the link at the top of that page.

Legislation can be complex and this history is not intended to be exhaustive. Please contact the drafter of the requested bill for more information.

Background Materials and Research

Topic Summary: Many states have considered legislation to require drug testing or screening for public assistance benefits. Some legislation has been challenged on constitutional grounds, and courts have struck down laws that require blanket or random drug testing of all recipients or applicants. That's because a drug test has long been considered a search for purposes of the Fourth Amendment, which provides protection against unreasonable searches. A search is generally considered reasonable if individualized suspicion exists for conducting the search. Drug testing requirements for public assistance benefits typically have not passed constitutional muster when they apply to all people without regard to whether a reasonable suspicion exists that the person is using drugs.

However, some states have passed drug testing laws that have not been challenged in court. Those laws usually require that applicants for or recipients of a public assistance program complete a screening of some type to determine if they're at risk of using drugs. People whose screening indicates possible drug use are then required to complete a drug test in order to receive benefits. In addition, states generally include privacy protections in their drug-testing laws because courts have also looked at whether such laws adequately protect individual privacy interests. The drug screening and testing usually are done at the state's expense. Finally, most public assistance programs are governed by federal law. Until recently, the federal government has allowed drug testing only for individuals involved in the Temporary Assistance for Needy Families (TANF) program.

Other Materials:

- [Drug Testing for Welfare Recipients and Public Assistance](#), National Conference of State Legislatures, March 24, 2017.
- [Constitutional Analysis of Suspicionless Drug Testing Requirements for the Receipt of Government Benefits](#), Congressional Research Services, March 6, 2015.

DRUG TESTING FOR PUBLIC ASSISTANCE

- [LeBron v. the Secretary of State of Florida Department of Children and Families](#), 11th U.S. Circuit Court of Appeals decision in case challenging Florida's blanket drug-testing law, Dec. 3, 2014.

Introduced Legislation

2021: None

2019: None

2017: None

2015

[House Bill No. 200](#) – (S) Tabled in Committee -- AN ACT ESTABLISHING DRUG SCREENING AND DRUG TESTING REQUIREMENTS FOR ELIGIBILITY UNDER THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM; PROHIBITING FINANCIAL ASSISTANCE IN CERTAIN SITUATIONS; ALLOWING A THIRD PARTY TO ACCEPT PAYMENTS FOR CHILDREN WHOSE PARENTS ARE INELIGIBLE FOR BENEFITS BECAUSE OF DRUG TESTING AND SCREENING REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 53-4-201, 53-4-212, 53-4-231, AND 53-4-244, MCA.

2013

[House Bill No. 596](#) – (H) Tabled in Committee -- AN ACT ESTABLISHING DRUG SCREENING AND DRUG TESTING REQUIREMENTS FOR ELIGIBILITY UNDER THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM; PROHIBITING ASSISTANCE IN CERTAIN INSTANCES; ALLOWING A THIRD PARTY TO ACCEPT PAYMENTS FOR CHILDREN WHOSE PARENTS ARE INELIGIBLE FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BENEFITS BECAUSE OF DRUG SCREENING AND TESTING REQUIREMENTS; PROVIDING FOR CONFIDENTIALITY; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 53-4-201, 53-4-212, 53-4-231, AND 53-4-244, MCA.

2011: None

2009: None

Prepared By:

Sue O'Connell, Research Analyst
Office of Research and Policy Analysis
September 30, 2022