



STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
P. O. Box 339  
Honolulu, Hawaii 96809-0339

February 12, 2009

MEMORANDUM

TO: Honorable Suzanne Chun Oakland, Chair  
Senate Committee on Human Services

FROM: Lillian B. Koller, Director

SUBJECT: **S.B. 1189 - RELATING TO DRUG TESTING**

Hearing: Thursday, February 12, 2009, 1:45 p.m.  
Conference Room 016, State Capitol

**PURPOSE:** The purpose of S.B. 1189 is to require recipients of General Assistance, Food Stamps, and Temporary Assistance for Needy Families programs to submit to random drug testing.

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) appreciates the intent of this bill and would like to offer the following comments.

Compliance with treatment for financial assistance recipients with a substance abuse problem is already a requirement for continued eligibility.

For our financial assistance programs, disability is any physical or mental condition as diagnosed by a physician, psychiatrist or psychologist, and certified by our Medical Review Board, which prevents an individual from working full-time. Addiction to substances, illegal or otherwise, typically qualifies as a disability.

Our General Assistance program, an individual must be temporarily disabled to be eligible for financial assistance. For our Temporary Assistance for Needy Families (TANF) program, disability is not a condition of eligibility but if identified, it affects work activity requirements.

Once eligible, disabled individuals are required to accept and comply with treatment as a condition of eligibility. Recipients of General Assistance specifically due to drugs or alcohol must follow a treatment plan. For TANF recipients identified to be substance abusers, drug testing is already a requirement.

Compliance is monitored by treatment providers and our Medical Review Board. Failure to comply with treatment makes the household ineligible for varying periods of time. Under TANF, the first noncompliance makes the family ineligible until compliance, the second is for two months or until compliance, whichever is longer, the third and future noncompliance make the family ineligible for three months or until they comply, whichever is longer. Under General Assistance, the first non-compliance causes a one month disqualification, the second is for three months and the third and future non-compliance causes six months of disqualification.

We currently have approximately 60 families per month and 1,400 adult singles receiving financial assistance that require substance abuse treatment.

Finally, the Food Stamp program is different; it is an exclusively federally funded program. The U.S. Code charges the Secretary of the U.S. Department of Agriculture with establishing national uniform standards of eligibility. As stated, "No State agency shall impose any other standards of eligibility as a condition for participating in the program." We would not be allowed to implement this requirement on our Food Stamp population.

We also respectfully defer to the testimony of the Department of the Attorney General submitted in the 2008 Legislative Session, on S.B. 3184 in 2008 as to the legality of this issue.

Thank you for the opportunity to provide comments on this bill.

*Kanani Kaaiawahia Bulawan*

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Date: February 9, 2009

To: Sen. S. Chun-Oakland, Chair Human Services  
Sen. L. Ihara Jr., Vice Chair Human Services

Hearing: February 12, 2009 Thursday 1:45pm Rm 016

**Measure: SB1189: RELATING TO DRUG TESTING**

Aloha Chair Chun-Oakland, Vice Chair Ihara and committee members:

My name is Kanani Kaaiawahia Bulawan. I'm a kupuna, a recovering addict, a resident of Waianae and a Kanaka Maoli. I ask for **FULL SUPPORT** to SB1189 relating to Drug Testing of recipients of public financial assistance.

THIS MAKES SENSE, IS RESPONSIBLE AND ACCOUNTABLE to the general public who are constantly subject to "higher" taxes to support programs for those who are unable to care for themselves for one reason or another. As a recovering addict I can tell you I know there are a number of recipients who are receiving benefits and are using it to support their drug addiction rather than support their basic needs such as housing, food, utilities and basic living expenses. Are we to support their drug habits or are we to foster wellness through recovery?

Again I thank you for your time and ask that you **FULLY SUPPORT the bill**. We need to be more responsible for the resources we have and be more efficient in how we spend our limited resources, especially during this time of economic challenges. We need to SPEND OUR FUNDS FOR THE RIGHT REASONS, there will be a positive return with this measure rather than a loss if we don't support this measure. Recipients will continue to use resources for addiction.

Should you have any questions or need additional information feel free to call me at 426-4647, 682-4673 or 783-9302.

Mahalo,

Kanani Kaaiawahia Bulawan



**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FIFTH LEGISLATURE, 2009**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1189, RELATING TO DRUG TESTING.

**BEFORE THE:**

SENATE COMMITTEE ON HUMAN SERVICES

**DATE:** Thursday, February 12, 2009 **TIME:** 1:45 PM

**LOCATION:** State Capitol, Room

**TESTIFIER(S):** Mark J. Bennett, Attorney General  
or Candace J. Park, Deputy Attorney General.

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Chair Chun Oakland and Members of the Committee:

The Attorney General has serious concerns regarding this bill, as it appears to be unconstitutional.

This bill requires recipients of general assistance, food stamps, and temporary assistance for needy families (hereinafter collectively "public assistance") administered by the Department of Human Services to submit to drug testing if there is reasonable suspicion to believe that the recipient, while receiving assistance, has consumed a controlled substance.

The Attorney General believes that this bill presents significant constitutional concerns under the search and seizure provisions of the Fourth Amendment. In addition, portions of the bill (concerning food stamps) are preempted by federal law and should be removed.

If the bill is amended as explained below, these concerns may be lessened. Given the complexity of Fourth Amendment law and its application in the context of public benefits, however, any attempt to require public assistance recipients to submit to drug testing raises the possibility of a court challenge.

The fact that a public assistance recipient may choose to decline benefits rather than agree to the drug testing does not necessarily end

the constitutional inquiry. Under the doctrine of "unconstitutional conditions," once the government elects to provide benefits, in many situations the conditions placed on those benefits must also comply with the Constitution. United States v. Scott, 450 F.3d 863, 866 (9th Cir. 2005), discussing Dolan v. City of Tigard, 512 U.S. 374 (1994).

The constitutionality of a governmental search is based on "reasonableness." Veronia Sch. Dist. 47J v. Acton, 515 U.S. 646, 652 (1995). Generally, this means that the governmental search must be supported by probable cause. Scott, 450 F.3d at 868. In some situations, however, the government may constitutionally conduct searches without probable cause, if certain requirements are met. The drug testing proposed by this bill would be based on "reasonable suspicion" that a recipient "has consumed a controlled substance" (lines 7-9). This requires individualized suspicion, as opposed to random searches, which require no individualized suspicion at all. Under federal law, both "reasonable suspicion" tests and random tests must be justified by the government's "special needs, beyond the normal need for law enforcement[.]" Scott, 450 F.3d at 868. See also Sanchez v. County of San Diego, 464 F.3d 916 (9th Cir. 2006) (applying "special needs" to searches without probable cause); American Federation of Government Employees v. Martin, 969 F.2d 788 (9th Cir. 1992) (applying "special needs" to drug testing based on reasonable suspicion). Those non-law enforcement "special needs" include, for example, verifying eligibility for welfare programs, Sanchez, and protecting children from the dangers of drug abuse and trafficking, Vernonia.

It is an open question whether a "reasonable suspicion" drug testing requirement for public assistance recipients is constitutional. To lessen the constitutional concerns, the bill may be amended by doing the following:

1. Clearly articulating, in a purpose section, the special needs (beyond law enforcement) that this proposal seeks to address. These interests must be concrete, and closely related to the harms the bill

seeks to address. Hypothetical concerns may be insufficient. Scott, 450 F.3d at 870.

2. Supporting the bill with concrete information and evidence demonstrating a marked and documented problem of drug abuse among public assistance recipients, over and above the same problem among the general population.

3. Not using the program for law enforcement purposes. This should be explained both in the statutory terms and as implemented by the Department. For example, if the major goal of the provision is to enable prosecutions for drug crimes, the special needs requirement will not be met.

4. Limiting the bill's application to the temporary assistance for needy families (TANF) program and the state funded equivalent, temporary assistance for other needy families (TAONF), based on a state interest in protecting children. Currently, the bill covers general assistance, TANF, and food stamps. The general assistance program is limited to households without minor children, in accordance with Hawaii Revised Statutes (HRS) section 346-71. Food stamps are available to both families and individuals, but for reasons stated in paragraph 7, the State is unable to impose additional eligibility criteria for the food stamp program. 7 U.S.C. §§ 2011-2036. TANF, however, is for families with children only, 42 U.S.C. section 608, and therefore the State may be able to argue that drug abuse by TANF-recipient parents endangers their children. Concrete information or evidence about the connection between substance abuse and child neglect or abuse would be very helpful. Of the three programs included in this bill, only TANF is for families with children only, and therefore the State's substantial interest in protecting children is connected most closely to that program. TAONF should be included in this bill if TANF is, in order to avoid disparate treatment of similarly situated groups.

If the general assistance program is retained in the bill, then the State would have to support the drug testing requirement on a state interest other than the protection of children, such as an interest in

preventing state resources from being used for illegal drug activity. Concrete information or evidence that state resources are being used on illegal drug activity would be helpful.

5. Making a drug-free life an explicit condition of eligibility for the benefits. The measure proposed here makes drug testing a requirement "in order to retain eligibility" for the benefits program. Neither the Hawaii Revised Statutes nor the Hawaii Administrative Rules require a general assistance recipient or a TANF or TAONF recipient to lead a drug-free life. If the statutes or the rules were amended to make living a drug-free lifestyle a condition of eligibility, the measure's position in a constitutional challenge may be improved. That is because the Supreme Court and the Ninth Circuit have upheld the constitutionality of state laws requiring home visits for welfare applicants, in part because the visits help to assure that the recipients meet eligibility requirements. Wyman v. James, 400 U.S. 309 (1971); Sanchez v. City of San Diego, 464 F.3d 916 (9th Cir. 2006).

6. Including statutory wording requiring the Department, in adopting rules, to use the least intrusive means in all aspects of the drug testing program. This should include maximizing individuals' privacy in collecting urine samples, and restricting the use of the information obtained.

7. Removing the food stamp program from the bill. The food stamp program is a federal program based on federal laws and regulations. Federal law establishes eligibility criteria for food stamp recipients and prohibits the State from imposing any other standards of eligibility as a condition for participating in the program. 7 U.S.C. § 2014(b).

As noted above, the constitutionality of this proposal is an open question. A constitutional challenge could be better defended if these suggested amendments are made. Given the complexity of this area of law, however, a court challenge is likely even if the bill is amended as suggested.



Senate HMS Cmte  
Thurs, Feb 12, 2009  
1:45 pm  
room 016

National Association of Social Workers

Hawaii Chapter

February 9, 2009

TO: Senator Suzanne Chun Oakland  
Members of the Senate Human Services Committee

FROM: Debbie Shimizu, LSW  
National Association of Social Workers, Hawaii Chapter

RE: SB 1189 Relating to Drug Testing- **OPPOSE**

Chair Chun Oakland and members of the Senate Human Services Committee, I am Debbie Shimizu, Executive Director of the National Association of Social Workers (NASW), Hawaii Chapter. I am also a member of the Welfare and Employment Rights Coalition (WERC) and the Financial Assistance Advisory Council (FAAC) of DHS. NASW is the largest professional organization for social workers in Hawaii.

**NASW opposes SB 1189.**

Drug testing for recipients of GA, food stamps, or TANF in order to retain eligibility for these programs is punitive especially when these individuals are subject to drug testing if there is "reasonable suspicion" to believe that the recipient has consumed a controlled substance. How is "reasonable suspicion" defined?

Drug addiction is a disease and individuals who are drug addicted need treatment and support rather than terminating their benefits.

Thank you for this opportunity to testify.



**TO:** SENATE COMMITTEE ON HUMAN SERVICES

**FROM:** PAMELA LICHTY, MPH, PRESIDENT

**RE:** SB 1189 RELATING TO DRUG TESTING – **IN OPPOSITION**

**DATE:** FEBRUARY 12, 2009, 1:45 p.m. ,Room 016

The Drug Policy Action Group strongly opposes this bill which would impose drug testing on recipients of general assistance, food stamps, or temporary assistance for needy families.

Research tells us that these needy populations use controlled substances at approximately the same level as others in our society. At this time of scarce resources, this is a mean-spirited, counter-productive and expensive means of intruding into the lives of the most powerless among us. There may well be legal barriers which this brief measure does not explore. My understanding is that food stamps, for example, are an entitlement subject only to income restrictions.

Anyone in our society should have the constitutional right to object to a drug test without being penalized in this manner. These people are not in safety sensitive positions, after all, where they could endanger the public by their alleged drug taking behavior.

After witnessing the complexities and problems that have plagued the Department of Education in its efforts to instate drug testing of teachers, I find it astounding that this proposal could be seriously considered. The costs of instigating this program should be weighed against the results measured in devastated lives and impoverished people, who may or may not be in the grips of addiction, and find themselves with literally nowhere to turn for help.

I urge the committee to hold SB1189. Mahalo for the opportunity to testify today.

Date: February 9, 2009

To: SENATE COMMITTEE ON HUMAN SERVICES  
Senator Suzanne Chun Oakland, Chair  
Senator Les Ihara, Jr, Vice-Chair

From: Teresa Bill, Univ. Hawai'i Bridge to Hope Coordinator

Re: SB 1189 relating to Drug Testing  
Thurs. Feb. 12 2009 1:45 p.m.  
Conference Room 016 1 copy to Committee Clerk, room 226

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My name is Teresa Bill, and I am testifying as Coordinator of Bridge to Hope, a program supporting welfare recipients, in **strong opposition to SB 1189 requiring drug testing** of food stamp, TANF and GA recipients if there is "reasonable suspicion" to believe that the recipient has consumed a controlled substance. I must state that I am testifying on my own behalf & do not represent the official position of the University.

I do not know the impetus for this Bill but it appears punitive and presumes to connect welfare recipients with drug use, drug testing, food stamp and welfare fraud. These are inaccurate and destructive stereotypes that public assistance recipients must face and fight against every day. What other groups of tax-paying citizens are expected to submit to drug tests to receive assistance they are eligible for?

Already, recipients of public benefits are in an unequal power relationship with their case managers, and many clients feel that they cannot disagree with their case manager without risking their cash assistance. Adding the additional threat that a case manager has "reasonable suspicion" of drug use makes an already intimidating relationship even more so.

Individuals with drug addiction problems need assistance with their addiction. If there are children in the household and drug addiction is a safety issue, we already have programs and processes in place to address this. Cutting food stamps which can only be used to purchase food; and cash assistance which is currently insufficient to fund housing only puts more stress on families.

I urge you not to pass this bill. It is punitive and preys on inaccurate and humiliating stereotypes of welfare participants. Thank you for this opportunity to testify.

SB1189, Relating to Drug Testing

HMS; Chair, Sen Chun-Oakland

**OH, FOR HEAVEN'S SAKE, KILL THIS IDEA ONCE AND FOR ALL!!**

Drug testing for welfare recipients raises its ugly head every so often. It is quite simply a punitive measure that assures that clients who are vulnerable and powerless are intruded upon even more. Legislators have to understand that many clients are disabled because of their drug use. What will we do, test them and deny them benefits? Other clients are on medications that mimic the effects of drugs and can be seen as symptoms of drug use so that these clients will also have to go through the ordeal of meaningless testing.

But, above all, this drug testing for these clients is a way of making life on a cash assistance welfare program as miserable as possible. These clients deserve maximum respect, not additional horrors. As a professor of social work, I deeply resent that some legislators might want to subject these clients to these investigations. **Just because people are poor and helpless does not mean they don't deserve our compassion and understanding!**

**HEWA!**

In an atmosphere of fiscal crisis, I can scarcely believe that any one would want to see government funds wasted this way!!

**Thank you for killing this bill!**

Aloha, Joel  
Dr. Joel Fischer, ACSW  
President, 19-3, Democratic Party

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Report Title:  
Drug Testing; Recipients of Government Assistance  
Description:  
Requires recipients of general assistance, food stamps, and temporary assistance to submit to drug testing for reasonable cause.

THE SENATE

S.B. NO. 1189

TWENTY-FIFTH LEGISLATURE, 2009

STATE OF HAWAII

My name is Erick Peter Ehrhorn and I am opposed to this bill. This is little more than an invasion of personal privacy and a means to make the poor beg even more than they have to. In case you haven't heard, the state, besides the country, is in a recession. The last thing that should be done is to stimulate Big Brother.

If someone on welfare uses drugs, it is probably because they have mental problems and drugs offer some release. Tell me are you willing to test the 25% of the homeless who are veterans and deny them assistance should they test positive? Nice way to support the troops.

Again I urge you to reject this bill and instead consider bills that would increase help to the needy. And remember just say no to BIG BROTHER. We had enough of that for the past 8 years. Again thank you for considering my testimony.

FAX-1-800-587-6657 OK (048/008/001)  
TESTIMONY - THE SENATE - 25<sup>TH</sup> LEGISLATURE

REGULAR SESSION OF 2009 2/12/09 1:45 PM  
CONF. RM. 016 STATE CAPITOL 415 BERETANIA ST  
HONOLULU, HI TRUCE END

NAME: MARGARET LEVY-DORANDS, CNA

POSITION: BOARD MEMBER

ORGANIZATION: STATEWIDE INDEPENDENT LIVING COUNCIL

DATE: 2/12/09

TIME: 1:45 PM

COMMITTEE DIRECTION: COMMITTEE ON HUMAN SERVICES  
SEN. CHUN OAKLAND, SEN. IHARA

1. MEASURE # SB 1210 - I AM AGAIN THIS MEASURE

- 2 " " SB 1189 - "
- 3 " " SB 915 - "
- 4 " " SB 918 - "
- 5 " " SB 1330 - "
- 6 " " SB 924 - "
- 7 " " SB 1177 - "
- 8 " " SB 913 - "
- 9 " " SB 916 - "

I AM FOR THE FOLLOWING MEASURES

10. MEASURE # SB 1016 - I AM FOR THIS MEASURE

- 11. " " SB 133 - "
- 12. " " SB 801 - "
- 13. " " SB 1006 - "
- 14. " " SB 1014 - "

THANK YOU

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