

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1117 Temporary Assistance For Needy Families Applicant Drug Screening
SPONSOR(S): Children, Families & Seniors Subcommittee, Latvala
TIED BILLS: **IDEN./SIM. BILLS:** SB 1392

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	8 Y, 2 N, As CS	Langston	Brazzell
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Temporary Assistance for Needy Families (TANF) program is a block grant that provides states, territories, and tribes federal funds each year to cover benefits, administrative expenses, and services targeted to needy families. States receive block grants to operate their individual programs and to accomplish the goals of the TANF program. Florida’s Temporary Cash Assistance (TCA) Program is funded through the TANF block grant and provides cash assistance to needy families with children that meet eligibility requirements.

Federal law regarding the use of TANF funds allows states to test welfare recipients for use of controlled substances and sanction those recipients who test positive. Fifteen states, including Florida, have laws imposing drug testing or screening for TANF applicants or recipients. Some laws apply to all applicants; other laws limit testing to those instances where there is a reason to believe the applicant or recipient is engaging in illegal drug activity or has a substance use disorder; and other laws require a specific screening process.

In 2011, Florida enacted s. 414.0652, F.S., which required all TANF applicants to submit to a drug test as a condition of eligibility to receive TCA benefits. However, the United States District Court for the Middle Court of Florida declared s. 414.0652, F.S., facially unconstitutional and permanently prohibited the state from reinstating and enforcing the law. Additionally, the United States Court of Appeals for the Eleventh Circuit held that this statute violated the Fourth Amendment for its unreasonable search of applicants without evidence of “a more prevalent, unique, or different drug problem among TANF applicants than in the general population.” This law is not currently being implemented.

CS/HB 1117 amends s. 414.0652, F.S., to limit drug testing of TANF applicants who:

- Have a previous drug-related felony conviction within the last ten years; and
- The Department of Children and Families (DCF) has a reasonable suspicion to believe are engaging in the illegal use of a controlled substance.

The bill will have a significant negative fiscal impact on DCF.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Temporary Assistance for Needy Families (TANF)

Under the federal welfare reform legislation of 1996, the Temporary Assistance for Needy Families (TANF) program replaced the welfare programs known as Aid to Families with Dependent Children, the Job Opportunities and Basic Skills Training program, and the Emergency Assistance 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 2006 by the Deficit Reduction Act of 2005. States receive block grants to operate their individual programs and to accomplish the goals of the TANF program.

Florida's Temporary Cash Assistance Program

The Temporary Cash Assistance (TCA) Program provides cash assistance to families with children under the age of 18 or under age 19¹ if full time secondary school students, that meet the technical, income, and asset requirements. The purpose of the TCA Program is to help families become self-supporting while allowing children to remain in their own homes. In November 2016, 12,517 adults and 65,855 children received TCA.²

Categories of TCA

Florida law specifies two categories of families who are eligible for TCA: those families that are work-eligible and may receive TCA for the full-family, and those families who are eligible to receive child-only TCA. Within the full-family cases, the parent or parents are required to comply with work requirements to receive TCA for the parent(s) and child(ren). Additionally, there are two types of child-only TCA:

- Where the child has not been adjudicated dependent, but is living with a relative,³ or still resides with his or her custodial parent, but that parent is not eligible to receive TCA;⁴ and
- The Relative Caregiver Program, where the child has been adjudicated dependent and has been placed with relatives by the court. These relatives are eligible for a payment that is higher than the typical child-only TCA.

The majority of cash assistance benefits are provided to child-only cases, through the Relative Caregiver Program or to work-eligible cases where the adult is ineligible due to sanction for failure to meet TCA work requirements. In November 2016, 35,350 of the 47,204 families receiving TCA were child-only cases.⁵ In November 2016, there were 11,854 families receiving TCA through full-family cases containing an adult, 520 of which were two-parent families; these are the families who are subject to work requirements.⁶

¹ Parents, children and minor siblings who live together must apply together. Additionally, pregnant women may also receive TCA, either in the third trimester of pregnancy if unable to work, or in the 9th month of pregnancy.

² Department of Children and Families, Monthly Flash Report Caseload Data: November 2016, <http://eww.dcf.state.fl.us/ess/reports/docs/flash2005.xls> (last visited January 30, 2017).

³ Grandparents or other relatives receiving child-only payments are not subject to the TANF work requirement or the TANF time limit.

⁴ Child-only families also include situations where a parent is receiving federal Supplemental Security Income (SSI) payments, situations where the parent is not a U.S. citizen and is ineligible to receive TCA due to his or her immigration status, and situations where the parent has been sanctioned for noncompliance with work requirements.

⁵ *Supra*, note 2.

⁶ *Id.*

Administration

Various state agencies and entities work together through a series of contracts or memorandums of understanding to administer the TCA Program.

- The Department of Children and Families (DCF) is the recipient of the federal TANF block grant. DCF monitors eligibility and disperses benefits.
- CareerSource Florida, Inc. is the state's workforce policy and investment board. CareerSource Florida has planning and oversight responsibilities for all workforce-related programs.
- The Department of Economic Opportunity (DEO) implements the policy created by CareerSource.⁷ DEO submits financial and performance reports ensuring compliance with federal and state measures and provides training and technical assistance to Regional Workforce Boards.
- Regional Workforce Boards (RWBs) provide a coordinated and comprehensive delivery of local workforce services. The RWBs focus on strategic planning, policy development and oversight of the local workforce investment system within their respective areas, and contracting with one-stop career centers. The contracts with the RWBs are performance- and incentive- based.

Eligibility Determination

An applicant must meet all eligibility requirements to receive TCA benefits. The initial application for TANF is processed by DCF. DCF determines an applicant's eligibility. Additionally, to be eligible for full-family TCA, applicants must participate in work activities unless they qualify for an exemption.⁸ If no exemptions from work requirements apply, DCF refers the applicant to DEO.⁹ Upon referral, the participant must complete an in-take application and undergo assessment by RWB staff. Once the assessment is complete, the staff member and participant create the Individual Responsibility Plan (IRP). DCF does not disperse any benefits to the participant until DEO or the RWB confirms that the participant has registered and attended orientation.

Work Requirement

Individuals receiving TCA who are not otherwise exempt from work activity requirements must participate in work activities¹⁰ for the maximum number of hours allowable under federal law.¹¹ The number of required work or activities hours is determined by calculating the value of the cash benefits and then dividing that number by the hourly minimum wage amount.

Protective Payee

In the event that a TANF recipient is noncompliant with the work activity requirements, DCF has authority to terminate TCA.¹² In the event TCA is terminated for the noncompliant adult, but not the children, DCF establishes a protective payee that will receive the funds on behalf of any children in the home who are under the age of 16.¹³ The protective payee shall be designated by DCF and must agree in writing to use the assistance in the best interest of the child or children. Protective payees may include:

- A relative or other individual who is interested in or concerned with the welfare of the child or children;

⁷ S. 445.007(13), F.S.

⁸ S. 414.105, F.S.

⁹ This is an electronic referral through a system interface between DCF's computer system and DEO's computer system. Once the referral has been entered into the DEO system the information may be accessed by any of the RWBs or One-Stop Career Centers.

¹⁰ 45 C.F.R. § 261.30

¹¹ S. 445.024, F.S.

¹² S. 414.065, F.S.

¹³ *Id.*

- A member of the community affiliated with a religious, community, neighborhood, or charitable organization; or
- A volunteer or member of an organization who agrees in writing to fulfill the role of protective payee.¹⁴

Drug Testing

Section 414.0652, F.S., requires DCF to drug test each individual applying for temporary cash assistance as a condition of eligibility for those benefits; however this law was declared unconstitutional and is currently not being implemented.

Section 414.0652, F.S., applied to all individuals included within the cash assistance group covered by the TANF application, with the exception of children under the age of 18. It disqualified an individual from receiving TANF benefits for one year if that person tested positive for controlled substances.¹⁵ If a parent tested positive, DCF could appoint a protective payee who would receive funds on behalf of the child, or the parent could designate an immediate family member, or an individual approved by DCF, to receive TANF benefits on behalf of the child.¹⁶

The initial disqualification of one year could be reduced to six months upon proof of completion of a substance abuse treatment program.¹⁷ A subsequent positive test disqualified the individual from receiving TANF benefits for three years from the date of that positive test.¹⁸

The tested individuals were responsible for the cost of the drug test; however, applicants whose tests were negative for drugs were reimbursed by DCF in the form of an increase in the TANF benefit to the applicant for the cost of the drug screen.¹⁹

Substance Abuse

Substance abuse affects millions of people in the United States each year. Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.²⁰ Substance use disorders occur when the chronic use of alcohol and/or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.²¹ It is often mistakenly assumed that individuals with substance use disorders lack moral principles or willpower and that they could stop using drugs simply by choosing to change their behavior.²² In reality, drug addiction is a complex disease, and quitting takes more than good intentions or a strong will. In fact, because drugs change the brain in ways that foster compulsive drug abuse, quitting is difficult, even for those who are ready to do so.²³

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), a diagnosis of substance use disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.²⁴ The most common substance use disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.²⁵

¹⁴ *Id.*

¹⁵ S. 414.0652(1)(b), F.S.

¹⁶ S. 414.0652(2)-(3), F.S.

¹⁷ S. 414.0652(2)(j), F.S.

¹⁸ S. 414.0652(2)(h), F.S.

¹⁹ S. 414.0652(1), (2)(a), F.S.

²⁰ WORLD HEALTH ORGANIZATION. *Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last visited March 4, 2017).

²¹ SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, *Substance Use Disorders*, <http://www.samhsa.gov/disorders/substance-use> (last visited March 4, 2017).

²² NATIONAL INSTITUTE ON DRUG ABUSE, *Understanding Drug Use and Addiction*, <http://www.drugabuse.gov/publications/drugfacts/understanding-drug-abuse-addiction> (last visited March 1, 2017).

²³ *Id.*

²⁴ *Supra*, note 21.

²⁵ *Id.*

As DCF does not drug-test TCA recipients, the number of TCA recipients in Florida who are substance users is unknown.

Drug Testing of TANF Recipients

Federal law regarding the use of TANF funds allows states to test welfare recipients for use of controlled substances and sanction those testing positive.²⁶

Drug Testing TANF Recipients in Other States

Several other states require drug testing or screening for TANF applicants or recipients. Some laws limit testing to those instances where there is a reason to believe the applicant or recipient is engaging in illegal drug activity or has a substance use disorder, and other laws require a specific screening process. For example:

Alabama requires its Department of Human Resources to administer a drug screening program for any adult applying for TCA who is otherwise eligible, upon reasonable suspicion that the adult uses or is under the influence of a drug.²⁷ Reasonable suspicion exists if an applicant has a conviction for the use or distribution of a drug within five years prior to the date of the application for TCA or tested positive without a valid prescription as a result of the required drug screening.²⁸ Maine permits its Department of Health and Human Services to administer a drug test to a TANF recipient who, at the time of application, has been convicted of a drug-related felony within the last 20 years.²⁹

Arkansas uses an empirically validated screening tool to screen TANF applicants and recipients; if the result of the drug screening tool gives the Department of Workforce Services a reasonable suspicion to believe that the applicant or recipient has engaged in the use of drugs, then the applicant or recipient must be drug tested.³⁰ Recipients must be screened annually.³¹ Similarly, Georgia requires its Department of Human Services (DHS) to screen TCA applicants or recipients if reasonable suspicion exists that such applicant or recipient is using an illegal drug.³² DHS may use any information it has obtained to determine whether such reasonable suspicion exists, including, but not limited to:

- An applicant's or recipient's demeanor;
- Missed appointments and arrest or other police records;
- Previous employment or application for employment in an occupation or industry that regularly conducts drug screening; and
- Termination from previous employment due to unlawful use of a controlled substance or controlled substance analog or prior drug screening records of the applicant or recipient indicating unlawful use of a controlled substance or controlled substance analog.³³

Kansas applies the same standard as Georgia for screening and drug testing its TCA applicants and recipients.³⁴ Mississippi and Utah require all applicants for TANF to complete a written questionnaire to determine the likelihood of a substance abuse problem.³⁵ If the results indicate a likelihood the person has a substance abuse problem, the applicant must submit to a drug test.³⁶ The Oklahoma Department of Human Services screens all TANF applicants to determine if they are engaged in the illegal use of a

²⁶ Pub. L. 104-193, s. 902; 21 U.S.C. 862(b).

²⁷ Ala. Code § 38-1-7(b).

²⁸ Id.

²⁹ Me. Rev. Stat. tit. 22, § 3762.

³⁰ Ark. Code Ann. § 20-76-705(1).

³¹ Id.

³² Ga. Code Ann. § 49-4-193(c).

³³ Id.

³⁴ Kan. Stat. Ann. § 39-709.

³⁵ Miss. Code. Ann. § 43-17-6; Utah Code Ann. § 35A-3-304.5.

³⁶ Id.

controlled substance using a Substance Abuse Subtle Screening Inventory (SASSI) or other similar screening methods.³⁷

From 2012 to 2014, Tennessee phased in suspicion-based drug testing for TANF applicants.³⁸ Tennessee's Department of Human Services was directed to develop appropriate screening techniques and processes that would establish reasonable cause that an applicant for TANF is using a drug and was also directed to identify and select a screening tool such as SASSI or another similar technique to be employed for this program.³⁹

After a previous pilot program that drug tested all TANF recipients was declared unconstitutional, Michigan created a pilot program in 2015 implementing suspicion-based drug screening and testing program in three counties.⁴⁰ The participating counties screen applicants and recipients using a valid substance abuse screening tool; if the screening tool gives the department reason to believe the person has a substance abuse problem, the person will be drug tested.⁴¹ West Virginia also implemented a three-year pilot program in 2016 to screen TANF applicants for substance abuse issues if there is reasonable suspicion.⁴² Reasonable suspicion exists if, based upon the result of the drug screen, the applicant demonstrates qualities indicative of substance abuse based upon the indicators of the drug screen, or has been convicted of a drug-related offense within the three years immediately prior to an application for TANF.⁴³

Additionally, Missouri and North Carolina also drug tests all applicants and recipients of TANF for whom they have reasonable cause to believe based on an initial screening that they are engaged in illegal use.⁴⁴ Neither state specifies the type of screening which may give rise to a reasonable suspicion in statute.

Constitutional Challenges for Suspicionless Drug Testing in Other States

The U.S. Supreme Court has held one suspicion-less drug test unconstitutional. In Chandler v. Zell, the state of Georgia required all candidates for designated state offices to certify that they had taken a drug test and the result was negative in order to run for state office.⁴⁵ In ruling the drug testing unconstitutional, the court held that,

Where the risk to public safety is substantial and real, blanket suspicionless searches calibrated to the risk may rank as 'reasonable'...But where, as in this case, public safety is not genuinely in jeopardy, the Fourth Amendment precludes the suspicionless search.⁴⁶

In 1999, the State of Michigan enacted a pilot program for suspicion-less drug testing of all family assistance recipients with the intent for the program eventually to become effective statewide.⁴⁷ Welfare recipients challenged the new law authorizing suspicion-less drug testing in federal court. The federal district court found that the law was an unconstitutional violation of an individual's right to privacy under the Fourth Amendment. The court specifically ruled that drug testing was unconstitutional when applied universally or randomly without reasonable suspicion of drug use.⁴⁸

³⁷ 56 Okl. St. § 230.52.

³⁸ Tenn. Code Ann. § 71-3-1202.

³⁹ Id.

⁴⁰ Mich. Comp. Laws Ann. § 400.57z.

⁴¹ Id.

⁴² W. Va. Code Ann. § 9-3-6.

⁴³ Id.

⁴⁴ Mo. Ann. Stat. § 208.027.; N.C. Gen. Stat. Ann. § 108A-29.1.

⁴⁵ Chandler v. Miller, 520 U.S. 305 (1997).

⁴⁶ Id. at 323.

⁴⁷ P.A. 1999, No. 17, codified as s. 400.57I, Michigan Compiled Statutes Annotated.

⁴⁸ Marchwinski v. Howard, 113 F. Supp. 2d 1134 (E. D. Mich. 2000). On appeal a panel of the Sixth Circuit first reversed the District Court, finding the required testing did not violate the Fourth Amendment to the U.S. Constitution. Marchwinski v. Howard, 309 F. 3d 330 (6th Cir. 2002). That decision was vacated for the entire court to consider the case. Marchwinski, vacated 319 F. 3d 258. The appellate

Constitutional Challenge to s. 414.0652, F.S.: Lebron v. Wilkens

In 2011, the Florida Legislature passed HB 353,⁴⁹ which created s. 414.0652, F.S., requiring DCF to drug test each individual applying for temporary cash assistance as a condition of eligibility for those benefits.

Under s. 414.0652, F.S., all individuals included within the cash assistance group covered by the TANF application were required to submit to testing with the exception of children under the age of 18. The bill requires all parents to be tested including minor parents who are not required to live with a parent, legal guardian, or other adult caretaker. It also disqualifies individuals from receiving TANF benefits if they tested positive for controlled substances. The initial disqualification is for one year from the date of the positive test; however, upon showing proof of completing the program, the individual may exercise a one-time option reapply for TANF benefits within six months from the date of the positive test. Upon a subsequent positive test, the individual is disqualified from receiving TANF benefits for three years from the date of that positive test.

Section 414.0652, F.S., was challenged in a class action lawsuit by TANF recipients and was declared unconstitutional by the United States District Court for the Middle District of Florida and the United States Court of Appeals for the Eleventh Circuit

On December 31, 2013, the Middle District Court issued summary judgement for the plaintiff on the grounds that the State had failed to establish a special need to drug test all TANF applicants. The Court declared the statute facially unconstitutional and permanently prohibited the State from reinstating and enforcing the law.⁵⁰ The Middle District was highly critical of any suspicionless drug test. The legal question before the Middle District was whether s. 414.0652, F.S., which required all applicants for TANF benefits to submit to suspicionless drug testing, was constitutional under the Fourth and Fourteenth Amendments.⁵¹ A drug test is a search under the Fourth Amendment, as applicable to the states through the Fourteenth Amendment.⁵² The Fourth and Fourteenth Amendments do not prohibit all searches; only unreasonable searches; for a search to be reasonable, it ordinarily must be based on individualized suspicion of wrongdoing.⁵³ Because there was no suspicion of wrongdoing as the basis for the search, the state was required to prove that there was a substantial special need to drug test all TANF recipients.⁵⁴ The state argued that the following interests qualify as special needs sufficiently substantial to permit an exception to the Fourth Amendment in this case:

- Ensuring TANF participants' job readiness;
- Ensuring the TANF program meets its child-welfare and family-stability goals; and
- Ensuring that public funds are used for their intended purposes and not to undermine public health.⁵⁵

The Middle District found these goals and objectives laudable, but “insufficient to place the entire Florida TANF population into that ‘closely guarded category’ of citizens for whom the Supreme Court has sanctioned suspicionless, mandatory drug testing.”⁵⁶ Additionally, the Middle District found that the state had not shown that suspicionless and warrantless drug testing was necessary to address alleged concerns.⁵⁷ On December 3, 2014, the U.S. Eleventh Circuit Court of Appeals affirmed the ruling of the Middle District, and held that s. 414.0652, F.S., the state did not “meet its burden of establishing a

court deadlocked 6-6 to reverse so the lower court decision stood affirmed. Marchwinski, affirmed after rehearing *en banc*, 60 Fed. Appx. 601, 2003 WL 1870916 (6th Cir. 2003).

⁴⁹ Ch. 81-2011, Laws of Fla.

⁵⁰ Lebron v. Wilkins, 990 F. Supp. 2d 1280, 1299 (M.D. Fla. 2013).

⁵¹ *Id.* at 1287.

⁵² *Id.* at 1288.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 1291.

⁵⁶ *Id.*

⁵⁷ *Id.*

substantial special need to drug test all TANF applicants without any suspicion” and violated the Fourth Amendment for its unreasonable search of applicants without evidence of “a more prevalent, unique, or different drug problem among TANF applicants than in the general population.”⁵⁸

Effect of Proposed Changes

CS/HB 1117 amends s. 414.0652, F.S., to limit drug testing of TANF applicants who:

- Have a previous drug-related felony conviction within the last ten years; and
- The Department of Children and Families (DCF) has a reasonable suspicion to believe are engaging in the illegal use of a controlled substance.

DCF currently averages 26,213 TANF applications per month which include an adult household member.⁵⁹ Based on limited data from the Department of Corrections, DCF estimates that 1.56% of current adult TANF recipients have a drug conviction.⁶⁰ DCF currently receives an average of 26,213 TANF applications per month that have an adult in the household.⁶¹ By applying the current population percentage to the applications received, DCF estimates an average 408 individuals per month requiring a drug test under the bill.⁶²

B. SECTION DIRECTORY:

Section 1: Amends s. 414.0652, F.S., relating to drug screening applicants for Temporary Assistance for Needy Families.

Section 2: Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DCF will be responsible for reimbursing individuals who test negative for controlled substances for the cost of the drug test.⁶³

Based on drug testing costs in 2011, DCF estimates a potential cost for a bundled rate between \$28.50 and \$40 per person.⁶⁴ Additionally, DCF estimates a conservative minimum of 408 new applicants per month would be tested.⁶⁵ Assuming that in addition to the new applicants tested each month, 1.56% of approximately 12,890 temporary cash assistance recipients would need to be tested on an ongoing basis, the total annual recurring cost for drug testing would be \$213,975.⁶⁶

⁵⁸ *Lebron v. Sec'y of the Fla. DCF*, 772 F.3d 1352, 1355 (11th Cir. 2014)

⁵⁹⁵⁹ Department of Children and Families, Agency Analysis of 2017 House Bill 1117. (on file with Children Families and Seniors Subcommittee staff).

⁶⁰ Id.

⁶¹ Email from Lindsey Perkins Zander, Legislative Specialist, Department of Children and Families, RE; HB 1117 Bill Analysis (Mar. 13, 2017) (email on file with Children Families and Seniors Subcommittee staff).

⁶² Id.

⁶³ *Supra*, note 59.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Id.

However, DCF notes that the number of individuals meeting the criteria for testing is likely to be higher.⁶⁷

DCF also estimates a nonrecurring cost of \$377,396 to \$471,744 to modify the ACCESS Management System, and FLORIDA system to identify the disqualified individuals.⁶⁸

DCF will incur minimal costs to mail notices to individuals and protective payees for each drug test.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

TCA applicants will need to pay for the initial drug test. This is estimated to cost between \$28.50 and \$40.00. As TCA is a program for individuals with very low incomes, this could present a financial hardship for some applicants.

Individuals testing positive for drugs will not be reimbursed for the drug test. They also will be unable to receive TCA for two or three years, depending upon when they test positive.

The protective payee who may be designated to receive TANF benefits on behalf of the disqualified individual's children must also be drug tested before being approved to receive the benefits, though the bill does not authorize the protective payee to be reimbursed for the cost of the test if he or she tests negative.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Federal law regarding the use of TANF funds allows states to test welfare recipients for use of controlled substances and sanction those testing positive. However, the state's current law (s. 414.0652, F.S.) was determined in 2014 by the U.S. Eleventh Circuit Court of Appeals to violate the Fourth Amendment for its unreasonable search of applicants without evidence of "a more prevalent, unique, or different drug problem among TANF applicants than in the general population."

Due to this ruling, the state's suspicionless TANF drug testing program in s. 414.0652, F.S., is not being implemented by DCF. Other states have successfully implemented "suspicion based" TANF drug testing programs, which predicate drug testing on a previous conviction for a drug-related felony or a reasonable suspicion that an applicant or recipient has a substance abuse problem.

⁶⁷ Id.

⁶⁸ Id. FLORIDA programming will need to create new sanction coding and notices, identification of a secure electronic method for communication of drug testing results, and data extracts for reporting purposes. The high-level estimate range is 3,226 to 4,032 hours.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DCF will need to establish a process to identify individuals subject to drug testing. To do so, DCF suggests granting it additional legislative authority to access criminal justice information and criminal justice information systems as defined in s. 943.045, F.S., to include screening for past drug infractions.⁶⁹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2017, the Children, Families, and Seniors Subcommittee adopted an amendment that, instead of creating new statute, amended the existing statute relating to drug testing of TANF applicants. The amendment limits the instances when a TANF applicant must be drug screened to applicants:

- With a previous drug-related felony conviction within the last 10 years, and
- For whom DCF has a reasonable suspicion are engaging in the illegal use of a controlled substance.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.

⁶⁹ Id.