

## HB 16 Q & A

**Question:** Is this bill constitutional and does it violate my Fourth Amendment Rights?

**Answer:** In examining the Constitutionality of random drug testing for public assistant recipients, it is important to remember that the U.S. Supreme Court has not addressed this issue directly. The Supreme Court has heard matters regarding suspicionless drug tests in other settings, but the test for determining the Constitutionality of such tests all falls on the reasons behind the testing, or more specifically, the “compelling state interest.” It would be premature and improper to extrapolate all previous rulings to the random drug testing system established in this bill.

Any time the government, or any agent thereof, conducts a search, such as a drug test, the search must be examined in the context of our Fourth Amendment privacy protections against unreasonable searches and seizures. Considering there are no criminal implications in this bill, the Supreme Court would most likely question the search’s reasonableness. A search is “reasonable” when supported by “special needs” beyond the normal need for law enforcement. In the most recent cases before the Supreme Court regarding suspicionless searches (i.e. random drug tests) the Court has held that public schools have the right to test athletes and participants of extracurricular activities because the public school’s custodial and educational duties, a finding of individual suspicion was not necessary. Arguably, the State has a compelling interest in curbing the drug use of citizens in general, maximizing the benefit of every dollar expended, and specifically, deterring drug use of persons receiving public assistance, because (a) the State cannot rationally justify the incompatible policies of criminally policing drug use while simultaneously providing money for persons to purchase drugs, and (b) the preeminent interest of protecting low-income families from the ravages of addiction and abuse.

Second comes the question of an “expectation of privacy.” The average citizen has the greatest expectation of privacy under the Fourth Amendment. Various activities or conditions affect this expectation; for example, prisoners, students and military personnel all have a diminished expectation of privacy. In the recent Supreme Court cases mentioned above, the Court held that students involved in athletics and extra-curricular activities have a diminished expectation of privacy because of the rules, procedures and activities inherent in participation. Similarly, a person accepting public assistance may have a diminished expectation of privacy due to the fact that as a condition precedent to receiving assistance a person must submit to the government private information such as name, address, social security number, income, number of dependents, etc., and this information is checked and rechecked to ensure the eligibility for public assistance. This bill provides no criminal recourse for anyone testing positive for illicit use of controlled substances and ensures the confidentiality of all test results. One could argue that it treads on the Fourth Amendment in the lightest way possible.

Lastly, the Supreme Court will probably require that a drug testing program be “tailored” (possibly narrowly) to fit the State’s “compelling interest.” This bill provides for random

testing, and prohibits the use of any other criteria, including but not limited to, suspicion of drug use, previous drug use or criminal conviction for drug use or possession. Again, the results are completely confidential and cannot be distributed to a public or private person or entity. Additionally, following a positive test, the recipient will not lose any benefits until failing a second drug test 30-60 days later. If a person twice fails a drug test and is determined ineligible, the person can reapply in two years. Both of these provisions are aimed at deterring drug use while allowing self-help and providing a remedy, and are less stringent than alternative policies the State could implement in dealing with the dilemma.

Again, the Supreme Court has yet to directly address the issue of drug testing of public assistance recipients which was actually provided for in the Welfare Reform Act of 1996, and the unique nature of the issue would require a specific analysis. The bill has been drafted in a way to navigate the constitutional waters and provide a limited solution to a definitive problem.

**Question:** Won't drug testing hurt the children of families on public assistance?

**Answer:** No. Drug addicted parents hurt the children. Drug addicted fathers do not provide a positive role model and squander precious financial resources on illicit drugs. Drug addicted mothers do the same, but with one additional problem -- in many instances they give birth to drug addicted babies. These children then must go through a painful withdrawal program immediately following birth. In some instances these children are permanently damaged by the mother's drug abuse and will never be a productive member of society. Effectively addressing a father or mother's drug problem will lead to treatment and a more productive future for the entire family.

**Question:** Isn't drug testing an invasion of my privacy and a violation of my civil rights?

**Answer:** No. Signing up for any kind of public assistance is voluntary in the first place. No one requires anyone to apply for these benefits. But those who do choose to sign up for welfare and food assistance are already required to prove need by providing the government access to their bank accounts and their sources of income. This information is then reviewed and sometimes investigated by the government agency providing the assistance. Applicants voluntarily agree to disclose such information as a condition of receiving assistance. Drug testing is simply another investigation that an applicant will voluntarily agree to in order to receive assistance. People have a choice -- if they do not want to be tested for drugs, they do not have to sign up for assistance.

**Question:** How much will the drug testing cost?

**Answer:** The cost of testing ranges from \$50-150 depending on the detail of the test. Here's the important thing to remember: What is the cost of not testing? Clearly there will be a cost on the front side, but hundreds of thousands of dollars will be saved by weeding out those who abuse the system.

**Question:** Receiving welfare, food assistance and unemployment is a right. Why are you trying to take my assistance away?

**Answer:** This bill does not violate your constitutional rights. Applying for assistance is a choice, not a requirement