

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 Committee on Children, Families, and Elder Affairs

BILL: SB 1392

INTRODUCER: Senator Latvala

SUBJECT: Temporary Assistance for Needy Families (TANF) Applicant Drug Screening

DATE: March 20, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Crosier	Hendon	CF	Pre-meeting
2.		AHS	
3.		AP	

I. Summary:

SB 1392 creates s. 414.0653, F.S., which requires the Department of Children and Families (DCF) to drug test applicants for TANF benefits with a prior felony conviction or history of arrests for a drug-related offense. DCF must provide notice of the drug-screening policy to applicants. Individuals who fail the drug test may not receive TCA for two to three years, depending on when they fail the test, unless they successfully complete a drug treatment program. The bill specifies that a child remains eligible for benefits if a parent fails a drug test and provides conditions for designating a protective payee.

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.

II. Present 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 TCA²

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 that 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 received 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

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.

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://www.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 received 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.*

- The Department of Economic Opportunity (DEO) implements the policy created by CareerSource Florida.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 application 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 noncompliance 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 Section 445.007(13), F.S.

⁸ Section 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. Section 261.30

¹¹ Section 445.024, F.S.

¹² Section 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.¹⁵

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.¹⁶ 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.¹⁷

The initial disqualification of one year could be reduced to six months upon proof of completion of a substance abuse treatment program.¹⁸ A subsequent positive test disqualified the individual from receiving TANF benefits for three years from the date of the positive test.¹⁹

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.²⁰

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.²¹

Drug Testing TANF Recipients in Other States

Several 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:

¹⁴ *Id.*

¹⁵ *Lebron v. Wilkins*, 990 F. Supp. 2d 1280, 1299 (M.D. Fla. 2013).

¹⁶ Section 414.0652(1)(b), F.S.

¹⁷ Section 414.0652(2)-(3), F.S.

¹⁸ Section 414.0652(2)(j), F.S.

¹⁹ Section 414.0652(2)(h), F.S.

²⁰ Section 414.0652(1), (2)(a), F.S.

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

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.²² 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.²³ 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.²⁴

Mississippi and Utah require all applicants for TANF to complete a written questionnaire to determine the likelihood of a substance abuse problem.²⁵ If the results indicate a likelihood the person has a substance abuse problem, the applicant must submit to a drug test.²⁶ The Oklahoma Department of Human Services screens all TANF applicants to determine if they are engaged in the illegal use of a controlled substance using a Substance Abuse Subtle Screening Inventory (SASSI) or other similar screening methods.²⁷

From 2012 to 2014, Tennessee phased in suspicion-based drug testing for TANF applicants.²⁸ 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.²⁹

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.³⁰ Neither state specifies the type of screening which may give rise to a reasonable suspicion in statute.

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

In 2011, the Florida Legislature passed HB 353,³¹ which created s. 414.0652, F.S., requiring DCF to drug test each individual 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 required 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

²² Ala. Code Section 38-1-7(b).

²³ *Id.*

²⁴ Me. Rev. Stat. tit. 22, Section 3726

²⁵ Miss. Code. Ann Section 43-17-6; Utah Code Ann. Section 35A-3-304.5

²⁶ *Id.*

²⁷ 56 Okl. St. Section 230.52.

²⁸ Tenn. Code Ann. Section 71-3-1202.

²⁹ *Id.*

³⁰ Mo. Ann. Stat. Section 208.027; N.C. Gen. Stat. Ann. Section 108A-29.1.

³¹ Ch. 81-2011, Laws of Florida

disqualification is for one year from the date of the positive test; however, upon showing proof of completing a substance abuse treatment program, the individual may exercise a one-time option to 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 District.

The Middle District Court, on December 31, 2013, issued summary judgment 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.³² 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 unconstitutional under the Fourth and Fourteenth Amendments.³³ A drug test is a search under the Fourth Amendment, as applicable to the states through the Fourteenth Amendment.³⁴ 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.³⁵ 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.³⁶ 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.³⁷

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."³⁸ Additionally, the Middle District found that the state had not shown that suspicionless and warrantless drug testing was necessary to address alleged concerns.³⁹ On December 3, 2014, the U.S. Eleventh Circuit Court of Appeals affirmed the ruling of the Middle District, and held that the state did not "meet its burden of establishing a substantial special need to drug test all TANF applicants without suspicion" and violated the Fourth Amendment for its unreasonable search of applicants without

³² *Lebron v. Wilkins*, 990 F. Supp. 2d 1280, 1299 (M.D. Fla. 2013)

³³ *Id.* at 1287.

³⁴ *Id.* at 1288.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 1291.

³⁸ *Id.*

³⁹ *Id.*

evidence of “a more prevalent, unique, or different drug problem among TANF applicants than in the general population.”⁴⁰

III. Effect of Proposed Changes:

Section 1 creates s. 414.0653, F.S., to require DCF to require a drug test to be administered at the time a person applies for TANF and every 2 months after that date who:

- Has a previous conviction of committing or attempting to commit a felony listed in chapter 893, relating to drug abuse prevention and control.
- Has a documented history of multiple arrests for drug use or possession within the past 10 years.

The cost of the drug testing is the responsibility of the person tested. If the person tests negative for controlled substances, the department will increase the amount of the initial TANF benefit by the amount paid by the person for the drug testing. A person that tests positive for controlled substances is ineligible to receive TANF benefits for 2 years after the date of the positive drug test.

The department is required to provide notice of drug testing to each individual at the time of application for benefits. The notice must advise the person that drug testing will be conducted as a condition for receiving TANF benefits and that the person is responsible for the cost of the drug tests. The individual is advised that the required drug testing may be avoided if the person does not apply for TANF benefits. Dependent children under the age of 18 are exempt from drug-testing requirements.

Prior to being tested, each person will be advised that he or she may, but is not required to, advise the agent administering the test of any prescription or over-the-counter medication the person is taking. Each individual being tested is required to sign a written acknowledgement that he or she received and understood the notice and advice.

Each individual who tests positive and determined ineligible for TANF benefits must be informed that they can reapply for those benefits 2 years after the date of the positive drug test unless, after 6 months, 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 and is licensed by the department. The individual must pass an initial drug test. The drug test administered as a result of reapplication is the responsibility of the individual. An individual who fails the drug test after reapplication as described above may reapply for benefits only once.

A parent determined ineligible for TANF benefits due to the failure of a drug test may choose to designate another individual to receive benefits for the parent’s minor child. The designated individual must be an immediate family member or, if an immediate family member is not available or the family member declines, another individual, approved by the department, may be designated. The designated individual must also undergo drug testing before being approved to receive benefits on behalf of the child. A dependent child’s eligibility for TANF benefits is not affected by the parent’s ineligibility.

⁴⁰ *Lebron v. Sec'y of the Fla. DCF*, 772 F. 3d 1352, 1355 (11th Cir. 2014)

Section 2 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Federal law regarding the use of TANF funds allows states to test welfare recipients for use of controlled substances and sanction those testing positive. Under s. 414.0652, F.S., Florida's suspicionless TANF drug testing was determined facially unconstitutional.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

TCA applicants will 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. However, the bill does not authorize the protective payee to be reimbursed for the cost of the test if he or she tests negative.

C. Government Sector Impact:

DCF will be responsible for reimbursing individuals who test negative for controlled substances for the cost of the drug test. The bill is not clear how DCF will know the criminal history of the applicant. If DCF must run a criminal background check through the Florida Department of Law Enforcement, additional costs will be incurred.

Based on drug testing costs in 2011, DCF estimates a potential cost for a bundled rate between \$28.50 and \$40 per person. Additionally, DCF estimates a conservative minimum of 408 new applicants per month would be tested at \$40 per drug test for a monthly cost of \$16,320. This would translate into an annual cost of $\$16,320 \times 12 = \$195,840$ annually. The annual cost of drug testing every two months is $\$195,840 \times 6 = \$1,175,040$. The department based this assumption that all applicants would test negative and the department would be required to reimburse all individuals. These costs would be decreased based on the number of individuals who tested positive.⁴¹

Currently, DCF averages 26,213 TANF applications per month which includes an adult household member. The fee for DCF to obtain a record for criminal history information for each applicant is \$24.00. The monthly cost for obtaining these records would be \$629,112 with an annual cost of \$7,549,344. In s. 943.0542, F.S., DCF's vendors pay \$8.00 per name submitted for a state criminal history check. The Legislature could authorize a fee of \$8.00 for the screening of TANF applications. It is necessary to determine how often applicants would be re-screened and the cost of re-screening will be a factor.

Additionally, although DCF did not include additional resources in its legislative analysis, it is anticipated that additional staff and upgrades of its current computer system would be necessary.

In its analysis dated March 17, 2017, the Florida Department of Law Enforcement (FDLE) stated that no additional programming will be required under this proposed legislation. However, FDLE noted that this bill combined with other background screening bills will add to the workload of its Biometric ID System.

FDLE also provided a projected cost of performing state criminal history records check for the approximately 26,213 TANF monthly applicants. The bill is not clear if the criminal history records checks should be performed as a state or a national records check. It is unknown what the fiscal impact would be if FDLE is required to perform the criminal history records check on a national level.

VI. Technical Deficiencies:

It is unclear as drafted if one or both criteria must be met for testing. Also, it is unclear if a Level 1 or Level 2 background check is needed if testing is required. DCF does not control currently

⁴¹ Department of Children and Families, Agency Analysis of SB 1392 dated March 2, 2017 (on filed with the Senate Committee on Children, Families and Elder Affairs).

collected information on the number of individuals with prior non-trafficking felony drug convictions. In order to implement this policy, DCF would need 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.⁴²

After it is established whether a Level 1 or Level 2 background screening is necessary, it would be necessary to determine how often applicants are re-screened.

VII. Related Issues:

The Legislature may wish to repeal s. 414.0652, F.S., as it has been found facially unconstitutional and does not have the force of law.

DCF's computer systems will need to be upgraded to capture information on applicants' drug testing and background screenings.

The Legislature may wish to authorize a fee of \$8.00 for each applicant's criminal history record check instead of the current \$24.00 in s. 943.0542.

VIII. Statutes Affected:

This bill creates section 414.0653 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of 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.

⁴² *Id.*