

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 Criminal Justice Committee

BILL: SB 1128

INTRODUCER: Senator Oelrich

SUBJECT: Temporary Cash Assistance

DATE: February 7, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Farmer	CF	Favorable
2.	Cellon	Cannon	CJ	Pre-meeting
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill deletes the opt out provision in s. 414.095(1), F.S., which prohibits the denial of temporary cash assistance benefits based solely on a felony drug conviction, unless that conviction was for drug trafficking pursuant to s. 893.135, F.S. The bill also deletes requirements related to substance abuse treatment in s. 414.095(1), F.S.

The bill renumbers the remaining subsections of s. 414.095, F.S., and creates a new subsection (2) which contains the following provisions:

- Requires the Department of Children and Families (DCF or department) to deny cash assistance benefits and food assistance benefits to any individual with a felony conviction on or after July 1, 2012, for possession of a controlled substance or trafficking pursuant to s. 893.135, F.S.;
- Provides an exception to the denial of benefits for persons who have successfully completed a treatment program for drug addiction or drug abuse; and
- Provides that an individual who has a felony conviction for drug trafficking is not eligible for cash assistance or food assistance.

The bill also provides for the appointment of an alternate payee to receive benefits on behalf of the children and other family members in the assistance group if an individual is denied assistance based on a felony drug possession conviction.

This bill substantially amends sections 414.095, 409.2564, 409.902, 414.045, 414.0652, and 414.0655 of the Florida Statutes.

II. Present Situation:

Background

Temporary Assistance for Needy Families (TANF)

Under federal welfare reform legislation of 1996,¹ 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 were replaced by the Temporary Assistance for Needy Families (TANF) program.^{2,3} 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. The law is best known as the major source of funding for cash welfare for needy families with children, with federal requirements related to work and time limits.^{4,5}

States receive block grants to design and operate their individual programs and to accomplish the goals of the TANF program. These goals include the following:⁶

- Assisting needy families so that children can be cared for in their own 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

Temporary Cash Assistance Program (cash assistance)

The cash assistance program provides cash assistance to families with children under the age of 18 or under age 19 if full time secondary (high school) school students, that meet the technical, income, and asset requirements.^{7,8} Parents, children and minor siblings who live together must apply together. An individual must meet all of the eligibility requirements in order to qualify for cash assistance benefits. Those requirements include:

- Time Limits – Cash assistance is limited to a lifetime total of 48 months as an adult (except for child only cases, which have no time limit).
- Work Rules – Some people must participate in work activities unless they meet an exemption. Regional Workforce Boards provide work activities and services needed to get or keep a job.

¹ The Personal Responsibility and Work Opportunity Reconciliation Act (PWRORA), Public Law 104-193.

² TANF became effective July 1, 1997, and was reauthorized in February 2006 under the Deficit Reduction Act of 2005.

³ US Dept. of Health and Human Services, Administration on Children and Families. Retrieved January 25, 2012, from <http://www.acf.hhs.gov/programs/ofa/tanf/about.html>.

⁴ *Id.*

⁵ Florida Department of Children and Family Services. Temporary Assistance for Needy Families (TANF) *An Overview of Program Requirements*. October 2006. Retrieved January 26, 2012, from <http://www.dcf.state.fl.us/programs/access/docs/TANF%20101%20final.pdf>.

⁶ US Dept. of Health and Human Services, Administration on Children and Families. Retrieved January 25, 2012, from <http://www.acf.hhs.gov/programs/ofa/tanf/about.html>.

⁷ Florida Department of Children and Family Services. Retrieved January 25, 2012, from <http://www.dcf.state.fl.us/programs/access/tca.shtml>.

⁸ Pregnant women may also receive TCA, either in the third trimester of pregnancy if unable to work, or in the 9th month of pregnancy.

- Income and Deductions – Gross income must be less than 185 percent (\$27,214 for a family of two) of the Federal Poverty level and countable income cannot be higher than the payment standard for the family size. Individuals get a \$90 deduction from their gross earned income. Individuals receiving benefits also get an additional earned income deduction as an incentive to get and keep a job.
- Citizenship – Individuals must be U.S. citizens or qualified non-citizens.
- Residency – Individuals must live in the state of Florida.
- SSN – Individuals must provide a Social Security Number or proof they have applied for one.
- Assets – A family's countable assets must be equal to or less than \$2,000. Licensed vehicles needed for individuals subject to the work requirement may not exceed a combined value of \$8,500.
- Relationship – A child must be living in the home maintained by a parent or a relative who is a blood relative of the child.
- Child Support Cooperation – The parent or the caretaker relative of the children must cooperate with child support enforcement to identify and locate the parent(s) who do not live in the child's home, to prove a child's legal relationship to their parent and to get the court to order child support payments.
- Immunization – Children under age 5 must be up to date with childhood immunizations.
- Learnfare – Children age 6 to 18 must attend school and parents/caretakers must attend school conferences.

Supplemental Nutrition Assistance Program⁹ – (food assistance)

The Food Assistance Program is a federally funded program to help low-income people buy the food they need for good health. The benefits portion of the program is 100 percent federally funded and administration of the program is split between the state and the federal government.¹⁰ The U.S. Department of Agriculture (USDA) determines the amount of food assistance benefits an individual or family receives. Food assistance benefits are a supplement to a family's food budget. Households may need to spend some of their own cash, along with their food assistance benefits, to buy enough food for a month.¹¹ DCF reports that approximately 3,311,095 people are currently receiving food stamps at approximately \$450 million dollars annually.¹²

Protective Payees

The cash assistance program and food assistance programs require participants to satisfy work requirements established in federal law. In the event a cash assistance or food assistance recipient is noncompliant with the work activity requirements, DCF has authority to terminate cash assistance to the family.¹³ In the event that assistance is terminated, DCF will establish a protective payee that will receive cash assistance or food assistance funds on behalf of any

⁹ Formerly known as the Food Stamp Program.

¹⁰ DCF ACCESS Florida Food, Medical Assistance, and Cash Program Policy Manual, Retrieved January 27, 2012, from <http://www.dcf.state.fl.us/programs/access/esspolicymanual.shtml>.

¹¹ DCF Food Assistance Program Fact Sheet, October 2011. Retrieved January 27, 2012, from www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf.

¹² DCF Standard Data Reports. Retrieved January 27, 2012, from <http://www.dcf.state.fl.us/programs/access/StandardDataReports.asp>.

¹³ Section 414.065, F.S., establishes penalties for the cash assistance program and requires the department to administer sanctions related to food assistance consistent with federal regulations.

children in the home who are under the age of 16.¹⁴ The protective payee shall be designated by the department and may include:

- 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; or
- 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.¹⁵

Federal Law – Felony Drug Conviction

Federal law provides that an individual convicted under federal or state law of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance¹⁶ shall not be eligible for:

- Assistance under any State program funded under part A of title IV of the Social Security Act (cash assistance), or
- Benefits under the supplemental nutrition assistance program as defined in the Food Stamp Act of 1977 or any state program carried out under the Food Stamp Act of 1977 (food assistance).¹⁷

However, the federal law also provides that a state may “opt out” of that part of the federal law which makes felony drug offenders ineligible for assistance by specific reference in the state law.¹⁸ A state may also choose to limit the period of time for the prohibition.¹⁹

Florida has specifically opted out of the federal prohibition against providing cash assistance and food assistance to felony drug law violators, other than drug traffickers. Persons who have felony drug offense convictions must meet the program’s eligibility requirements including substance abuse treatment, but those persons are not automatically ineligible for assistance. The Florida opt out provision does not apply to drug traffickers. Section 414.095(1), F.S. states in part:

Benefits shall not be denied to an individual solely based on a felony drug conviction, unless the conviction is for trafficking pursuant to s. 893.135. To be eligible under this section, an individual convicted of a drug felony must be satisfactorily meeting the requirements of the temporary cash assistance program, including all substance abuse treatment requirements. Within the limits specified in this chapter, the state opts out of the provision of Pub. L. No. 104-193, s. 115,

¹⁴ *Id.* In cases of food assistance, an authorized representative shall receive the program benefits.

¹⁵ s. 414.065, F.S.

¹⁶ As defined in 21.U.S.C.802(6).

¹⁷ Public Law 104-193 Section 115, *Denial of Assistance and Benefits for Certain Drug-Related Convictions*. Retrieved January 28, 2012, from <http://wdr.doleta.gov/readroom/legislation/pdf/104-193.pdf>.

¹⁸ *Id.*

¹⁹ *Id.*

that eliminates eligibility for temporary cash assistance and food assistance for any individual convicted of a controlled substance felony.

Florida Felony Drug Statutes

Section 893.13, F.S., designates the sale, manufacture, delivery or possession of specified controlled substances as felony offenses. Section 893.135, F.S., defines and prohibits trafficking in controlled substances as felony offenses.

III. Effect of Proposed Changes:

This bill deletes the opt out provision in s. 414.095(1), F.S., which prohibits the denial of temporary cash assistance and food assistance benefits solely based on a felony drug conviction unless that conviction was for drug trafficking pursuant to s. 893.135, F.S.

The bill creates a new subsection (2) in s. 414.095, F.S., entitled *Ineligibility Due to Felony Convictions*. On or after July 1, 2012, the new subsection:

- Denies cash assistance and food assistance benefits to any individual who has been convicted of an offense classified as a felony for the possession of a controlled substance as defined in the federal Controlled Substances Act or for trafficking pursuant to s. 893.135, F.S., unless he or she can provide verification of successful completion of a treatment program for drug addiction or abuse;
- Provides that an individual with a felony conviction for drug trafficking is not eligible for cash or food assistance; and
- Provides that if an individual is deemed ineligible as a result of a felony drug conviction, an alternative payee will be designated to receive the assistance on behalf of others in the assistance group (e.g. children or other family members in the home).

The bill amends ss. 409.2564, 409.902, 414.045, 414.0652, and 414.0655, F.S., to conform cross-references.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill may result in a reduction in the number of individuals being provided with cash assistance and/or food assistance.

C. Government Sector Impact:

DCF could see a reduction in the number of applicants who apply for assistance. This could create a reduction in program expenditures, however the exact amount is not known.

The department further reports:

- It will need to make changes to its ACCESS Program's web application and paper applications to ask applicants and recipients about convictions for felony drug possession. Other system changes will be needed to create a process by which the department can request individuals to provide proof of completion of a substance abuse program and to create a disqualification process for felony controlled substance possession;
- Under federal TANF policy, a parent denied benefits due to a controlled substance felony is still considered "work eligible" when cash benefits are continued through a protective payee for the children. Requiring drug treatment compliance for these individuals as a condition of continued benefits for other family members reduces the potential risk to the work participation rate;²⁰ and
- Current federal law requires each individual, during the application process, state in writing, whether they or any member of their household has been convicted of a drug felony. Based on the department's prior experience with obtaining these statements on individuals with a drug trafficking felony there should be little immediate impact with implementation of this bill.²¹

VI. Technical Deficiencies:

- The newly created language on lines 47-55 states that an individual convicted of an offense classified as a felony for possession of a controlled substance, as defined in the Controlled Substances Act, 21 U.S.C., s. 802(6), or pursuant to s. 893.135, is *not eligible* for temporary cash assistance or food assistance *unless* the department receives verification that the individual has satisfactorily completed a treatment program or regimen for drug addiction or drug abuse. Then the newly created language on lines 55-57 provides that an individual who

²⁰ Work participation rates, or the proportion of families receiving TANF cash assistance that participated in work activities, are the key performance measure the U.S. Department of Health and Human Services uses to assess state TANF programs.

²¹ Department of Children and Families. Staff Analysis and Economic Impact, SB 1128, December 12, 2011.

has a felony conviction for drug trafficking is *not eligible* for temporary cash assistance or food assistance. Lines 47-55 appear to indicate that anyone convicted pursuant to s. 893.135, F.S. (trafficking), is not eligible for assistance unless they have completed a treatment program, whereas lines 55-57 stated that anyone convicted of trafficking is not eligible at all. Clarification is suggested so that the bill sponsor's intent can be implemented by the department;

- Lines 53-55 provide that an individual may be eligible for cash assistance or food assistance if he or she has successfully completed a drug addiction or drug abuse program or regimen; however, the bill does not specify what qualifies as a treatment program or regimen. It is suggested that, for the sake of consistency within the Chapter, the reference to treatment programs recently created in s. 414.0652(i) and (j), F.S., be used in the bill;²²
- Line 60 refers to "alternative payee." Current law in this Chapter specifies the designation of a *protective payee* or an *authorized representative*.
- The language that appears on line 48, "on or after July 1, 2012" appears to modify the entire remainder of the sentence. It is presumed that the sponsor's intent is to make the provisions in the new subsection (2) of s. 414.095, F.S., applicable to persons who are *convicted* of a felony drug offense *on or after July 1, 2012*.
- The bill makes reference to the felony drug offenses of possession and trafficking in controlled substances; however, Florida law also prohibits purchase, sale, manufacture and delivery as felony drug offenses. A statutory reference to the "general" drug statute, s. 893.13, F.S., would clarify that the bill applies to *all felony drug offenses*.

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.)

None.

- B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²² Legislation enacted during the 2011 Session related to drug testing for applicants for TANF benefits specifies that an individual who tests positive under s. 414.0652, F.S., and who is denied TANF benefits as a result may reapply for those benefits after 6 months if the individual can document the successful completion of a substance abuse treatment program offered by a provider that meets the requirements of s. 397.401, F.S., and is licensed by the department.