

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SENATE BILL 1513

By: Coates

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5  
6 AS INTRODUCED

7 An Act relating to poor persons; creating the Public  
8 Assistance Drug Testing Act; providing short title;  
9 defining terms; requiring drug tests for public  
10 assistance; prohibiting public assistance in certain  
11 circumstances; exempting certain programs; providing  
12 for certain types of drug tests; requiring certain  
13 notice; prohibiting certain charges; providing  
14 exception; directing appropriate agencies to  
15 promulgate rules; directing the State Board of Health  
16 to regulate certain testing and testing facilities;  
17 prohibiting certain facilities from providing  
18 specified tests; specifying conditions for certain  
19 tests; providing for confidentiality; prohibiting  
20 release of certain information; prohibiting  
21 disclosure of certain information; providing for  
22 certain penalties; providing for codification; and  
23 providing an effective date.  
24

18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 3201 of Title 56, unless there  
21 is created a duplication in numbering, reads as follows:

22 This act shall be known and may be cited as the "Public  
23 Assistance Drug Testing Act".  
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1 SECTION 2. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 3202 of Title 56, unless there  
3 is created a duplication in numbering, reads as follows:

4 As used in the Public Assistance Drug Testing Act:

5 1. "Applicant" means any person who has applied for public  
6 assistance under a public assistance program;

7 2. "Confirmation test" means a drug test on a sample to  
8 substantiate the results of a prior drug test on the same sample and  
9 which uses different chemical principles and is of equal or greater  
10 accuracy than the prior drug test;

11 3. "Drug" means amphetamines, cannabinoids, cocaine,  
12 phencyclidine (PCP), hallucinogens, methaqualone, opiates,  
13 barbiturates, benzodiazepines, synthetic narcotics, designer drugs,  
14 or a metabolite of any of these substances;

15 4. "Drug test" means a chemical test administered for the  
16 purpose of determining the presence or absence of a drug or its  
17 metabolites in a person's bodily tissue, fluids or products;

18 5. "Public assistance" means payments to, medical care on  
19 behalf of, or any other kind of benefit to or for a recipient who  
20 receives aid under a public assistance program;

21 6. "Public assistance program" means any program solely funded  
22 by the state which administers public assistance to residents and  
23 shall not include programs which receive all or part of their  
24 funding from federal dollars;

1 7. "Random selection basis" means a mechanism for selecting  
2 recipients for drug testing that:

3 a. results in an equal probability that any recipient  
4 from a group of recipients subject to the selection  
5 mechanism will be selected, and

6 b. does not give the public assistance program discretion  
7 to waive the selection of any recipient selected under  
8 the mechanism;

9 8. "Reasonable suspicion" means a belief that a recipient is  
10 using or has used drugs and may be based upon, among other things:

11 a. observable phenomena, such as:

12 (1) the physical symptoms or manifestations of being  
13 under the influence of a drug, or

14 (2) the direct observation of drug use,

15 b. a report of drug use while receiving public assistance  
16 provided by reliable and credible sources which has  
17 been independently corroborated,

18 c. evidence that an individual has tampered with a drug  
19 test while receiving public assistance, or

20 d. evidence that a recipient is involved in the use,  
21 possession, sale, solicitation or transfer of drugs  
22 while receiving public assistance;

23 9. "Recipient" means any person who receives public assistance  
24 under a public assistance program;

1           10. "Review officer" means a person, qualified by the State  
2 Board of Health who is responsible for receiving results from a  
3 testing facility which have been generated by a public assistance  
4 program's drug testing program and who has knowledge and training to  
5 interpret and evaluate an individual's test results together with  
6 the individual's medical history and other relevant information;

7           11. "Sample" means tissue, fluid or product of the human body  
8 chemically capable of revealing the presence of drugs in the human  
9 body; and

10          12. "Testing facility" means any person, including any  
11 laboratory, hospital, clinic or facility which provides laboratory  
12 services to test for the presence of drugs in the human body.

13          SECTION 3.        NEW LAW        A new section of law to be codified  
14 in the Oklahoma Statutes as Section 3203 of Title 56, unless there  
15 is created a duplication in numbering, reads as follows:

16          A. Beginning July 1, 2009, public assistance programs shall be  
17 required to conduct drug testing of applicants and recipients  
18 pursuant to the provisions of this act.

19          B. Public assistance shall be denied to an applicant after a  
20 public assistance program has been notified of a confirmed positive  
21 drug test pursuant to this act or if the applicant refuses to  
22 undergo drug testing. Public assistance to the recipient may be  
23 granted after a period of time to be determined by the public  
24 assistance program, provided that the recipient tests negative for

1 | drugs in a subsequent drug test and undergoes post-rehabilitative  
2 | testing pursuant to Section 4 of this act. In no circumstances  
3 | shall the public assistance be granted in less than three (3) months  
4 | or more than six (6) months following a confirmed positive drug test  
5 | if a subsequent drug test is negative.

6 | C. Public assistance provided to a recipient shall be  
7 | immediately terminated after a public assistance program has been  
8 | notified of a confirmed positive drug test conducted pursuant to  
9 | this act. Public assistance to the recipient may resume after a  
10 | period of time to be determined by the public assistance program,  
11 | provided that the recipient tests negative for drugs in a subsequent  
12 | drug test and undergoes post-rehabilitative testing pursuant to  
13 | Section 4 of this act. In no circumstances shall the public  
14 | assistance resume in less than three (3) months or more than six (6)  
15 | months following a confirmed positive drug test if a subsequent drug  
16 | test is negative.

17 | D. The state agency responsible for administering a public  
18 | assistance program which is notified of a confirmed positive drug  
19 | test shall not be required to contact other state agencies which may  
20 | also be administering public assistance to the recipient.

21 | E. Nothing in this act shall be construed to subject a public  
22 | assistance program which receives all or part of its funding from  
23 | federal dollars to the requirements of this act.

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1 F. Drug testing required or permitted by and conducted pursuant  
2 to federal law or regulation for a public assistance program which  
3 receives all or part of its funding from federal dollars shall be  
4 exempt from the provisions of this act and rules promulgated as a  
5 result of this act.

6 G. Nothing in this act shall be construed to prohibit  
7 recipients from the use of drugs legally prescribed to the recipient  
8 by a licensed health care provider when used as directed.

9 SECTION 4. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 3204 of Title 56, unless there  
11 is created a duplication in numbering, reads as follows:

12 Public assistance programs shall only require recipients to  
13 undergo drug testing under the following circumstances:

14 1. Applicant testing: A public assistance program shall  
15 require an applicant to undergo drug testing as a condition of  
16 eligibility for public assistance;

17 2. Reasonable suspicion testing: A public assistance program  
18 shall require a recipient to undergo drug testing if the public  
19 assistance program has a reasonable suspicion that the recipient has  
20 used or is using drugs while receiving public assistance under the  
21 public assistance program;

22 3. Random testing: A public assistance program shall require a  
23 recipient to undergo drug testing on a random selection basis;

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1           4. Scheduled, periodic testing: A public assistance program  
2 shall require a recipient to undergo drug testing if the test is  
3 scheduled routinely for all recipients of the public assistance  
4 program;

5           5. Post-rehabilitation testing: A public assistance program  
6 shall require a recipient to undergo drug testing following a  
7 confirmed positive drug test after the recipient's public assistance  
8 resumes.

9           SECTION 5.           NEW LAW           A new section of law to be codified  
10 in the Oklahoma Statutes as Section 3205 of Title 56, unless there  
11 is created a duplication in numbering, reads as follows:

12           Public assistance programs shall display a prominent notice of  
13 the drug testing required pursuant to this act in all areas at which  
14 the public assistance program receives applications for public  
15 assistance.

16           SECTION 6.           NEW LAW           A new section of law to be codified  
17 in the Oklahoma Statutes as Section 3206 of Title 56, unless there  
18 is created a duplication in numbering, reads as follows:

19           A public assistance program shall be prohibited from requiring  
20 an applicant or recipient to pay for all or part of a drug test  
21 required pursuant to this act, including confirmation tests and the  
22 cost of transportation if the testing is conducted offsite.

23           Provided, however, an individual who requests a retest of a sample  
24 in order to challenge the results of a positive test may be required

1 to pay all costs of the retest, unless the retest reverses the  
2 findings of the challenged positive test. In such case, the public  
3 assistance program shall reimburse the individual for the costs of  
4 the retest.

5 SECTION 7. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 3207 of Title 56, unless there  
7 is created a duplication in numbering, reads as follows:

8 State agencies which administer public assistance programs  
9 subject to this act shall promulgate rules as necessary to implement  
10 the provisions of this act which shall include, but shall not be  
11 limited to:

12 1. The rights of an applicant and recipient to explain, in  
13 confidence, the test results;

14 2. The rights of an applicant and recipient to obtain all  
15 information and records related to that individual's testing; and

16 3. The available appeals procedures, remedies and sanctions.

17 SECTION 8. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 3208 of Title 56, unless there  
19 is created a duplication in numbering, reads as follows:

20 The State Board of Health shall have the power and duty to  
21 promulgate, prescribe, amend and repeal rules of the licensure and  
22 regulation of testing facilities and for the establishment and  
23 regulation of minimum testing standards and procedures rules, which  
24 shall include, but shall not be limited to:

- 1        1. Qualifications of testing facilities which shall include the  
2 requirement that facilities doing urinalysis for initial or  
3 confirmation tests either be certified for forensic urine drug  
4 testing pursuant to guidelines or regulations of the federal  
5 Department of Health and Human Services or be accredited for  
6 forensic urine drug testing by the College of American Pathologists  
7 or other organizations recognized by the State Board of Health;
- 8        2. Qualifications of testing facility personnel;
- 9        3. Body component samples that are appropriate for drug  
10 testing, to include saliva, urine and hair;
- 11       4. The drugs in addition to marijuana, cocaine, opiates,  
12 amphetamines and phencyclidine, and their metabolites, for which  
13 testing may be conducted;
- 14       5. Methods of analysis and internal quality control procedures  
15 to ensure reliable test results;
- 16       6. Internal review and certification process for test results;
- 17       7. Security measures to preclude adulteration;
- 18       8. Chain-of-custody procedures;
- 19       9. Retention and storage procedures and durations to ensure  
20 availability of samples for retesting;
- 21       10. Procedures for ensuring confidentiality of test results;
- 22       11. Proficiency testing;
- 23       12. Training and qualifications of review officers which shall  
24 include, but not be limited to, licensure to practice medicine and

1 surgery or osteopathic medicine or holding a doctorate in clinical  
2 chemistry, forensic toxicology, or a similar biomedical science;

3 13. Training and qualifications of collection site personnel;

4 14. Sample collection procedures that ensure the privacy of the  
5 individual and prevent and detect tampering with the sample;

6 15. Sample documentation, storage and transportation to the  
7 testing facility; and

8 16. Procedures for the testing facility to provide the  
9 necessary documentation of testing procedures and test results to  
10 the public assistance program requesting testing services as  
11 required by this act.

12 SECTION 9. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 3209 of Title 56, unless there  
14 is created a duplication in numbering, reads as follows:

15 No testing facility shall provide laboratory services to a  
16 public assistance program to test for the presence or absence of  
17 drugs unless it meets the qualifications established for testing  
18 facilities pursuant to Section 8 of this act and is licensed by the  
19 State Department of Health to perform such tests pursuant to Section  
20 558 of Title 40 of the Oklahoma Statutes.

21 SECTION 10. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 3210 of Title 56, unless there  
23 is created a duplication in numbering, reads as follows:

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1 All sample collection and testing for drugs pursuant to the  
2 provisions of this act shall be conducted in accordance with the  
3 following conditions:

4 1. Samples shall be collected and tested only by individuals  
5 deemed qualified by the State Board of Health and may be collected  
6 on the premises of the public assistance program;

7 2. Only samples deemed appropriate by the State Board of Health  
8 for drug testing shall be collected;

9 3. The collection of samples shall be performed under  
10 reasonable and sanitary conditions;

11 4. A sample shall be collected in sufficient quantity for  
12 splitting into two separate specimens, pursuant to rules of the  
13 State Board of Health, to provide for any subsequent independent  
14 analysis in the event of challenge of the test results of the main  
15 specimen;

16 5. Samples shall be collected and tested with due regard to the  
17 privacy of the individual being tested. In the instances of  
18 urinalysis, no designee of a public assistance program shall  
19 directly observe an applicant or employee in the process of  
20 producing a urine sample; provided, however, collection shall be in  
21 a manner reasonably calculated to prevent substitutions or  
22 interference with the collection or testing of reliable samples;

23 6. Sample collection shall be documented, and the documentation  
24 procedures shall include:

- a. labeling of samples so as reasonably to preclude the probability of erroneous identification of test results, and
- b. an opportunity for the applicant or recipient to provide notification of any information which the applicant or recipient considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant information;

7. Sample collection, storage, and transportation to the testing facility shall be performed so as reasonably to preclude the probability of sample contamination or adulteration;

8. Sample testing shall conform to scientifically accepted analytical methods and procedures. Testing shall include confirmation of any positive test result by gas chromatography, gas chromatography-mass spectroscopy, or an equivalent scientifically accepted method of equal or greater accuracy as approved by State Board of Health rule, at the cutoff levels as determined by Board rule, before the result of any test may be used as a basis for denial or termination of public assistance; and

9. A written record of the chain of custody of the sample shall be maintained from the time of the collection of the sample until the sample is no longer required.

1           SECTION 11.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 3211 of Title 56, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. Public assistance programs shall maintain all drug test  
5 results and related information, including, but not limited to,  
6 interviews, reports, statements and memoranda, as confidential  
7 records. Such records, including the records of the testing  
8 facility, shall not be used in any criminal proceeding, or any civil  
9 or administrative proceeding unless such records are ordered  
10 released pursuant to a valid court order.

11           B. The records described in subsection A of this section and  
12 maintained by the public assistance program shall be the property of  
13 the public assistance program and, upon the request of the applicant  
14 or recipient tested, shall be made available for inspection and  
15 copying to the applicant or recipient. A public assistance program  
16 shall not release such records to any person other than the  
17 applicant, recipient or the recipient's review officer, unless the  
18 applicant or recipient, in writing following receipt of the test  
19 results, has expressly granted permission for the public assistance  
20 program to release such records or pursuant to a valid court order.

21           C. A testing facility, or any agent, representative or designee  
22 of the facility, or any review officer, shall not disclose to any  
23 public assistance program, based on the analysis of a sample  
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1 collected from an applicant or recipient for the purpose of testing  
2 for the presence of drugs, any information relating to:

3 1. The general health, pregnancy or other physical or mental  
4 condition of the applicant or recipient; or

5 2. The presence of any drug other than the drug or its  
6 metabolites that the public assistance program requested be  
7 identified and for which a medically acceptable explanation of the  
8 positive result, other than the use of drugs, has not been  
9 forthcoming from the applicant or recipient.

10 Provided, however, a testing facility shall release the results  
11 of the drug test and any related analysis and information to the  
12 individual tested upon the request of the applicant or recipient.

13 SECTION 12. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 3212 of Title 56, unless there  
15 is created a duplication in numbering, reads as follows:

16 Any person who willfully and knowingly violates the provisions  
17 of this act shall be guilty of a misdemeanor and, upon conviction,  
18 punishable by a fine of not less than One Hundred Dollars (\$100.00)  
19 nor more than Five Thousand Dollars (\$5,000.00) or imprisonment in  
20 the county jail for not more than one (1) year, or by both such fine  
21 and imprisonment.

22 SECTION 13. This act shall become effective November 1, 2008.

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