



ACLU OF MAINE  
121 MIDDLE STREET  
SUITE 301  
PORTLAND, ME 04101  
(207) 774-5444  
WWW.ACLUMAINE.ORG

TESTIMONY OF OAMSHRI AMARASINGHAM, Esq.

LD 1407 – Ought Not To Pass

**An Act to Require Screening and Testing for Illegal Substances of Beneficiaries under the TANF Program**

JOINT STANDING COMMITTEE ON HEALTH AND HUMAN SERVICES

May 18, 2015

Senator Brakey, Representative Gattine, and members of the Committee on Health and Human Services, greetings. My name is Oamshri Amarasingham, and I am Public Policy Counsel for the American Civil Liberties Union of Maine. On behalf our members, we oppose LD 1407, which raises constitutional questions and gives credence to harmful and false stereotypes.

The ACLU of Maine has consistently opposed the administration's repeated efforts to force poor Mainers to submit to suspicionless drug tests. We agree that Mainers are suffering from addiction, but we cannot see how violating the constitutional rights of Mainers receiving TANF benefits will stem this public health crisis. Further, we have not seen any evidence that TANF recipients are more likely than other Mainers to use illegal drugs. We also object to the section of LD 1407 that would deny benefits to anyone convicted of a drug-related felony – especially in light of Maine's overly punitive drug laws.<sup>1</sup>

**LD 1407 Is Constitutionally Suspect and Proposes an Inappropriate Use of the SASSI Assessment**

The Supreme Court of the United States has long held that a drug test is a search protected by the Fourth Amendment to the United States Constitution. With limited exception, the Fourth Amendment requires at least *individualized suspicion*, if not probable cause, to justify a drug test. While LD 1407 would require the Department of Health and Human Services (DHHS) to first administer the Substance Abuse Subtle Screening Inventory (SASSI) assessment, we are skeptical that a certain score could constitute even reasonable suspicion, let alone probable cause, required by the Fourth Amendment.

The Committee should be aware that the SASSI Institute, the organization behind the screening instrument, specifically objects to this use of the SASSI assessment. In their position paper against these kinds of bills, the Institute cites ethical and legal concerns in addition to the constitutional deficiencies:

***“The purpose of the SASSI is to help people who have substance use disorders. To use the SASSI to discriminate against individuals, such as disqualifying job applicants or to deny public assistance, violates the purpose of the SASSI and is a violation of the Americans with Disabilities Act.”<sup>2</sup>***

<sup>1</sup> See, e.g., 17-A M.R.S.A. § 1107-A (classifying simple possession of several drugs as a felony-level offense).

<sup>2</sup> SASSI Institute, “Screening Issues,” January 12, 2015. Emphasis in original.

In order to implement a policy of suspicionless drug testing, DHHS must (1) articulate “special needs” beyond the normal need for law enforcement,<sup>3</sup> and (2) show that the special needs are “substantial,” meaning “important enough to override the individual’s acknowledged privacy interest [and] vital to suppress the Fourth Amendment’s normal requirement of individualized suspicion.”<sup>4</sup>

The proposed program fails to pass this stringent test. DHHS has not shown that drug abuse is a rampant problem amongst Mainers who receive TANF benefits. Even if DHHS could present evidence of a problem, it is unclear why DHHS would need to skirt normal law enforcement procedures to address the problem. The ACLU successfully sued the states of Florida<sup>5</sup> and Michigan<sup>6</sup> over the constitutionality of laws that made public benefits contingent on passing a drug test. Both the Eleventh and Sixth Circuit courts – two of the most conservative circuits in the country – agreed with us that such drug testing programs violate the Fourth Amendment.<sup>7</sup>

### **LD 1407 is Fiscally Irresponsible**

LD 1407 appears to be based on the faulty assumption that cutting benefits for an already marginalized group of TANF applicants will save the state money. It will not.

TANF is temporary help for children and their parents while the family works toward becoming self-supporting. For someone who is on the path to rehabilitation from prior drug use, a place to live, food to eat, and support to gain employment are crucial to continued success. Without support systems like TANF, families are likely to fall further into poverty, straining other state-based programs that are already strapped for funding. Maine’s already over-burdened food pantries and homeless shelters will have to fill the gap, which they are unlikely to be able to do. The state will have to spend more money on other programs to meet the need. There will be a ripple effect that hurts Maine’s largest cities, landlords, and hospitals. To suppose that making Maine’s poorest families poorer will benefit the state’s coffers defies common sense.

LD 1407 solves no problems, while creating a host of new issues. Chief among the proposal’s deficiencies is the question of costs. Data from other states with similar drug testing programs has shown that these programs are a waste of taxpayer dollars.

- Utah: From August 2013 through July 2014, Utah screened 4,786 TANF applicants or recipients

---

<sup>3</sup> *Skinner v. Ry. Labor Executives’ Ass’n*, 489 U.S. 602, 619 (1989).

<sup>4</sup> *Chandler v. Miller*, 520 U.S. 305, 318 (1997).

<sup>5</sup> *Lebron v. Secretary, Florida Dept. of Children and Families*, 710 F.3d 1202 (2013).

<sup>6</sup> *Marchwinski v. Howard*, 113 F. Supp. 2d 1134 (E.D. Mich. 2000), *aff’d*, 60 F. App’x 601 (6th Cir. 2003).

<sup>7</sup> In February 2013, the Eleventh Circuit Court of Appeals struck down a Florida law requiring TANF applicants to submit to suspicionless drug tests.<sup>7</sup> The enforcement of the law had previously been halted by a district judge within months of its going into effect as the result of a lawsuit brought by the American Civil Liberties Union of Florida. The appeals court concluded that “[t]he simple act of seeking public assistance does not deprive a TANF applicant of the same constitutional protection from unreasonable searches that all other citizens enjoy.” In the unanimous decision, authored by Judge Rosemary Barkett, the court held that not only had the lower court not overstepped its bounds in issuing the injunction, but that the state had failed to prove that there was any reason to treat poor families in Florida as any more likely to be drug users. “[T]here is nothing inherent to the condition of being impoverished that supports the conclusion that there is a “concrete danger” that impoverished individuals are prone to drug use,” Barkett wrote for the court. In a concurring opinion, Judge Adalberto Jordan stated that, “[c]onstitutionally speaking, the state’s position is simply a bridge too far.” The ACLU challenged a similar Michigan drug testing program as unconstitutional, arguing that suspicionless drug testing of welfare recipients violates the Fourth Amendment’s protection against unreasonable searches. The case, *Marchwinski v. Howard*, concluded in 2003 when the Sixth Circuit upheld the lower court’s decision striking down the policy as unconstitutional.

and tested 454 individuals identified through screening. Of these, only 17 individuals tested positive, in other words *0.35% of those screened*. Utah spent over **\$32,000** for testing and screening of this period.

- Missouri: From March 2013 through October 2014, Missouri screened nearly 70,000 applicants and identified 1,646 for testing. Of those, only 69 individuals tested positive, in other words *less than 0.1% of those screened*.<sup>8</sup>

The bill provides that someone who fails a drug test may continue to receive benefits if she enrolls in treatment. The bill is silent on whether the recipient must bear the cost of treatment, or what the recipient's recourse is if no treatment programs are available.

It bears repeating that under the current administration, funding for critical treatment programs has been severely cut. In 2013 alone, funding for drug treatment programs was cut by 7%. Of the \$1.4 billion dollars that the state of Maine spends on the cost of drug and alcohol abuse, only 3.4% is spent on treatment.<sup>9</sup> Statewide, there are less than 200 beds available for substance abuse rehabilitation, which is *less than 0.5%* of the 4,800 people seeking treatment for opiate addiction in 2013 alone.<sup>10</sup>

### **LD 1407 Fosters Baseless and Ugly Stereotypes about TANF Recipients**

Finally, LD 1407 turns core principles of American justice upside-down, requiring some TANF applicants to prove innocence by submitting to an unconstitutional drug test and permanently punishing Mainers with past convictions. Our system of justice dictates that a past conviction is not an indication of future bad conduct. Further, when someone does break the law, punishment is appropriately determined by a court of law. And, once the sentence is served, the individual's debt to society has been paid.

Not only does LD 1407 seek to permanently punish someone who has already served her sentence, this bill seeks to punish her *children*. It is patently unfair to deprive needy children of state assistance because of mistakes their parents made.

If enacted, this bill will disproportionately harm women in Maine. Women are the fastest growing segment of the incarcerated population, and many are being put behind bars for nonviolent drug offenses. Attached to my testimony is a fact sheet about women in prison that gives an overview of the devastating and disparate impact of drug laws on women. It is important to note that the majority of women in prison are mothers and most were the primary caretakers of their children prior to incarceration.

The proposed bill violates the constitution, relies on harmful stereotypes, and will only further destabilize Maine's most vulnerable families. Please reject LD 1407.

---

<sup>8</sup> Center on Budget and Policy Priorities, "Drug Testing in TANF," January 2015.

<sup>9</sup> Eric Russell, *Drug Treatment Funding in Maine is Falling, but Demand is Greater than Ever*. Portland Press Herald, February 23, 2014.

<sup>10</sup> *Id.*