
A BILL FOR AN ACT

RELATING TO HUMAN SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that it may be beneficial
2 to require some recipients of public assistance to submit to
3 testing for the illegal use of drugs in order to qualify for or
4 to maintain eligibility for benefits. At least fifteen states
5 have already passed legislation requiring drug screening or
6 testing for public assistance applicants or recipients: Alabama,
7 Arkansas, Arizona, Florida, Georgia, Kansas, Michigan,
8 Mississippi, Missouri, North Carolina, Oklahoma, Tennessee,
9 Utah, West Virginia, and Wisconsin. It would be in Hawaii's
10 best interest to pass similar legislation that would help ensure
11 that only persons who do not illegally use drugs, or are willing
12 to participate in substance abuse treatment, receive public
13 assistance, and that scarce public resources pay for necessities
14 such as food, utilities, and housing, rather than enable
15 addiction.

16 The purpose of this Act is to require the department of
17 human services to establish and administer a two-year pilot



1 program of suspicion-based drug screening and testing of
2 applicants for, and recipients of, temporary assistance for
3 needy families benefits.

4 SECTION 2. (a) The department of human services shall
5 establish and administer a two-year pilot program of suspicion-
6 based drug screening and testing for each:

7 (1) Applicant who is otherwise eligible for the temporary
8 assistance for needy families program; and

9 (2) Recipient of benefits through the temporary assistance
10 for needy families program.

11 (b) The drug screening and testing program shall include:

12 (1) A requirement that an applicant, upon initial
13 application for temporary assistance for needy
14 families program benefits, or at annual
15 redetermination in the case of a current recipient of
16 program benefits, shall be screened using an
17 empirically validated drug screening tool; provided
18 that:

19 (A) If the result of the drug screening tool gives
20 the department a reasonable suspicion that the
21 applicant or recipient has engaged in the illegal



1 use of drugs, then the applicant or recipient
2 shall be required to take a drug test;

3 (B) A refusal by an applicant or recipient to take a
4 drug test shall result in lack of eligibility for
5 program benefits for six months; and

6 (C) An applicant or recipient who tests positive for
7 illegal use of a controlled substance shall
8 undergo a second confirmation test using the same
9 specimen sample from the initial positive test.
10 The results of the confirmation test shall be
11 used to determine final eligibility for temporary
12 assistance for needy families program benefits;

13 (2) A process for allocating the cost of administering
14 the drug tests, as follows:

15 (A) If an applicant or recipient receives a negative
16 result on a drug test, the cost of administering
17 the drug test shall be paid by the department;

18 (B) If an applicant or recipient receives a positive
19 result on a drug test, refuses to enter a
20 treatment plan, and receives a negative result on
21 a drug test upon reapplying for benefits after



1 six months, the cost of administering the first
2 drug test shall be deducted from the
3 reapplicant's first installment of program
4 benefits, and the cost of administering the
5 second drug test shall be paid by the department;

6 (C) If an applicant receives a positive result on a
7 drug test and enters a treatment plan, the cost
8 of administering the drug test shall be deducted
9 from the applicant's first installment of program
10 benefits; and

11 (D) If a recipient receives a positive result on a
12 drug test and enters a treatment plan, the cost
13 of administering the drug test shall be deducted
14 from the recipient's first installment of program
15 benefits after redetermination;

16 (3) A referral process established by the department for
17 any applicant or recipient who receives a positive
18 result on a drug test to be referred to an appropriate
19 resource for drug abuse treatment or other services
20 for an appropriate period as determined by the
21 department; provided that:



- 1 (A) Evidence of ongoing compliance during the
- 2 determined treatment period shall be required;
- 3 and
- 4 (B) If an applicant or recipient is otherwise
- 5 eligible during the treatment period, the
- 6 applicant shall receive program benefits;
- 7 provided that the applicant or recipient:
 - 8 (i) Enters a drug treatment program within one
 - 9 week of referral by the department; and
 - 10 (ii) Submits to the department proof of
 - 11 successful program completion within the
 - 12 treatment period determined by the
 - 13 department;
- 14 (4) A requirement that a refusal to enter a treatment plan
- 15 or failure to successfully complete the treatment plan
- 16 by an applicant or recipient who receives a positive
- 17 result on a drug test shall result in the applicant or
- 18 recipient being deemed ineligible for program benefits
- 19 for six months;
- 20 (5) A requirement that an applicant or recipient be tested
- 21 using no less than a five-panel drug test upon the



1 conclusion of the determined treatment period;

2 provided that:

3 (A) If an applicant or recipient receives a positive
4 result on the drug test administered following
5 the determined treatment period, the applicant
6 shall be ineligible for program benefits for six
7 months; and

8 (B) If an applicant or recipient who has failed a
9 drug test reapplies for program benefits, the
10 applicant or recipient shall test negative for
11 illegal use of controlled substances in order to
12 receive program benefits, and the department may
13 provide a referral to an appropriate treatment
14 resource for drug abuse treatment or other
15 services; and

16 (6) A requirement that a dependent child's eligibility for
17 program benefits shall not be affected by a caretaker
18 relative's ineligibility due to positive results on a
19 drug test; provided that an appropriate protective
20 payee shall be designated to receive program benefits
21 on behalf of the dependent child.



1 (c) A dependent child under eighteen years of age shall be
2 exempt from the drug screening and testing requirement of this
3 Act unless the dependent child is a parent who is also an
4 applicant for the temporary assistance for needy families
5 program and who does not live with a parent, legal guardian, or
6 other adult caretaker relative.

7 (d) Notwithstanding any other law to the contrary, an
8 applicant or recipient shall not be denied temporary assistance
9 for needy families program benefits on the basis of failing a
10 drug test if the applicant has a current and valid prescription
11 for the drug in question or a registration certificate issued by
12 the department of health under chapter 329, part IX, Hawaii
13 Revised Statutes. An applicant or recipient may inform the
14 agency administering the drug test of any prescription or over-
15 the-counter medication that the person is taking.

16 (e) An applicant or recipient who receives a positive
17 result on a drug test administered under this Act shall not be
18 deemed to have a disability solely because of the drug test
19 result.

20 SECTION 3. In developing the pilot program established by
21 this Act, the department shall:



- 1 (1) Consult with substance abuse treatment experts;
- 2 (2) Develop appropriate screening techniques and processes
- 3 to establish reasonable cause that an applicant or
- 4 recipient is illegally using a drug and to establish
- 5 the necessary criteria to permit the department to
- 6 require the applicant or recipient to undergo no less
- 7 than a five-panel drug test;
- 8 (3) Identify and select a screening tool as a part of the
- 9 development of the screening technique that will be
- 10 employed under this Act;
- 11 (4) Develop a plan for funding the costs of the screening
- 12 and testing processes, personnel and information
- 13 systems modification, and other costs associated with
- 14 the development and implementation of the program; and
- 15 (5) Develop a plan for any modification of the
- 16 department's information systems necessary to properly
- 17 track and report the status of applicants or
- 18 recipients who are screened and who must undergo
- 19 testing as required by this Act. The plan shall
- 20 include:



1 (A) A detailed analysis of costs for systems
2 analysis, programming, and testing of
3 modifications; and

4 (B) Implementation dates for completion of the
5 modifications.

6 SECTION 4. (a) All information, interviews, reports,
7 statements, memoranda, and drug test results, written or
8 otherwise, received by the department under this Act shall be
9 confidential and not subject to disclosure and may not be used
10 or received in evidence, obtained in discovery, disclosed in any
11 public or private proceedings, released to law enforcement
12 officers, or used in any criminal proceedings.

13 (b) Information released contrary to this section shall
14 not be admissible as evidence in a criminal proceeding.

15 (c) Notwithstanding subsections (a) and (b), nothing in
16 this section shall prohibit:

17 (1) The department or a drug testing agency conducting the
18 drug test from having access to an adult applicant's
19 drug test information or using the information when
20 consulting with legal counsel in connection with
21 actions brought under or related to this Act or when



1 the information is relevant to its defense in a civil
2 or administrative matter;

3 (2) The reporting of child abuse, child sexual abuse, or
4 neglect of a child; or

5 (3) The aggregating of any statistics, data, or other
6 information for the purpose of fulfilling the
7 reporting requirement established under section 6 of
8 this Act; provided that the aggregated statistics,
9 data, or other information is reported in a manner to
10 protect the privacy of individual applicants for, and
11 recipients of, temporary assistance for needy families
12 program benefits.

13 SECTION 5. The department shall adopt rules, pursuant to
14 chapter 91, Hawaii Revised Statutes, necessary to implement this
15 Act; provided that the department shall consider:

16 (1) Testing procedures established by the United States
17 Department of Health and Human Services and the United
18 States Department of Transportation;

19 (2) Screening procedures recommended by the substance
20 abuse treatment experts consulted under section 3 to
21 determine when a person exhibits criteria indicating



1 that there is reasonable cause to suspect that a
2 person is likely to illegally use drugs;

3 (3) Body specimens and minimum specimen amounts that are
4 appropriate for drug testing;

5 (4) Methods of analysis and procedures to ensure reliable
6 drug testing results, including standards for initial
7 tests and confirmation tests;

8 (5) Minimum detection levels for each applicable drug or
9 drug metabolite for the purpose of determining a
10 positive result;

11 (6) Chain of custody procedures to ensure proper
12 identification, labeling, and handling of specimens
13 tested; and

14 (7) Retention, storage, and transportation procedures to
15 ensure reliable results of drug tests.

16 SECTION 6. The department shall submit a report to the
17 legislature no later than twenty days prior to the convening of
18 the regular sessions of 2019 and 2020. The report shall
19 include:

20 (1) The number of individuals screened;



- 1 (2) The number of screened individuals for whom there was
- 2 a reasonable suspicion of illegal drug use;
- 3 (3) The number of screened individuals who took a drug
- 4 test;
- 5 (4) The number of screened individuals who refused to take
- 6 a drug test;
- 7 (5) The number of screened individuals who received a
- 8 positive result on the drug test;
- 9 (6) The number of screened individuals who received a
- 10 negative result on the drug test;
- 11 (7) The number of individuals who received a positive
- 12 result on a second or subsequent drug test;
- 13 (8) The costs incurred by the department for the
- 14 administration of the drug screening and testing
- 15 program;
- 16 (9) The number of applications and re-applications
- 17 received for temporary assistance for needy families
- 18 benefits in the previous year and the current year;
- 19 and
- 20 (10) Any proposed legislation.

21 SECTION 7. As used in this Act:



1 "Caretaker relative" means any of the following individuals
2 living with a minor child:

- 3 (1) A parent or stepparent;
- 4 (2) A grandparent;
- 5 (3) A sibling, half-sibling, or stepsibling;
- 6 (4) An aunt or uncle of any degree;
- 7 (5) A first cousin, nephew, or niece; or
- 8 (6) A relative by adoption within the previously named
9 classes.

10 "Chain of custody" means the methodology of tracking
11 specified materials or substances for the purpose of maintaining
12 control and accountability from initial collection to final
13 disposition for all materials or substances, providing
14 accountability at each stage in handling, testing, and storing
15 specimens and reporting test results.

16 "Confirmation test" means a second analytical procedure
17 used to identify the presence of a specific drug or drug
18 metabolite in a specimen. The test may be different in
19 scientific principle from that of the initial test procedure and
20 must be capable of providing requisite specificity, sensitivity,
21 and quantitative accuracy.



1 "Department" means the department of human services.

2 "Drug" means marijuana, cocaine, methamphetamine,
3 amphetamine, and opiates, including morphine. The director may
4 add additional substances to this definition by rule.

5 "Drug test" means any chemical, biological, or physical
6 instrumental analysis administered by a drug testing agency
7 authorized to test under this Act for the purpose of determining
8 the presence or absence of a drug or its metabolites.

9 "Drug testing agency" means an entity that has the required
10 credentials as established by the department to administer drug
11 tests using a person's urine, blood, or DNA that will detect and
12 validate the presence of drugs in a person's body.

13 "Drug treatment program" means a service provider that
14 provides confidential, timely, and expert identification,
15 assessment, and resolution of drug or alcohol abuse problems
16 affecting a person.

17 "Five-panel drug test" means a test for marijuana, cocaine,
18 methamphetamine, amphetamine, and opiates, including morphine.

19 "Protective payee" means a caretaker relative or legal
20 guardian of a minor child unless the caretaker relative who is



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1 an applicant for temporary assistance for needy families
 2 benefits receives a positive result on a drug test.

3 "Specimen" means tissue, fluid, or a product of the human
 4 body capable of revealing the presence of drugs or drug
 5 metabolites.

6 SECTION 8. This Act does not affect rights and duties that
 7 matured, penalties that were incurred, and proceedings that were
 8 begun before its effective date.

9 SECTION 9. This Act shall take effect upon its approval
 10 and shall be repealed on June 30, 2020.

11

INTRODUCED BY:

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JAN 18 2018



H.B. NO. 1904

Report Title:

Temporary Assistance for Needy Families; Drug Testing; Pilot Program

Description:

Requires DHS to administer a 2-year drug screening and testing pilot program for applicants and recipients of temporary assistance for needy families benefits. Allows applicants and recipients to receive benefits if the applicant submits proof of entry into substance abuse treatment and later provides proof of successful completion of the program. Sunsets on 6/30/2020.

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