



South Dakota Legislative Research Council

Issue Memorandum 95-32

PROPOSALS TO REQUIRE MANDATORY DRUG TESTING OF WELFARE RECIPIENTS

Introduction

Proposals to require mandatory drug testing of welfare recipients come equipped with red flags labeled “unfair,” “unlawful search,” “self-incrimination,” and “privacy.” Only a few states have attempted to enact such provisions. This memorandum examines the few examples of legislation from other states that are available.

South Carolina

South Carolina passed a welfare reform package in 1995 that includes a section making an AFDC recipient ineligible for AFDC assistance if, while receiving benefits, the recipient is identified as requiring alcohol or other drug abuse treatment, is convicted of an alcohol-related offense or a controlled substance violation, or gives birth to a child showing evidence of maternal substance abuse confirmed by a positive test of the child’s specimen.

If the recipient submits to random drug tests or participates in a drug or alcohol treatment program, the assistance may continue. A subsequent random test showing drug use or a subsequent conviction for a controlled substance violation or an alcohol-related offense makes the recipient ineligible for AFDC.

South Carolina uses random drug testing with the recipient’s acquiescence as a

condition of retaining AFDC benefits. Since the drug testing follows known drug use and is done with the agreement of the recipient, the red flags do not fly.

North Carolina

North Carolina’s HB 5 of 1995, The Public Assistance Personal and Family Responsibility Act of 1995, contains section 108A-26.17 which requires, as a condition of eligibility for welfare benefits, that an applicant or recipient who is determined by a certified substance abuse counselor or by a physician certified by the American Society of Addiction Medicine to be addicted to alcohol or drugs and in need of professional treatment agree to participate in a treatment program. The applicant or recipient would be required to submit to random drug testing during and after participation in the treatment program.

An applicant or recipient who does not comply with these requirements is not eligible for benefits, but may possibly be eligible for medical assistance. Children remain eligible for benefits, which are paid to a protective payee. A person is not regarded as failing to comply if an appropriate treatment program is unavailable.

The random drug testing would be required of persons who had already been determined

to be addicted. Agreement to the testing would be a condition of continued receipt of welfare.

The North Carolina legislature did not pass the bill, and random drug tests are not at present a condition of eligibility for welfare in that state.

Texas

Texas passed HB 1863 this year, which was over 200 pages long. One of the sections of the bill requires each adult who receives financial assistance to sign a bill of responsibilities that defines the responsibilities of the state and the recipient. The department must explain the agreement to the applicant before the agreement is signed. The Texas bill contains a comprehensive list of requirements, including a provision forbidding a caretaker relative or parent receiving assistance to use, sell, or possess marijuana or a controlled substance or to abuse alcohol.

This bill permits the department to apply sanctions or penalties after an investigation determines noncompliance with a requirement of the responsibility agreement. The person receiving assistance can request a hearing to show good cause for noncompliance.

This bill does not mention drug testing and

does not elaborate on the elements of an investigation. It simply prohibits drug use and allows sanctions or penalties to be applied. The sanctions or penalties are not specified, and the bill does not clearly state that drug use would result in loss of assistance. Subdivision 31.0032(c) “does not prohibit the department from providing medical assistance, child care, or any other social or support services for an individual subject to sanctions or penalties under this chapter.”

Conclusion

Mandatory drug testing as a condition of eligibility for welfare benefits is not a popular issue if the scarcity of legislation from other states is taken as a gauge. Its popularity may increase if its constitutionality is not called into question. The provision so far has been part of bills classified as welfare reform. South Carolina’s welfare reform package passed; North Carolina’s bill did not. Texas’s welfare reform bill passed, but, while its language forbidding drug use was clear enough, drug testing was not specifically mentioned and the consequences of drug use were hazy.

This issue can be expected to be of continued interest, along with other proposals for welfare reform.

This issue memorandum was written by Rosemary Quigley, Administrative Rules Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.
