

SUBJECT: Drug testing of certain persons seeking financial assistance benefits

COMMITTEE: Human Services — favorable, without amendment

VOTE: 5 ayes — Raymond, Klick, Sanford, Scott Turner, Zerwas

3 nays — N. Gonzalez, Naishtat, Rose

1 absent — Fallon

SENATE VOTE: On final passage, April 10 —31-0

WITNESSES: No public hearing

BACKGROUND: The Temporary Assistance for Needy Families (TANF) program provides financial help for children and their parents or relatives who are living with them. The Health and Human Services Commission (HHSC) determines the amount of the TANF payment depending on family size and income.

Families approved for TANF receive payments for six months and receive a renewal application from HHSC before the end of the six months. The total amount of time a parent or relative can receive TANF ranges from 12 to 36 months. There are no time limits for children.

If a child's parent or relative is also approved for TANF, the parent or relative must agree not to abuse alcohol or drugs. Federal rules permit drug testing as part of the TANF block grant.

DIGEST: SB 11 would require adult applicants, including those who were applying solely on behalf of a child, and minor parents who were head of household, to submit to a marijuana and controlled substance use screening assessment when first applying for financial assistance benefits and on an application for continuation of those benefits.

**Drug testing.** Under the bill, if the screening assessment indicated good cause to suspect the person had used marijuana or a controlled substance, the person would have to submit to a drug test. The first time a person's

drug test came back positive for drugs not prescribed by a health care practitioner, the person would be ineligible for financial assistance benefits for six months. The second time, the person would be ineligible for 12 months and could reapply six months after the date the person's period of eligibility began if the person completed or enrolled in a substance abuse treatment program. The third time, the person would be permanently ineligible.

The commission would have to pay the cost of the screening assessments and drug tests using funds from the federal TANF block grant. The bill would require the commission to use the most efficient and cost-effective marijuana and controlled substance use screening assessment tool, based on validated tools.

Before denying a person eligibility for financial assistance benefits, the commission would have to:

- notify the person who took the drug test of the test results and the commission's proposed determination of ineligibility; and
- confirm the results of the drug test through a second drug test or other appropriate method.

A person who was denied financial assistance benefits due to a positive drug test would have to submit to a drug test, without first submitting to a marijuana and controlled substance use screening assessment, when reapplying for those benefits.

**Exceptions.** The Health and Human Services Commission would have to adopt rules exempting a person from drug testing if there was no one in the person's county that could administer the drug test and if submitting to a drug test outside the person's county would impose an unreasonable hardship.

The denial of eligibility for financial assistance benefits to a person would not affect the eligibility of the person's family for those benefits. If a parent or caretaker relative of a dependent child became ineligible for benefits because of the results of a drug test, the bill would require the commission to designate a protective payee to receive financial assistance benefits on behalf of the child. The protective payee would also have to submit to a controlled substance use screening assessment and drug test if appropriate. The protective payee would be ineligible to serve in that role

if the drug test came back positive for controlled substances not prescribed to the person.

**Drug test reporting to DFPS.** The commission would have to report positive drug test results to the Department of Family and Protective Services (DFPS) to use in investigations of child abuse and neglect.

**Effective dates.** If a state agency determined that a federal waiver or authorization was necessary to implement a provision of the bill, the agency could delay implementing that provision until the waiver or authorization was granted.

The bill would take effect September 1, 2013, and would apply to initial applications for financial assistance benefits and to applications for continuation of those benefits made on or after that date.

**SUPPORTERS  
SAY:**

SB 11 would ensure that the TANF program used public funds responsibly and would put recipients on a path toward self-sufficiency. Drug use tears apart families, hurts children, and prevents individuals from living healthy, productive lives. The state has a responsibility to ensure that individuals are on a true path to self-sufficiency and drug-free in keeping with the mission of the program.

The bill would ensure that children received the assistance they needed by allowing children to continue to receive benefits through a protective payee if their parent or caretaker was disqualified for TANF benefits upon a second or third positive drug test. SB 11 also would encourage parents whose drug tests came back positive a second time to enter treatment by requiring them to enroll in a substance abuse treatment program before they could reapply for benefits.

Texas statute currently requires TANF recipients to sign a personal responsibility agreement not to use, possess, or sell marijuana or a controlled substance, but there are few safeguards within the program to ensure that the money is spent on its intended purposes, such as food, clothing, housing, transportation, laundry, and other basic needs. SB 11 would create a sensible path between complete non-enforcement of the personal responsibility agreement and testing for all recipients.

In implementing the bill, HHSC would adopt rules to improve access to drug testing facilities and local, state, and nonprofit substance abuse

treatment programs.

**OPPONENTS  
SAY:**

SB 11 would stigmatize TANF recipients by promoting the erroneous perception that TANF recipients are drug users, when data is lacking to suggest people in need of government assistance are more likely than those in other socioeconomic groups to use drugs.

Struggling parents should not be treated like criminals for reaching out for help in desperate times. By requiring drug screening for all recipients, SB 11 would set a precedent of requiring innocent Texans to prove they did not commit a crime.

According to the Legislative Budget Board, the requirements of SB 11 would cost about \$1.2 million in general revenue related funds in fiscal 2014-15. It is likely the state would spend more money on drug testing and screening than it would have lost to the very small percentage of TANF recipients that were violating the personal responsibility agreement.

Texas has an extreme shortage of substance abuse treatment beds. By not providing funding for treatment, SB 11 could permanently suspend a parent's eligibility for TANF benefits while they waited to enroll in a program. People with drug problems who receive TANF benefits typically do not have the money to gain access to private treatment programs.

**NOTES:**

SB 11 would have a negative fiscal impact of \$1,237,789 in general revenue related funds through fiscal 2014-15, according to the fiscal note. HHSC indicates that it would implement a no-cost drug screening assessment and estimates about 2.5 percent of those screened would be subject to drug testing. HHSC anticipates that 5 percent of those subject to drug testing would refuse to be tested.

The fiscal note also estimates costs for additional DFPS staff, hardware and software for each FTE, and modifications to HHSC technology systems. There could be additional costs related to HHSC designating a protective payee, but the LBB could not estimate those costs at this time.