

# ncjustice **BRIEF**

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## Mandatory Drug Testing of Work First Applicants and Recipients would be Costly, Likely Illegal, and Ineffective at Identifying and Treating Drug Abuse

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### KEY FINDINGS:

- **North Carolina's Work First program assists extremely low-income families get on the path to self-sufficiency. The majority of those benefitting from assistance are children.**
- **In order to be eligible for Work First's time-limited and meager benefits, work-eligible recipients must participate in work requirements. In an economy where there are not enough available jobs, Work First's role as a safety net for struggling families has been declining over time.**
- **Suspicionless mandatory drug testing, as proposed by Senate Bill 594, would place additional financial burdens on struggling families as well as on the state. Research shows the proportion of welfare recipients with drug abuse problems is extremely low, meaning that the state would have to reimburse the vast majority of applicants and recipients for the costs of their drug tests. Universal drug testing is an unfunded mandate that could cost the state approximately \$2.3 million for the testing alone.<sup>1</sup>**
- **Suspicionless drug testing of public assistance applicants and recipients likely violates the Constitution's Fourth Amendment against unreasonable search and seizure. Other states' statutes that were not based on individual suspicion have been deemed unconstitutional.**
- **Suspicionless drug testing is an ineffective way to identify and address substance abuse. Without screening, blanket drug tests have been found to have significant limitations in identifying drug abuse.**

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### Overview of Senate Bill 594 and North Carolina's Work First program

Senate Bill 594, the suspicionless drug testing legislation now under consideration in the North Carolina General Assembly, would require Work First recipients and applicants to pay upfront for a drug test in order to participate in the program. Participants would then be reimbursed for negative drug-test results. The bill also shifts the focus away from screening and services by replacing existing evaluation and treatment provisions with drug-testing mandates.

North Carolina implemented Work First in 1996 to assist extremely low-income families in becoming economically self-sufficient through basic services, a small cash grant, and short-term training. In order to be eligible for Work First support services, families must have an annual income at or below 200 percent of the federal poverty level. Yet, the threshold is much lower for cash assistance (See Appendix). Benefits are designed to be temporary, and all work-eligible individuals must participate in

## A SHORT HISTORY OF “WELFARE REFORM”

In 1996, under the federal Personal Responsibility and Work Opportunity Reconciliation Act, Temporary Assistance for Needy Families (TANF) replaced Aid to Families with Dependent Children (AFDC), under which states had received federal funding in proportion to their caseloads. In contrast, TANF provides states with a fixed block grant that does not fluctuate as caseloads rise or fall, nor are the funds adjusted for inflation.<sup>3</sup> The great majority (92 percent) of spending in North Carolina goes toward programs like child care, foster care, and adolescent pregnancy prevention. The remaining funds go to cash assistance.<sup>4</sup>

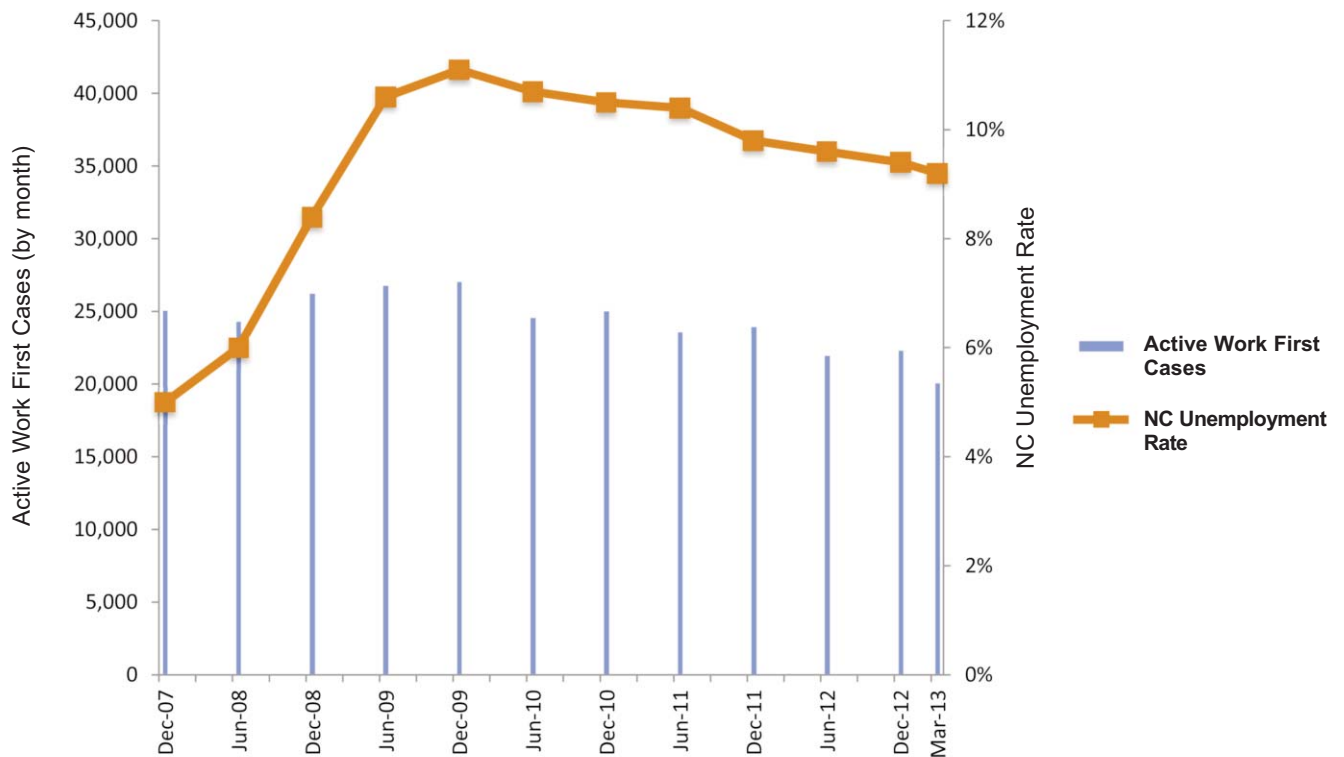
work requirements in order to receive benefits. The majority of those benefitting from the program are children. In March 2013, for instance, 68 percent of the Work First caseload consisted of child-only cases.<sup>2</sup>

### Work First’s Declining Role as a Safety Net

North Carolina’s unemployment rate increased by 4.2 percentage points—or 84 percent—from the start of the Great Recession in December 2007 to March 2013, indicating the great stress that the economic downturn has put on

the state’s economy and families.<sup>5</sup> Yet during the same time period, the number of North Carolina families receiving Work First benefits declined by 17 percent.<sup>6</sup>

**FIGURE 1: Since the beginning of the Great Recession, Work First Cases have fallen from approximately 25,000 to 20,000 while unemployment rates soared.**



SOURCE: United States Bureau of Labor Statistics, Local Area Unemployment Statistics and North Carolina Department of Health and Human Services, Division of Social Services Program Statistics.

In good economic times, a declining caseload could indicate greater economic well-being. That is, fewer cases could indicate fewer families are in deep poverty and therefore ineligible for or not enrolled in a program like Work First. But with unemployment rates hovering above 9 percent for the last 49 months, declining Work First caseloads point to the program's limited role in building economic security in an economy with insufficient jobs.

To be eligible for Work First, recipients must be pursuing work, either by receiving job training and/or by embarking on an extensive job search. Most families have two years before cash benefits run out. The Work First program is built on the assumption that once recipients complete the program and

acquire new skills, they will be able to find jobs and will no longer need public assistance. This model does not work when there are not enough jobs. Unemployment remains stubbornly high in North Carolina, and unemployed workers outnumber available job openings by approximately three to one.<sup>7</sup>

## MORE FEES FOR SERVICE

Under SB 594, several drug tests would likely be needed to screen for all banned substances, with a price tag potentially exceeding \$100.<sup>13</sup> A \$100 fee could easily exceed one month's worth of Work First cash benefits for many families.

For example, a family of four with two adults present in the household can receive up to \$297 in cash benefits. Yet, it is likely that some families receive less than the maximum benefit amount. If a household with this family make-up has countable income of \$250 per month, then their benefit would be \$172 per month—a figure that outstrips the \$200 upfront cost of drug tests for two adults. (See the Appendix for additional data on maximum benefit amounts by family size.)

A \$100 fee would be cost-prohibitive for extremely poor families trying to gain a foothold on the economic ladder by working or looking for work.

## Suspicionless Drug Testing Would be Fiscally Irresponsible

Proposals to drug test public assistance recipients are often based on the misguided assumption that testing will save states money because many applicants will be denied benefits. However, there is little evidence of drug use being particularly prevalent among welfare recipients. Research shows the difference in the proportion of welfare and non-welfare recipients using illegal drugs is statistically insignificant.<sup>8</sup> The experience of Florida—the one state that has recently implemented testing of applicants—shows few applicants actually test positive. Only 2.6 percent of applicants failed the drug testing in four months of Florida's mandatory drug testing program.<sup>9</sup>

Testing for drugs is a costly enterprise and may run upwards of \$100 for each applicant or participant, according to a non-partisan legislative attorney at the state General Assembly.<sup>10</sup> In North Carolina, tests for Work First applicants and recipients alone could cost approximately \$2.3 million based on March 2013 participation rates.<sup>11</sup> The actual cost could be even higher as this estimate does not take into account such costs as staff time to administer the tests and monitor compliance and eligibility; modifications to facilities to accommodate the testing; modifications to data systems; and potential legal fees.<sup>12</sup>

## Suspicionless Drug Testing is Likely Unconstitutional

Suspicionless drug testing of public assistance applicants and recipients likely violates the United States Constitution's Fourth Amendment against unreasonable search and seizure. Random searches are only justifiable if they meet a high legal standard and, in general, individualized suspicion is necessary for a search. States can and do impose drug testing for those recipients who have been identified as substance abusers; however, receiving cash assistance is not a basis for suspicion of drug use.<sup>14</sup>

Other states' statutes that required testing without reasonable basis or suspicion have been deemed unconstitutional. When Michigan tried enacting a drug-testing program for welfare recipients in the

early 2000s, a federal court struck it down as unconstitutional.<sup>15</sup> In February 2013, the 11th Circuit Court of Appeals upheld a lower court's ruling to stop enforcement of Florida's law requiring all applicants for TANF benefits to be tested.<sup>16</sup> Georgia, which also enacted suspicionless testing legislation, has delayed implementation pending the outcome of the Florida case.

## Suspicionless Drug Testing is Ineffective at Identifying and Addressing Substance Abuse

Substance abuse and addiction are barriers to employment and are of legitimate concern to a program whose mission is to help families move toward self-sufficiency.<sup>17</sup> However, blanket testing has not been found to be a best practice for identifying drug abuse. A recent issue brief from the United States Department of Health and Human Services Assistant Secretary for Planning and Evaluation noted that drug testing "has significant limitations in its ability to identify welfare recipients with substance abuse problems." The brief points to a recent study showing these drug tests misclassify more recipients than they accurately identify as needing intervention.<sup>18</sup> Several states have implemented best practices for identifying public benefit recipients with substance abuse problems, including intensive screening and referral methods.<sup>19</sup>

Currently, North Carolina's Work First program screens for possible substance abuse, and if the applicant is found to be at risk, a Qualified Professionals in Substance Abuse (QPSA) or physicians certified by the American Society of Addiction Medicine conduct a comprehensive assessment. If treatment is found to be appropriate, the QPSA will facilitate arrangements for treatment.<sup>20</sup> SB 594 would repeal this provision.

In addition, the proposal shifts the focus from treatment to testing. Currently, according to the Department of Social Services' Work First Manual, substance abuse assessment and treatment are approved Work First Employment Services activities and recipients may continue to qualify for supportive services.<sup>21</sup> Under SB594, the applicant or recipient is ineligible to receive any program assistance for one year. Cutting off supportive services during treatment would seem to run counter to the mission of Work First, which "assumes the family has the capacity to grow and change when provided the proper supportive interventions."<sup>22</sup>

## Conclusion

Suspicionless drug testing of public assistance recipients has been challenged on constitutional grounds around the country. And research has shown that blanket testing is ineffective and a waste of taxpayer money. Only a small fraction of public assistance recipients suffer from substance abuse and addiction. Funds would be better spent on treatment programs for these few individuals and on workforce development programs that can help public-assistance recipients transition to self-sufficiency.

- 1 See footnote 11 for assumptions and methodology.
- 2 North Carolina Department of Health and Human Services, Division of Social Services, March 2013. Work First Able-Bodied Report.
- 3 See Lower-Basch, 2011. "The Temporary Assistance for Needy Families Block Grant," CLASP.
- 4 Center on Budget and Policy Priorities, August 2012. "How States Have Spent Federal and State Funds Under the TANF Block Grant." Accessed at: <http://www.cbpp.org/cms/index.cfm?fa=view&id=3808>
- 5 The unemployment rate in North Carolina was 5.0 percent in December 2007 and 9.2 percent in March 2013. United States Bureau of Labor Statistics, LAUS.
- 6 In December 2007 there were 25,074 active cases and in March 2013 (the most recent data available), there were 20,805. North Carolina Department of Health and Human Services, Division of Social Services caseload data.
- 7 North Carolina Budget and Tax Center, March 2013. "North Carolina's unemployment rate remains stubbornly high, while unemployed workers outnumber available job openings by 3-to-1." Prosperity Watch Issue 21, No. 3.
- 8 ACLU, 2008. "Drug Testing of Public Recipients as a Condition of Eligibility" citing National Institute of Health Press Release, 1996. "National Institute of Alcohol Abuse and Alcoholism Study Estimates Alcohol and Drug Use, Abuse and Dependence Among Welfare Recipients."
- 9 Center for Law and Social Policy, October 2012. "Random Drug Testing of TANF Recipients is Costly, Ineffective, and Hurts Families."
- 10 North Carolina Senate Judiciary II Committee Meeting, April 10, 2013; Center for Law and Social Policy (CLASP) estimates the cost being between \$25 and \$150 each. CLASP, October 2012. "Random Drug Testing of TANF Recipients is Costly, Ineffective, and Hurts Families."
- 11 The \$2.3 million estimate is based on March 2013 data for the Work First Program and assumes that each drug test costs \$100. The number of Work First active cases in March 2013 was 20,805 and the number of applicants was 3,220. Active cases include both child-only as well as adult-only cases. It is unclear if both categories would be subject to drug testing under SB 594 (child-only cases could potentially include the

testing of guardians, though Section 1 G.S.108A-29.1 (c) of the bill could also be read to exempt these cases). Also, this estimate does not account for the cost of the second drug test that would be required for cases in which two parents are present in the household. Work First data is published by the North Carolina Department of Health and Human Services Division of Social Services, Program Statistics and Review, and was accessed at <http://www.ncdhhs.gov/dss/stats/wf.htm>. Because the negative testing rate in Florida was 97.4 percent, our calculation is based on an assumption of a similarly high negative rate. As a caveat, there is no certainty that North Carolina's positive test rate would correspond with Florida's rate; however, this data is the only recent state-level data available.

- 12 Issue Brief from the U.S. Department of Health and Human Services Assistant Secretary for Planning and Evaluation, October 2011. "Drug Testing Welfare Recipients: Recent Proposals and Continuing Controversies," U.S. Department of Health and Human Services.
- 13 North Carolina Senate Judiciary II Committee Meeting. April 10, 2013.
- 14 See CLASP, 2012.
- 15 See Marchwinski v. Howard, 113 F. Supp. 2d 1134.
- 16 National Conference of State Legislatures, 2013. "Drug Testing and Public Assistance."
- 17 The Work First Manual states that the mission of Work First is to "provide family-centered services to children and families to achieve well being through ensuring self-sufficiency, support, safety, and permanency." North Carolina Department of Health and Human Services, DHHS On-line Manual, accessed at <http://info.dhhs.state.nc.us/olm/manuals/dss/csm-95/man/>
- 18 Issue Brief from the U.S. Department of Health and Human Services Assistant Secretary for Planning and Evaluation, 2011. "Drug Testing Welfare Recipients: Recent Proposals and Continuing Controversies," HHS citing Crew, R.E. and Davis, B.C. 2003. Assessing the Effects of Substance Abuse among Applicants for TANF Benefits: The Outcome of a Demonstration Project in Florida. Journal of Health and Social Policy 17(1): 39-53.
- 19 CLASP, 2012. "Alternatives to Drug Testing to TANF Applicants."
- 20 North Carolina Department of Health and Human Services, Work First Manual, "Philosophy of Work First" accessed at [http://info.dhhs.state.nc.us/olm/manuals/dss/csm-95/man/WF001-02.htm#P36\\_2661](http://info.dhhs.state.nc.us/olm/manuals/dss/csm-95/man/WF001-02.htm#P36_2661).
- 21 North Carolina Department of Health and Human Services, Work First Manual. "Substance Abuse/Mental Health Initiative" accessed at <http://info.dhhs.state.nc.us/olm/manuals/dss/csm-95/man/WF104B-02.htm#TopOfPage>.
- 22 Ibid. "Philosophy of Work First" accessed at [http://info.dhhs.state.nc.us/olm/manuals/dss/csm-95/man/WF001-02.htm#P36\\_2661](http://info.dhhs.state.nc.us/olm/manuals/dss/csm-95/man/WF001-02.htm#P36_2661).

## APPENDIX: Who is Eligible for North Carolina's Work First Program and for How Much?

**For non-cash assistance Work First support services, families must have an annual income at or below 200 percent of the federal poverty level. For cash assistance under the Work First program, a family's benefit payment is dependent on family size and the amount of countable income. The monthly benefit payment is worth half of the difference between the need standard and total countable income. Maximum benefit payments by family size are detailed in the chart below.**

**As illustrated in the chart, need standard and maximum benefit payments are both well below half of the federal poverty level. As family size grows, both indicators as a percentage of the federal poverty line drop.**

WORK FIRST CASH ASSISTANCE INCOME PARAMETERS			
Family Size	Need Standard Per Month (% of FPL*)	Maximum Benefit Payment Per Month (% of FPL*)	2013 Federal Poverty Level Per Month
1	\$362 (37.8%)	\$181 (18.9%)	\$958
2	\$472 (36.5%)	\$236 (18.3%)	\$1,293
3	\$544 (33.4%)	\$272 (16.7%)	\$1,628
4	\$594 (30.3%)	\$297 (15.1%)	\$1,963

\*FPL is defined as the federal poverty level. Data reflects need standard and benefit payments for standard counties.

SOURCE: North Carolina Department of Health and Human Services, Division of Social Services, 2010-2013 Work First Plan State Plan Manual and the United States Department of Health and Human Services