

House Bill 861

By: Representatives Harden of the 28th, Ramsey of the 72nd, Allison of the 8th, Dempsey of the 13th, McBrayer of the 153rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 35 of the Official Code of Georgia Annotated, relating to law
2 enforcement officers, so as to require law enforcement agencies to report drug related arrests
3 to the Department of Human Services; to amend Article 1 of Chapter 4 of Title 49 of the
4 Official Code of Georgia Annotated, relating to general provisions for public assistance, so
5 as to require drug testing for applicants and recipients of state administered TANF benefits;
6 to provide for legislative intent; to provide for related matters; to provide for severability; to
7 provide for an effective date and applicability; to repeal conflicting laws; and for other
8 purposes.

9 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

10 **SECTION 1.**

11 WHEREAS, the citizens of this state have a great concern for the abuse of illegal substances
12 by recipients of public benefits not only because such benefits are paid with limited public
13 funds that are potentially wasted on illegal drug users, but also because of the need to
14 identify and provide help to those who are caught in the trap of drug addiction; and

15 WHEREAS, the Georgia General Assembly recognizes the importance of encouraging a
16 drug-free lifestyle and believes that the state should discourage rather than support the abuse
17 of illegal substances; and

18 WHEREAS, the use of illegal drugs by those on the lower end of the economic scale makes
19 it more likely that such persons will remain in poverty and commit other criminal offenses;
20 and

21 WHEREAS, serious drug abuse by lower income parents is more likely to result in the
22 children of impoverished families failing in school, developing emotional or behavior
23 problems, and being neglected or abused; and

24 WHEREAS, if the state is to take responsibility for breaking the tragic cycle of the
 25 interrelated conditions of poverty, crime, and drug abuse, then it is necessary and proper for
 26 the state to adopt a practice that will identify those substance abusers who receive state
 27 benefits rather than continuing to allow government tax dollars to support these
 28 self-destructive behaviors.

29 Therefore, the Georgia General Assembly by this Act adopts a just and effective means of
 30 identifying illegal drug users receiving public benefits.

31 SECTION 2.

32 Chapter 1 of Title 35 of the Official Code of Georgia Annotated, relating to law enforcement
 33 officers, is amended by adding a new Code section to read as follows:

34 "35-1-18.

35 (a) It is the intent of the General Assembly to encourage Georgia law enforcement officials
 36 to work in conjunction with the Department of Human Services to help identify illegal
 37 substance abusers receiving certain public benefits.

38 (b) For purposes of this Code section, 'drug related offense' means any criminal offense
 39 that requires as an element of such offense the possession, consumption, use, or distribution
 40 of marijuana or a controlled substance.

41 (c) Every law enforcement agency shall electronically report any available identification
 42 information of a suspect who is arrested for a drug related offense who is 18 years of age
 43 or older to the Department Human Services. Such report shall be made within seven days
 44 of the arrest and in a manner prescribed by the department."

45 SECTION 3.

46 Article 1 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to
 47 general provisions relating to public assistance, is amended by adding a new Code section
 48 to read as follows:

49 "49-4-3.1.

50 (a) As used in this Code section, the term:

51 (1) 'Applicant' means any person applying or reapplying for TANF benefits with the
 52 Department of Human Services or any public or private entity working on behalf of the
 53 department in the administration of TANF benefits.

54 (2) 'Drug related offense' means any criminal offense that requires as an element of such
 55 offense the possession, consumption, use, or distribution of marijuana or a controlled
 56 substance.

57 (3) 'Drug test' means the collection and testing of bodily fluids or other matter for the
58 presence of marijuana or controlled substances administered in a manner equivalent to
59 that required by the Mandatory Guidelines for Federal Workplace Drug Testing Programs
60 (HHS Regulations 53 C.F.R. 11979, et seq., as amended) or other professionally valid
61 procedures approved and adopted by the department. The term 'drug test' shall include
62 any initial test or tests and any follow-up test required to meet or exceed federal or other
63 professional standards for ensuring the accuracy of the testing process.

64 (4) 'Failing a drug test' means test results indicating the presence of marijuana or a
65 controlled substance in a person's system; provided, however, that where a person has a
66 valid medical prescription for a controlled substance for which he or she tested positive,
67 he or she shall not be considered to have failed a drug test for such substance.

68 (5) 'Recipient' means a person currently receiving TANF benefits from or through the
69 Department of Human Services.

70 (6) 'TANF benefits' means state administered federal benefits under the Temporary
71 Assistance For Needy Families (TANF) program but shall not include any public
72 assistance related to the provision of medical care.

73 (b) Not later than January 1, 2013, the Department of Human Services shall institute a
74 drug testing program for applicants of TANF benefits who are 18 years of age or older.
75 The drug testing program for TANF benefits shall require that a drug test be administered
76 to each applicant for TANF benefits prior to the receipt of any such benefits.

77 (c) Contingent upon available funding, in addition to administering a drug test to
78 applicants for TANF benefits, the department shall institute a random drug testing program
79 for recipients of TANF benefits. A recipient of TANF benefits shall submit, not less than
80 once every two years, to the department's random drug testing program as a requirement
81 for continued receipt of such benefits. The department shall be responsible for ensuring
82 that recipients chosen for drug testing are selected at random and not by any other criteria.

83 (d) In addition to administering a drug test to applicants for TANF benefits, the department
84 shall also administer a drug test to recipients of TANF benefits who have been arrested for
85 drug related offenses. Drug testing of recipients of TANF benefits arrested for drug related
86 offenses shall be conducted within 30 days of the department receiving notice of the
87 recipient's arrest. The department shall establish a procedure by which law enforcement
88 agencies may report arrests for drug related offenses.

89 (e) The department shall deny TANF benefits to an applicant for or recipient of TANF
90 benefits if the applicant or recipient fails a drug test.

91 (f) Failure of an applicant or recipient to comply with the drug testing requirements of this
92 Code section or the rules and regulations of the department for the administration of such

93 test shall be deemed to be equivalent to failing a drug test, and the applicant or recipient
94 shall be denied or deemed ineligible to receive TANF benefits.

95 (g) A person denied TANF benefits for failing a drug test pursuant to this Code section
96 may reapply for such benefits but shall be required to pass a drug test in the same manner
97 as an original applicant for such benefits. Any person failing a second drug test
98 administered under the provisions of this Code section shall not be permitted to reapply for
99 TANF benefits for a period of two years following the results of such test. Any person
100 failing a third drug test administered under the provisions of this Code section shall be
101 indefinitely prohibited from reapplying for TANF benefits.

102 (h) The department shall be responsible for ensuring the confidentiality of any and all drug
103 test results administered as part of the program. Random drug test results shall be used
104 only for the purpose of denying or determining eligibility for continued receipt of state
105 public assistance, state administered federal public assistance, or both. At no time shall
106 drug test results be released to any public or private person or entity except as requested
107 by the person tested.

108 (i) If a parent is deemed ineligible for TANF benefits as a result of failing a drug test
109 conducted under this Code section, the dependent child's eligibility for TANF benefits shall
110 not be affected. An appropriate protective payee shall be designated and approved by the
111 department to receive benefits on behalf of the child. The parent may recommend another
112 individual to receive benefits for the parent's minor child. The recommended individual
113 must be an immediate family member. If an immediate family member is not available or
114 the family member declines the option, another individual shall be designated and approved
115 by the department. The designated individual shall also undergo drug testing before being
116 approved to receive benefits on behalf of the child. If the designated individual fails a drug
117 test, he or she shall be ineligible to receive benefits on behalf of the child.

118 (j) The department shall provide for an administrative hearing and interdepartmental
119 appeal for review of the findings of the department to the commissioner or his or her
120 designee. A decision by the commissioner or his or her designee shall be considered a final
121 agency decision. A review of the final agency decision may be conducted by appeal to the
122 superior court of the county where the applicant or recipient resides. An appeal of a final
123 agency decision shall be filed within 30 days of the decision and such decision shall be
124 affirmed provided there is any evidence to support the findings of the department. The
125 administrative appeal proceedings authorized under this subsection shall be conducted by
126 the department and shall not be conducted by the Office of Administrative Hearings or any
127 other agency outside of the department.

128 (k) The administrative costs of the drug test administered pursuant to this Code section
129 shall be paid by the recipient of TANF benefits by deducting such costs from the benefits

130 over a period of 12 months; provided, however, that a recipient of public benefits shall not
131 be charged more than a total of \$40.00 per drug test nor be required to pay for more than
132 two tests in a two-year period.

133 (l) The results of any drug test done according to this Code section shall not be subject to
134 disclosure under Article 4 of Chapter 18 of Title 50, relating to inspection of public
135 records. Such results shall not be used as a part of a criminal investigation or criminal
136 prosecution. Such results may not be used in a civil action or otherwise disclosed to any
137 person or entity without the express written consent of the person tested or his or her heirs
138 or legal representative. All such records shall be destroyed five years after the date of the
139 test.

140 (m) The department shall adopt rules and regulations for the administration of a drug
141 testing program in accordance with the provisions of this Code section."

142 **SECTION 4.**

143 In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared
144 or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other
145 sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full
146 force and effect as if the section, subsection, sentence, clause, or phrase so declared or
147 adjudged invalid or unconstitutional were not originally a part hereof. The General
148 Assembly declares that it would have passed the remaining parts of this Act if it had known
149 that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

150 **SECTION 5.**

151 This Act shall become effective on July 1, 2012, and shall apply to applicants or recipients
152 of TANF benefits on or after January 1, 2013.

153 **SECTION 6.**

154 All laws and parts of laws in conflict with this Act are repealed.