

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Committee

BILL: CS/CS/SB 556

INTRODUCER: Budget Committee, Criminal Justice Committee and Senators Oelrich, Dockery, and Garcia

SUBJECT: Drug Screening/Beneficiaries/Temporary Assistance

DATE: April 21, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Carpenter</u>	<u>Hansen</u>	<u>BHA</u>	<u>Fav/1 amendment</u>
3.	<u>Carpenter</u>	<u>Meyer, C.</u>	<u>BC</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill creates s. 414.145, F.S., establishing that the Department of Children and Families (DCF) shall create a drug screening program for temporary cash assistance (TANF) applicants as a condition of eligibility consistent with s. 112.0455, F.S. The bill provides the following:

- Adult applicants for TANF, to include both parents in a two-parent household, or caretaker relative who is included in the cash assistance group, shall be drug screened;
- Applicants who are teen parents and not required to live with a parent, legal guardian or other adult caretaker relative must also be tested;
- The Department of Children and Family Services must provide each individual with notice of the drug testing requirement at the time of application for TANF benefits, and that the individual is responsible for the cost of drug testing;
- Applicants that fail the drug screen have the right to submit to an additional drug screening under circumstances to be specified by DCF. The applicant who tests positive is ineligible for TANF benefits for one year. If, after one year, the person applies for TANF benefits and tests positive again, he or she shall be disqualified from receiving temporary cash assistance for 3 years;

- Provides that individuals testing positive for drugs and denied TANF benefits may reapply for those benefits after six months with documentation of successful completion of a licensed substance abuse program and passing a drug test.
- Specifies that a parent's ineligibility to receive TANF benefits due to a failed drug test does not affect his or her dependent child's eligibility for TANF benefits. The applicant who has failed a drug screen may designate another individual, who must pass the drug screening, to receive the cash assistance benefits on behalf of a minor child;
- DCF shall provide any individual who tests positive for drugs with information concerning drug abuse and treatment programs in the area in which he or she resides. The bill specifies that neither DCF nor the state is responsible for providing or paying for substance abuse treatment as part of screening under this section;
- Provides the Department of Children and Family Services with rule making authority to administer the section; and
- There is no date specified in the bill for the beginning of the drug screening of TANF applicants although the bill provides an effective date of July 1, 2011.

This bill has no direct fiscal impact on the Department of Children and Family Services, and necessary changes to the ACCESS Program's information systems to accommodate new notice requirements can be handled within existing resources.

This bill creates section 414.145 of the Florida Statutes.

II. Present Situation:

Temporary Assistance for Needy Families (TANF)

Under the welfare reform legislation of 1996, the Personal Responsibility and Work Opportunity Reconciliation Act – PWRORA – Public Law 104-193, the Temporary Assistance for Needy Families (TANF) program replaced the welfare programs known as Aid to Families with Dependent Children (AFDC), the Job Opportunities and Basic Skills Training (JOBS) program and the Emergency Assistance (EA) program.

The law ended federal entitlement to assistance and instead created TANF as a block grant that provides States, territories and tribes federal funds each year. These funds cover benefits, administrative expenses, and services targeted to needy families.

TANF became effective July 1, 1997, and was reauthorized in February 2006 under the Deficit Reduction Act of 2005.¹ States receive block grants to operate their individual programs and to accomplish the goals of the TANF program. Those goals include:

- Assisting needy families so that children can be cared for in their homes;
- Reducing the dependency of needy parents by promoting job preparation, work, and marriage;
- Preventing out-of-wedlock pregnancies; and
- Encouraging the formation and maintenance of two-parent families.²

¹ US Dept. of Health and Human Services, Administration on Children and Families <http://www.acf.hhs.gov/programs/ofa/tanf/about.html> (last visited on 2/15/11).

² *Id*

Currently, DCF administers the TANF program in conjunction with the Agency for Workforce Innovation (AWI). Current law provides that families are eligible for cash assistance for a lifetime cumulative total of 48 months (4 years).³ DCF reports that approximately 113,346 people are receiving temporary cash assistance.⁴ The FY 2010-2011 appropriation of TANF funds to support temporary cash assistance was \$211,115,965.

The TANF program expires on September 30, 2011, and must be reauthorized by Congress to continue.

Pilot Project for Drug Testing TANF Applicants

From January 1999 to May 2001, DCF in consultation with Workforce Florida implemented a pilot project in Regions 3 and 8 to drug screen and drug test applicants for TANF.⁵ A Florida State University researcher under contract to evaluate the pilot program did not recommend continuation or statewide expansion of the project. Overall research and findings concluded that there is very little difference in employment and earnings between those who test positive versus those who test negative. Researchers concluded that the cost of the pilot program was not warranted.

Sanctions to Welfare and Food Assistance Recipients Resulting from Felony Drug Convictions

Federal law provides that an individual convicted (under federal or state law) of any offense which is classified as a felony related to the possession, use or distribution of a controlled substance shall not be eligible for assistance under the TANF program or benefits under the food stamp program or any program carried out under the Food and Nutrition Act of 2008.⁶

The same section of Federal law provides that each state has the right to exempt individuals from having benefits withheld due to a felony drug charge.⁷ Florida has opted to exempt individuals from this provision and does not deny benefits for a felony drug conviction, unless the conviction is for drug trafficking.⁸

Drug Testing Welfare and Food Assistance Recipients

Federal law regarding the use of TANF funds provides that states may test welfare recipients for use of controlled substances and sanction those recipients who test positive.⁹

Protective Payees

The TANF program requires that people receiving cash assistance must satisfy work requirements established in federal law. Florida statutes provide that the Agency for Workforce Innovation develop specific activities that satisfy the work requirements.¹⁰

³ s. 414.105, F.S.

⁴ DCF Quick Facts, Access Program, January 1, 2011.

⁵ Evaluation Report, Robert E. Crew, Florida State University (on file with House committee staff).

⁶ P.L. 104-193, Section 115, 42 U.S.C. 862(a)

⁷ *Id*

⁸ s. 414.095, F.S.

⁹ P.L. 104-193, Section 902, 21 U.S.C. 862(b)

¹⁰ s. 445.024, F.S.

In the event that a TANF recipient is noncompliant with the work activity requirements, DCF has authority to terminate cash assistance to the family.¹¹ In the event that assistance is terminated, DCF will establish a protective payee that will receive TANF funds on behalf of any children in the home who are under the age of 16.¹² The protective payee shall be designated by DCF and may include:¹³

- A relative or other individual who is interested in or concerned with the welfare of the child or children and agrees in writing to utilize the assistance in the best interest of the child or children;
- A member of the community affiliated with a religious, community, neighborhood, or charitable organization who agrees in writing to utilize the assistance in the best interest of the child or children; and
- A volunteer or member of an organization who agrees in writing to fulfill the role of protective payee and utilize the assistance in the best interest of the child or children.

Agency for Health Care Administration – Laboratory Certifications

The Agency for Health Care Administration (AHCA) regulates facilities that perform clinical, anatomic, or cytology lab services to provide information or materials for use in diagnosis, prevention, or treatment of a disease or in the identification or assessment of a medical or physical condition in accordance with Chapters 408 and 483, F.S. These are considered clinical labs.

Additionally, AHCA regulates facilities for “Drug Free Workplaces,” pursuant to s. 112.0455, F.S. These types of labs perform chemical, biological, or physical instrumental analyses to determine the presence or absence of specified drugs or their metabolites in job applicants of any agency in state government.¹⁴ AHCA does not have the authority to drug screen temporary cash assistance benefits in either of these labs.

Department of Health and Human Services Division of Workplace Programs

The United States Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration (SAMHSA), Division of Workplace Programs (DWP) provide oversight for the Federal Drug Free Workplace Program. DWP certifies labs that conduct forensic drug testing for federal agencies and for some federally-regulated industries.¹⁵

III. Effect of Proposed Changes:

The bill creates s. 414.145, F.S., providing that the Department of Children and Family Services (DCF) will create a drug screening program that requires individuals who apply for temporary cash assistance benefits (TANF) to consent to being drug screened as a condition of eligibility. There is no implementation date for the program in the bill. Existing beneficiaries of the TANF program are not covered by the bill.

¹¹ s. 414.065, F.S.

¹² *Id*

¹³ *Id*

¹⁴ Chapter 408, F.S.

¹⁵ *Id*

DCF must provide notice of the potential of drug screening to all applicants and shall require an applicant to sign an acknowledgement form that he or she has received notice of DCF's drug screen policy and that he or she can refuse to undergo the screen. The screening shall be consistent with drug testing under The Drug-Free Workplace Act, s. 112.0455, F.S.

The bill provides that an adult applicant will be disqualified from receiving TANF benefits if:

- They refuse to submit to a drug screen or confirmatory test; or
- They test positive for drugs as a result of a confirmation test.

If an applicant fails a confirmation test they will be ineligible for TANF benefits for 1 year. Upon application for TANF benefits after a one-year period, if the applicant tests positive again, he or she is disqualified from receiving TANF for 3 years. However, with documentation of successful completion of a licensed substance abuse treatment program and passing an initial drug test, an individual may reapply after six months.

In a two-parent household, both parents must be tested. Any caretaker relative included in the TANF group must also be tested. Teen parents who are not required to live with a parent, legal guardian, or adult caretaker relative are also required to be tested.

The bill establishes that in the event the individual has minor children, the individual can designate an immediate family member or another individual approved by DCF to receive funds on behalf of the children. The designated individual must pass a drug screen.

DCF shall provide an individual who tests positive for drugs information concerning substance abuse treatment programs that may be available in their area. Neither DCF nor the state is responsible for providing or paying for substance abuse treatment for these individuals as part of the screening conducted in this section of law.

Applicants for cash assistance shall be responsible for the cost of both the initial drug screen and the confirmatory test (if needed).

Rule making authority is provided in order for DCF to implement the drug testing program.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirement of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

In a Michigan case welfare recipients sought an injunction to stop enforcement of a state statute authorizing suspicionless drug testing of applicants for and recipients of benefits. The U.S. District Court issued the temporary injunction and the State of Michigan appealed. The Circuit Court of Appeal overturned the District Court's ruling in 2003.¹⁶ In doing so the court thoroughly analyzed the evidence presented by the state to show the state's "special need" for the suspicionless drug testing. The Court relied, in part, on the 2002 U.S. Supreme Court decision in *Board of Education v. Earls* that approved of drug testing of students who participate in extracurricular activities.¹⁷

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill will have an impact on applicants who are required to undergo a drug screen or confirmation test as a condition of eligibility for temporary cash assistance funds. The department estimates that initial drug screening will cost \$10 per person and confirmatory tests will cost approximately \$25 per person.

C. Government Sector Impact:

The fiscal impact of this bill is unknown. However, because of the bill's provision that a TANF applicant, who is a parent with a minor child, and who fails the drug screen, may designate another recipient on the child's behalf, it is less likely TANF funds would be "saved" in every case of a positive drug screen.

Currently, DCF does not drug screen any individual as a condition of eligibility for cash assistance. DCF estimates that between 170-340 people (based on current caseloads) would test positive as a result of a drug screen. This estimate may be low.

The Substance Abuse and Mental Health Administration, which is part of the U.S. Department of Health and Human Services found that 9.6 percent of people living in households that receive government assistance used illicit drugs (in the previous month) compared with a 6.8 percent rate among families who receive no assistance.¹⁸

¹⁶ *Marchwinski v. Howard*, 309 F.3d 330 (6th Cir. 2002).

¹⁷ *Earls*, 122 S.Ct. 2559 (2002).

¹⁸ *Should Welfare Recipients Get Drug Testing?*, Alan Greenblatt, www.npr.org, March 31, 2010.

As mentioned in the Present Situation section of the analysis, a drug-screening pilot project was conducted in the Jacksonville area and parts of Putnam County between 1999 and 2001. During the project, 8,797 applicants or recipients were tested. Of those 8,797 applicants who were tested, 335 applicants tested positive for a controlled substance. The Orlando Sentinel reported that the cost of the pilot project was \$2.7 million.¹⁹

The bill states that neither the department nor the state is responsible for paying for substance abuse treatment for individuals as part of the screening conducted in this section. This could create problems for DCF when individuals who failed TANF drug screening seek help at a DCF-licensed substance abuse treatment facility or provider. It appears that DCF would need to establish a system to cross-reference those denied temporary cash assistance due to drug screening with those who are seeking substance abuse treatment. It is unknown at this time what the cost of developing such a cross-referencing system would be.

The department does not have exact estimates of the costs to changing its information systems required by the bill but states that these changes can be done within existing resources. Specifically, changes to the ACCESS program's information systems would be necessary to address new notice requirements by the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Budget Committee on April 15, 2011:

- Provides that individuals who test positive for drugs may reapply for cash assistance after six months with documentation of successful completion of a substance abuse treatment program licensed by the Department of Children and Family Services;
- Requires individuals reapplying for cash assistance benefits to pass an initial drug test after the successful completion of a treatment program; and
- Requires that teen parents who are not required to live with a parent, legal guardian or other adult caretaker relative must comply with the drug-testing requirement.

CS by Criminal Justice on March 22, 2011:

- Created a different section of law – by changing s. 414.095 to s. 414.145, F.S., in the bill;

¹⁹ Orlando Sentinel editorial, *Our take on: Welfare drug tests*, October 30, 2010.

- Eliminated Supplemental Nutrition Assistance Program (SNAP) applicants from the provisions in the bill;
- Eliminated the legislative intent, definitions, program implementation date, details related to specimen collection and preservation, and DCF's reporting requirement from the bill;
- Modified the period of ineligibility for TANF upon an initial failed drug screen from 3 years to one year. Provided that upon re-application in one year, if the applicant tests positive again, he or she is ineligible for 3 years;
- Restored current law in s. 414.095, F.S., regarding convictions for trafficking in drugs as a reason to deny benefits; and
- Provided that testing shall be consistent with s. 112.0455, F.S., the Drug-Free Workplace Act.

B. Amendments:

None.