

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman Jim Barnett at 1:30 p.m. on February 25, 2010, in Room 546-S of the Capitol.

All members were present.

Committee staff present:

Nobuko Folmsbee, Office of the Revisor of Statutes
Renaë Jefferies, Office of the Revisor of Statutes
Iraida Orr, Kansas Legislative Research Department
Amanda Nguyen, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Jan Lunn, Committee Assistant

Conferees appearing before the Committee:

Representative Kasha Kelley
Don Jordan, Secretary, Social and Rehabilitation Services (SRS)

Others attending:

See attached list.

HB 2275 - Establishing a program for drug screening for cash assistance recipients

Renaë Jefferies, Office of the Revisor of Statutes, briefed those attending on **HB 2275**. She indicated this legislation was carried over from 2009 and would establish a program of random drug testing for recipients of cash assistance from Temporary Assistance to Families (TAF or TANF) as well as those receiving General Assistance. Should an individual fail the drug test, the recipient must complete an educational or treatment program (if recommended by evaluation). Once an individual fails the drug test, he/she would be subject to periodic testing thereafter. Should a second positive result, the recipient would once again be referred for education or treatment. Once a third positive results, the recipient would be terminated from the cash assistance program. Ms. Jefferies described other important points in the legislation.

Senators asked several questions related to who would pay for drug testing and treatment, the definition of cash assistance and general assistance, how much is being spent on these programs, whether TAF is federal money, and what individual in the family who receives assistance would be subject to testing.

Ms. Jefferies clarified that the intent bill is to perform drug testing on the individual who applies for the assistance; TAF is federal money; there is nothing in the bill indicating how drug testing and treatment would be funded; and it was not known, at this time, the amounts being spent on the these programs. She referenced statute definitions for medical assistance, general assistance and cash assistance and read definitions to those attending.

Senator Barnett recognized Representative Kasha Kelley, who introduced this bill in the House during the 2009 session. She spoke in support of **HB 2275** outlining points contained in the legislation that passed through the House (Attachment 1).

Don Jordan, Secretary, SRS, provided neutral testimony (Attachment 2) explaining federal food assistance laws prohibit drug testing as a condition of eligibility and participation. TAF and General Assistance programs have no such regulations. Secretary Jordan provided statistics involving SRS Addiction and Prevention Services' program of screening TAF cash customers for substance abuse. He indicated at the current time, no state conducts random drug testing of public assistance recipients.

Chairperson Barnett called attention to written testimony submitted by Representative Louis E. Ruiz (Attachment 3) who stood in support of **HB 2275**.

Senators discussed the benefits and potential costs of such a program included in **HB 2275**.



CONTINUATION SHEET

Minutes of the Senate Public Health and Welfare Committee at 1:30 p.m. on February 25, 2010, in Room 546-S of the Capitol.

Chairperson Barnett indicated further discussion and possible final action would occur at a later date.

SB 447 - Child care; supervision of children and licensing and inspection of child care facilities

Senator Barnett requested an update be provided by Senator Kelly relating to efforts concerning this legislation. Senator Kelly reported that much work has occurred with concerned stakeholders resulting in a balloon amendment that was distributed to committee members. Senator Kelly and staff members explained the amendment.

The amendment was thoroughly discussed by those attending. Senator Pilcher-Cook expressed concern that many daycare providers may be unaware of the language contained in the amendment; Senator Barnett requested the committee secretary provide information to those who inquired about the amended language.

SENATE PUBLIC HEALTH & WELFARE COMMITTEE

GUEST LIST

DATE: February 25 2010

| NAME | REPRESENTING |
|------------------------|---|
| Elaine Schwartz | KS Public Health Assn. KPHA |
| Eldonna Chesnut | " " " " / Johnson County PH |
| Kathy Kuffin | " " " " / Johnson County HD |
| Mary A. Murphy | KDHE |
| Jack Koel | KDHE |
| Cassie Gaddis | University Child Development |
| Cecelia Courter | University Child Development |
| Diane Purcell | Kansas Assn for the Education of Young Children |
| Deb Crowl | Ks. Assoc. for the Ed. of Young Children |
| Kim Engelman | Parent advocate |
| Jessica Shirk | Washburn university Nursing student |
| Lauren Cochran | KS Coalition for School Readiness |
| Sharon Comradis | KS Action for Children |
| Doug Vance | KS Rec & Park Assoc. |
| Reva Wynradis | ERC Resource & Referral |
| Jon Nose | Washburn Law Student |
| Natalie Berfo | KANP |
| Lauren Luff | E. S.U. |
| Laraine Ewing | ESU |
| Justin Moyer | KHPA |
| Michelle Peterson | Capital Strategies |
| Levi Henry | Sandstone Group LLC |
| Sister Therese Bangert | Ks. Cath. Conf. |

Doug Bowman

CCELDs

Testimony to the Senate Public Health and Welfare Committee
Representative Kasha Kelley
March 24, 2010

Chairman Barnett, Vice Chair Schmidt, and members of the committee, thank you for the opportunity to visit with you about House Bill 2275. This bill deals with the somewhat complex topic of random drug screening for those receiving public assistance. In particular, HB 2275 – as amended by the House Committee on Health and Human Services – restricts the random testing to cash assistance recipients. Further amended in the House Committee of the Whole, the bill before you passed our chamber 99-26 after a well-reasoned debate.

Before we visit more about HB 2275, please allow me a moment to share some broader background and history on this issue.

The 1996 Welfare Reform Act (a.k.a. the Personal Responsibility and Work Opportunity Reconciliation Act), under TANF, authorized states to test public assistance recipients for illegal drugs and impose consequences when such tests were failed. Michigan was the first state to put forth such legislation in 1998.

Michigan's law was challenged by the ACLU on grounds that it violated the Fourth Amendment (protection against unreasonable search and seizure). The measure was then blocked by an injunction issued by a U.S. District Court judge in 1999. That decision was next overturned by a three-judge panel of the Sixth Circuit Court of Appeals. The Sixth Circuit held that welfare recipients have a "diminished expectation of privacy," and were free to not accept benefits if they did not wish to be tested.

When the full Sixth Circuit Court of Appeals reviewed the case, six of the judges sided with the state of Michigan, and six voted to void the law. Just as in our process, a measure is lost in the event of a tie vote. In this case, that meant affirmation of the district judge's initial decision.

It is notable that the pilot program initiated by Michigan law was in effect for only five weeks before it was halted. Its dictate was to test 20% of recipients randomly every six months. During the short time the program was in effect, 21 of the 268 people tested were positive for illegal drug use, or roughly 8%. With only one-fifth of recipients turning up an 8% positive return rate in the first five weeks, it is conceivable that the program – had it been allowed to continue – would have identified a far greater percentage of tax dollars being used for purposes other than intended. Although the state settled out of court, they did retain the right to test some public assistance recipients if suspected of substance abuse problems.

In 2009, Michigan announced a renewed effort to address abuse in the Michigan welfare system with a package of bills targeted at inappropriate use of the state's cash assistance program. The state was not alone in its quest to see tax dollars used legally, efficiently, and effectively. More than 20 other states have offered similar initiatives, many of which are either still alive in the legislative process or already enacted into law. A snapshot of the various states with current initiatives has Missouri's bill recently passing the House and awaiting attention from the Senate, Oklahoma's bill advancing to General Orders, and Arizona's legislation in effect with their program launched in November of 2009.

The question for each state that takes up this issue has and will continue to be that of crafting legislation deemed to pass the litmus test of the Fourth Amendment. It is important to note the tie vote of the court and that many are of the opinion that various versions of the bills existing today carry out the stated authorization of the 1996 WRA to test and impose consequences. Moreover, the bill markedly reflects practices commonly used in private industry as a condition of employment.

Public assistance of this nature was, of course, intended to be a short-term safety net for those in need. Though studies exist questioning the overall success of a public assistance program, in general, to have ever met its initial goal, this bill is not meant to address that discussion or concern. Instead, HB 2275 seeks to identify those who are abusing a service meant for legitimate purposes and helping them onto the path of rehabilitation. We must remember that often times there are children in these households, meaning that not simply the user, but future generations, are impacted by illegal activity, abuse and addiction. Further, we have a responsibility as the protectors of the public's purse to ensure that hard-earned tax dollars are being used as intended by law.

HB 2275 is a bill crafted with care and concern for those who have addiction issues. It does not seek to cast aside those with illegal drug-related problems. Quite the opposite, by screening one-third of cash recipients each year, it seeks to identify those abusing and move them toward healing. A first offense directs the state to provide drug counseling to the offender. Initially, after a second offense, the recipient would have lost their assistance. However, as amended by the House Committee of the Whole, an offender may have a second visit to counseling without losing assistance. Essentially, as passed by the House, HB 2275 is now a "three strikes and you're out" policy.

In the past, I have requested the contracts the state currently uses for drug testing for the purpose of gaining a general perspective on screening costs, as well as general information on addiction and prevention services. According to KLRD, contractually set pricing ranges from a one-drug panel, costing \$3.90 to a 10+ drug panel, costing \$5.30, in addition to a confirmation cost ranging between \$15 and \$20. This assumes contract pricing has remained relatively stagnant since 2009.

Another reviewed contract included a Medicaid Review Officer, with a fee of \$18 per screen, along with an average collection site fee of approximately \$22-\$27, depending on site location. Whether more competitive contracts or further bulk discounts exist is unknown, but recommended for pursuit.

Generally speaking, urine testing appears to remain the most common practice. I am told by local physicians that new, more tamper-proof methods of urine testing are now on the market. Similarly in the vein of tamper-proof methods is that of extracting hair clips. It's been related that hair clips can carry traces of use for up to six months prior, but may cost in the neighborhood of \$50 to \$100 per panel. I am not suggesting which method be used, and any method lacks verification if not executed with oversight. It would appear solid oversight would allow use of lower-priced panels. Also under various contracts pulled from 2009, KLRD reported the cost of drug treatment services per person at roughly \$2,864 (there is an unknown allocation of grant monies that can affect this number). When calculating estimated total costs, it is good to bear in mind that this testing is random and that not all who are tested will be positive and require treatment.

When the economy suffers, requests for public assistance increase. In 2008, *USA Today* cited federal data showing 27 states reporting increases in their welfare requests, and we know that number has continued to climb across the nation as the economy has dimmed. Budgets are in shortfall, taxpayers are squeezed, and government at all levels is looking to "do things better." As such, it is incumbent upon elected officials to stay focused on the issue and not be sidetracked by immaterial arguments. We must have our eye on a healthy Kansas...both its citizens' health and the health of its economy.

However, considering the various arguments in opposition of drug-testing legislation, I would like to touch upon several I came across during my research in an effort to save some discussion time in committee.

- *Screening all applicants/recipients is demeaning to those who do not use.*
 Conversely, screening and identification of those with drug problems hastens the state's ability to move those needing treatment into a program. It is respectful of those who have fallen on hard times by preserving and allocating moneys for their intended use as temporary financial assistance, instead of having them diluted and squandered by illegal activity.
- *This type of legislation singles out the poor.*
 While it is true that screening those requesting to be on/on public assistance typically encompasses those who are having a difficult time financially, it should be noted the same practice occurs in the private sector where income levels, great or small, are of no factor. Where one is asked to test as a condition of receiving taxpayer money and benefits, the other is asked to test as a condition of employment or continued employment. Moreover, as I have heard from our respective bodies that we, as legislators, should lead by example, and because I believe a person's current socioeconomic position has no bearing on the intent or application of this legislation, I have requested an amendment to add legislators to the list of elected officials required to pass drug screening (KSA 75-4362).
- *Legislation of this nature violates the Fourth Amendment*
 Initially successfully argued in the Michigan court case, because welfare is not an entitlement, states have the right to place reasonable restrictions or conditions on the receipt of discretionary government benefits, according to the Washington Legal Foundation. Moreover, identifying recipients who need treatment in an effort to move them out of addiction and poverty, and back into a productive role in society, while aiding the prevention of potential family abuse and neglect, can less be categorized as a violation, but rather a noble attempt at preserving a person's dignity and ensuring a better future.
- *Welfare recipients use illegal drugs at roughly the same rate as non-welfare recipients*
 Whether this statement is true or not has no bearing on the fact that tax dollars are not appropriated for illegal activity, fraud and abuse. While both sets may have drug-related habits, only one is taxpayer funded.
- *A focus on drug use distracts from other problems that contribute to unemployment and child neglect.*
 Conversely, the earlier the intervention, the sooner help can be given for all factors in play. Drugging often harms families through abuse and neglect when a propensity exists to spend money on drugs instead of necessities, ever the while withdrawing incentive to hold stable employment. Whether psychological disorders, dependency disorders, or other factors are in play in drug use, early intervention and proper placement can identify and stem a tide of consequences.
- *Random drug testing for those on public assistance could lead to an expansion in drug testing.*
 As long as illegal drugs remain illegal, and taxpayer funds are allocated for a specific use but are thus misused, an instrument such as drug testing is reasonable and rational in the scope of need.
- *There is a difference between illegal drug use and a dependency on an illegal drug.*
 Whether occasional use or a dependency exists is impertinent. The purchase and use of illegal substances with taxpayer moneys is a gross misuse of public programs, and an affront to those law-abiding citizens paying into the system.

Many of us have heard frustrations from our taxpaying constituents or received chain emails about the inequity of being required to pass drug tests for employment, while those receiving the tax dollars generated by drug-tested workers are not held to the same standard. The overarching intent of HB 2775 is to preserve public assistance for its original intent, and move those who use into a treatment program where they can have the potential to emerge a victor over drugs, a more productive citizen, and – if children are involved – a better parent. Simply put, we must ensure that dollars are going for diapers and detergent instead of drugs.

In conclusion, the launch of this program would be, as already outlined in the bill, dependent upon appropriation. Although we all are too familiar with the budget deficit we face, it is instructive to remember the Michigan program when considering this legislation. In its five short weeks, the data was strong enough to indicate that longer-term savings in a program of this nature could eclipse administration costs. As such, it is conceivable that found savings could serve as a future funding mechanism for the continued execution of the program.

Mr. Chair, committee, there is far more that I could say about this topic, but I am mindful of the time and the committee's schedule so, at this point, I would stand for questions.



KANSAS

DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

Don Jordan, Secretary

Senate Public Health and Welfare Committee
February 24, 2010

Public Assistance and Random Drug Testing

For Additional Information Contact:

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(785) 296-3271

Senate Public Health & Welfare

Date:

Attachment:

02/25/10

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Public Assistance and Random Drug Testing House Health and Human Services February 24, 2010

Madam Chair, thank you for the opportunity to present information regarding HB 2275, which establishes a program of random drug testing of cash assistance applicants and recipients as a condition of eligibility for assistance.

Federal food assistance laws prohibit drug testing for purposes of eligibility or participation. The TAF and General Assistance programs have no regulations prohibiting drug testing as a condition of eligibility. SRS recognizes substance use disorders as a serious barrier to employment and ongoing self sufficiency. With the onset of welfare reform in the mid 1990's, deliberate measures were initiated to identify applicants and recipients with substance abuse issues and to provide related treatment services essential in the recovery process.

SRS Addiction and Prevention Services (AAPS) screens all TAF cash customers for substance use problems in local SRS offices at the time of orientation for TAF services. Those participants determined to have a high probability of a substance use disorder receive a full assessment of need for intervention services. Persons that are assessed as in need of services are mandated to participate in the Solutions Recovery Care Coordination program. The program provides intensive case management services to assist the TAF recipient in obtaining recovery from substance use disorders. In FY 2009 there were 911 persons that received SRCC services for recovery support; 58 % of participants entered formal treatment.

No state currently conducts random drug testing of public assistance recipients. Michigan is the only state to have implemented a policy of drug testing TAF recipients as an eligibility condition. In 2003, the 6th circuit Court of Appeals struck down the Michigan law as unconstitutional based on violation of the Fourth Amendment rights against unreasonable search and seizure absent a reasonable suspicion that the recipients had committed a crime. Before the Michigan drug testing program was halted, only ten percent of recipients tested positive for drugs. Three percent of these tested positive for hard drugs such as cocaine and amphetamines. This is similar, if not lower, than rates of drug usage in the general population.

Implementing a formalized drug testing program will entail additional monitoring, tracking, sampling, recipient notification, and case coordination on the part of SRS staff and our treatment network. It is difficult to assess the associated costs of workload increases, screening and treatment.

Thank you for the opportunity to present information as the Committee weighs the merits and risks associated with HB2275.

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OVERSIGHT
DISASTER RECOVERY COMMITTEE—RANKING
DEMOCRAT

February 24, 2010

Chairman Barnett, Public Health and Welfare

Ranking Member Haley,

Members of the committee:

Under House Bill 2275; the request for recipients of TANF and other benefits local, state, and federal to be randomly drug screened should be made mandatory under the intent of this bill.

We as law makers have a responsibility to assure the taxpayers and citizens of Kansas that we are not perpetuating a culture of drug use.

It has been made known to me that we have an epidemic of individuals receiving aid to have been using or still using illegal drugs on a daily basis. We have no checks and balances in place to curtail this behavior. Our taxpayer dollars are being used to fund drug pushers, dealers and the drug cartels by allowing benefit recipients to go unchecked.

We do not want to take the benefits from the children, we in fact want to assure their safety from abuse or neglect by a drug addicted parent or guardian.

The mother in Florida who was prostituting her five year old daughter in order to fund her drug use was more concerned on her next fix than on her child. Subsequently the child was found dead in a trash heap. Could this have been avoided? We may never know but safeguards and some remedies need to be put in place.

I urge your support to move this bill out of committee favorably.

Respectfully,

A handwritten signature in black ink, appearing to read 'Louis E. Ruiz', with a large, stylized flourish at the end.

Representative Louis E. Ruiz

Senate Public Health & Welfare
Date:
Attachment:

02/25/10