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Testimony of Jack Comart, Maine Equal Justice Partners

In Opposition to L.D. 1407

"An Act to Require Screening and Testing For Illegal Substances of Beneficiaries Under the Temporary Assistance for Needy Families Program"

Senator Brakey, Representative Gattine and members of the Joint Standing Committee on Health and Human Services, my name is Jack Comart and I work for Maine Equal Justice Partners. I am here today to speak in opposition to L.D. 1407: "An Act to Require Screening and Testing For Illegal Substances of Beneficiaries Under the Temporary Assistance for Needy Families Program."

We oppose this bill for two main reasons:

- 1) It imposes a lifetime ban on the receipt of TANF or Food Supplement benefits for a person who has been convicted of a drug related felony at any time since 1996; and
- 2) While we support offering treatment to people in need of help for a substance use disorder: we oppose the inappropriate use of assessment tools as a form of punishment rather than help.

1. **The bill forever prevents a person with a drug-related felony conviction from receiving TANF or Food Supplement Benefits.**

Perhaps one of the harshest aspects of this bill is Section 3 of the bill. A person convicted of a drug-related felony, for example, 15 years ago, would never be able to get TANF or Food Supplement benefits.

A mother who made a serious mistake when she was twenty, for example, who was found unlawfully in possession of hydrocodone fifteen years ago would be denied help at the age of 35, after

having paid her debt to society and, having turned her life around. If this woman faced domestic violence and fled to a shelter with her children she would be unable to access help because of the one mistake she made back when she was twenty.

Or, take for example a 70-year-old man who committed a drug related felony nineteen years ago. He served his time, and is now an honest, hard-working, tax-paying individual living on \$1000 a month is Social Security Retirement benefits. Would we really want our policy to be to deny assistance for food due to a conviction nearly 20 years ago? Is this the sort of public policy we want to pursue? Why are we again imposing a life-time penalty on those who have paid their debt to society?

2. Use of the Screening Tool Is Not Evidence-Based:

Most of you have heard the term “evidence based.” The Commissioner and her staff use it frequently. So, where is the evidence for using substance abuse screening tools in determining eligibility for public assistance programs? Well, there is none. To the contrary, there is evidence that this is not the purpose of these tools, it is not an appropriate use of them. Here are quotes from the company that created them:¹

- SASSI screening results do not provide evidence that an individual is using or abusing a controlled substance.
- If the purpose of your screening program is to identify individuals who may be using controlled substances, rather than identifying a use disorder, then the SASSI does not fit your purposes.
- Regardless of the design of the program, SASSI screening results do not provide evidence that an individual is using or abusing a controlled substance.
- The optimal diagnostic procedure for identifying substance use disorders is a comprehensive assessment conducted by a professional with relevant expertise that includes:
 - One or more interviews, ideally with good rapport between client and professional.
 - Consideration of other supportive information sources such as collateral contacts, test reports and legal history.

¹ The SASSI Institute: Screening Issues, *available at*: <https://www.sassi.com/customer-support/clinical-support/screening-issues/>

- Some people whose substance use disorder is in remission and who do not need help in maintaining sobriety will screen as high probability of having a Substance Use Disorder. The client would be better served by completing a questionnaire that assesses the client's progress in recovery and level of vulnerability to relapse.
- Further, individuals in recovery may continue to show a "high probability of substance use disorder" SASSI screening result, even after they have been clean and sober for years. Using the SASSI to eliminate an applicant for a job or social services, ignoring the issue of whether the person is in recovery, violates the purpose of the SASSI and is a violation of the Americans with Disabilities Act.

The bottom line is that there is no evidence to support the use of this type of screening tool for this purpose—in fact, there is clear evidence that it is not intended for this purpose.

3. Violation of the ADA

The company that designs and sells the screening assessment tool recognizes that the use of this tool to screen public assistance recipients for eligibility may violate the Americans with Disabilities Act. The ADA protects those who are in recovery from a substance abuse disorder. States may not discriminate in the provision of services simply because a person is in recovery. The SASSI tool will, as noted above, show a high likelihood of substance abuse disorder for people in recovery. Thus, we subject a protected group to further drug screenings, including urinalysis and blood testing, that a non-disabled person need not endure.

4. Other Problems with the Bill:

- **No benefit from testing:** The minority of states that have used this type of screening tool for this purpose have found little benefit from it. For example, Mississippi instituted a similar program and found the following:

Total Number of Applicants who completed SASSI questionnaire: 5,578

Total Identified as High Likelihood for Substance Abuse: 72 (1.3% of applicants)
Total who submitted to a Drug Test: 72
Total Number who Tested Positive for Drugs: 8 (less than 2/10ths of 1 % of applicants)
Total Number who Tested Negative for Drugs: 64
Total Number of False Positives: 1

- **Lack of Competent trained Staff to Administer:** It is our understanding that DHHS eligibility specialists and not trained substance abuse counselors will be administering this test. We find that troubling both from a privacy standpoint and in terms of how this screening treatment tool can be abused.
- **No Good Cause Provision When No Provider Exists:** The bill removes any “good cause” provision that exists in current law for when a person is unable to enroll in a substance abuse treatment program.
- **No Check on False Positives:** The bill removes the option in current law for a second confirmatory drug test. It is unclear what drug test the Department proposes to use. If it is urinalysis, then it is highly unreliable. It will similarly detect legal substances as it will illegal substances.
- **Punishes Those Who Are Trying To Get Well:** The bill essentially requires recovery or else benefits are denied. So, a person making progress with their illness will nevertheless be penalized.
- **Removes Due Process Rights:** The bill removes from current law the right for a person to have a fair hearing prior to termination of benefits or denial of benefits. This raises additional serious constitutional concerns with this legislation.

Thank you.