

STATE OF NEW YORK

7574

IN SENATE

January 26, 2018

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT to amend the social services law, in relation to requiring recipients of public assistance benefits submit to pre-qualification drug screening and testing, random drug testing, reasonable suspicion drug testing and resumption of benefits drug testing

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The social services law is amended by adding a new section
2 132-b to read as follows:

3 § 132-b. Drug testing. 1. Every person who a. is eligible to receive
4 TANF assistance or who receives TANF assistance on behalf of a child;
5 and b. is at least eighteen years of age shall, as a condition of
6 receiving TANF assistance, submit to drug testing, random drug testing,
7 reasonable suspicion drug testing and resumption of benefits drug test-
8 ing, in accordance with the requirements of this section and otherwise
9 comply with the provisions of this section.

10 2. Each local social services office shall, at the time an applicant
11 applies for TANF assistance:

12 a. require the applicant to take a written substance abuse subtle
13 screening inventory test administered by a county office; and

14 b. notify the applicant that:

15 (1) the applicant is required to take a written substance abuse subtle
16 screening inventory test;

17 (2) the applicant may be subject to random drug testing based on the
18 results of the test described in paragraph a of this subdivision;

19 (3) the applicant may be subject to drug testing if the county office
20 believes, based on reasonable suspicion as set forth in subdivision
21 three of this section, that the individual is engaged in the illegal use
22 of a controlled substance;

23 (4) if the applicant tests positive on a drug test administered under
24 this section, the individual or the child on whose behalf the individual
25 receives TANF assistance may be ineligible for TANF assistance;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (5) if the applicant tests positive on a drug test administered under
2 this section, the amount of the cost of the drug test will be withheld
3 from any future TANF assistance the individual receives if the individ-
4 ual continues to receive TANF assistance; and

5 (6) if the applicant tests positive on a drug test administered under
6 this section, the amount of the cost of any subsequent drug tests the
7 individual is required to undergo will be withheld from the TANF assist-
8 ance the individual receives, if the individual continues to receive
9 TANF assistance, regardless of whether the individual tests positive or
10 tests negative on the drug test.

11 3. a. A local social services office is considered to have reasonable
12 suspicion to believe that an individual is engaged in the illegal use of
13 a controlled substance if one or more of the following apply:

14 (1) the individual has been charged with an offense under article two
15 hundred twenty (controlled substances offenses) or two hundred twenty-
16 one (offenses involving marihuana) of the penal code;

17 (2) the results of the substance abuse subtle screening inventory test
18 indicate that the individual is a risk for the illegal use of a
19 controlled substance; or

20 (3) the individual has previously failed a drug test administered
21 under this section.

22 b. If a local social services office has knowledge that an individual
23 has been formally charged with an offense described in subparagraph one
24 of paragraph a of this subdivision, the local social services office
25 shall administer a drug test to the individual.

26 c. If a local social services office has reasonable suspicion to
27 believe from the results of a substance abuse subtle screening inventory
28 test that an individual is engaged in the illegal use of a controlled
29 substance, the individual shall be placed in a pool of individuals who
30 are subject to drug testing described in paragraph a of subdivision four
31 of this section.

32 d. If a local social services office has reasonable suspicion to
33 believe that an individual is engaged in the illegal use of a controlled
34 substance as the result of failing a drug test administered under this
35 section, the individual shall be placed in a pool of individuals who are
36 subject to random drug testing as described in paragraph b of subdivi-
37 sion four of this section.

38 4. a. The local social services office shall administer a drug test to
39 at least fifty percent of the pool of individuals described in paragraph
40 c of subdivision three of this section. An individual may not be tested
41 more than once under this section.

42 b. The local social services office shall administer random drug tests
43 to twenty-five percent of the pool of individuals described in paragraph
44 d of subdivision three of this section each month.

45 c. The local social services office shall provide a list of drug abuse
46 treatment programs to any individual who tests positive under this
47 section.

48 5. a. An individual who tests positive under this section and provides
49 evidence that the individual is participating in a drug abuse treatment
50 program shall continue to receive TANF assistance. However, the office
51 of the secretary shall administer a drug test to the individual regular-
52 ly at intervals of at least twenty days and not more than thirty days
53 until the individual tests negative in two consecutive drug tests.

54 b. If an individual does not test negative in two consecutive drug
55 tests as described in paragraph a of this subdivision not later than
56 four months after the date the office of the local social services

1 office begins testing the individual regularly under paragraph a of this
2 subdivision, the individual, or any child on whose behalf the individual
3 receives TANF assistance, is ineligible to receive TANF assistance for
4 three months from the date the local social services office determines
5 that the individual is unable to test negative on two consecutive drug
6 tests as described in paragraph a of this subdivision.

7 c. If an individual tests positive under this section and fails to
8 provide, not later than thirty days after the date the individual tests
9 positive, evidence that the individual is participating in a drug abuse
10 treatment program, the individual or any child on whose behalf the indi-
11 vidual receives TANF assistance is ineligible to receive TANF assistance
12 for three months after the thirty day period expires.

13 d. An individual who is ineligible under paragraph b or c of this
14 subdivision may reapply for TANF assistance after the applicable three
15 month ineligibility period. Upon reapplying, the individual must test
16 negative on a drug test before the individual may receive TANF assist-
17 ance.

18 e. If an individual described in paragraph d of this subdivision tests
19 positive on the drug test administered for the TANF reapplication proc-
20 ess, the following apply:

21 (1) The individual is permanently ineligible to receive TANF assist-
22 ance for the individual.

23 (2) A child on whose behalf the individual receives TANF assistance is
24 ineligible for TANF assistance for as long as the child resides with the
25 individual.

26 6. a. An individual who reapplies for TANF assistance under paragraph
27 d of subdivision five of this section and is eligible to receive TANF
28 assistance is subject to random drug testing as described in paragraph b
29 of subdivision four of this section for as long as the individual
30 receives TANF assistance.

31 b. The local social services office shall administer random drug tests
32 to twenty-five percent of the pool of individuals described in paragraph
33 a of this subdivision each month.

34 7. a. If an individual who is ineligible to receive TANF assistance
35 under the provisions of this section and who was not a parent or guardi-
36 an of a child at the time he or she became ineligible to receive TANF
37 assistance subsequently becomes a parent or guardian of a child and
38 tests negative on a drug test administered by the local social services
39 office, the child is eligible for TANF assistance under this section if
40 the child meets all the other eligibility requirements to receive TANF
41 assistance.

42 b. An individual described in paragraph a of this subdivision is
43 subject to random drug testing as described in paragraph b of subdivi-
44 sion six of this section for as long as the individual receives TANF
45 assistance.

46 c. If an individual described under paragraph a of this subdivision
47 tests positive on a drug test administered by the local social services
48 office, the child on whose behalf the individual receives TANF assist-
49 ance is ineligible to receive TANF assistance for as long as the child
50 resides with the individual.

51 8. If an individual refuses to take a substance abuse subtle screening
52 inventory test or drug test under this section, the following apply:

53 a. The individual is ineligible to receive TANF assistance.

54 b. A child on whose behalf the individual receives TANF assistance is
55 ineligible for TANF assistance for as long as the child resides with the
56 individual.

1 9. a. Except as provided in paragraph b of this subdivision, the local
2 social services office shall pay the costs of a drug test administered
3 under this section.

4 b. If an individual tests positive on a drug test administered under
5 this section, the local social services office shall withhold the amount
6 of the cost of the drug test from the next payment of TANF assistance
7 the individual receives if the individual receives TANF assistance.

8 10. Any determination of ineligibility for TANF assistance under the
9 provisions of this section is subject to appeal and judicial review as
10 provided in section twenty-two of this chapter.

11 11. A drug test administered under the program must be performed by a
12 SAMHSA (as defined in IC 22-10-15-3) certified laboratory.

13 12. The local social services office shall notify the office of chil-
14 dren and family services regarding a child who is ineligible for TANF
15 assistance under this section. The office of children and family
16 services shall, not later than nine months after the date it receives
17 the notice, conduct a home visit at the child's residence to determine
18 whether to pursue the report as a report of suspected child abuse or
19 neglect.

20 13. The local social services office's records concerning the results
21 of a drug test under this section may not be admitted against a defend-
22 ant in a criminal proceeding.

23 14. As used in this section: a. "Controlled substance" means any
24 substance listed in schedule I, II, III, IV or V of section thirty-three
25 hundred six of the public health law other than marihuana, but including
26 concentrated cannabis as defined in paragraph (a) of subdivision four of
27 section thirty-three hundred two of such law.

28 b. "TANF assistance" means assistance under the federal Temporary
29 Assistance for Needy Families program under 42 U.S.C. 601 et seq.

30 c. "Tests negative" or "testing negative" means that an individual:
31 (1) tests negative for the use of a controlled substance in the indi-
32 vidual's body; and

33 (2) tests positive for the use of a controlled substance in the indi-
34 vidual's body but has a valid prescription or an order of a practitioner
35 acting in the course of the practitioner's professional practice for the
36 controlled substance.

37 d. "Tests positive" or "testing positive" means an individual:
38 (1) tests positive for the presence of a controlled substance in the
39 individual's body; and

40 (2) does not possess a valid prescription or an order of a practition-
41 er acting in the course of the practitioner's professional practice for
42 the controlled substance.

43 § 2. This act shall take effect on the first of January next succeed-
44 ing the date on which it shall have become a law.