

3676

2015-2016 Regular Sessions

I N A S S E M B L Y

January 27, 2015

Introduced by M. of A. DiPIETRO, BORELLI, GRAF, CROUCH, HAWLEY, BARCLAY, OTIS, LALOR, FINCH, CORWIN, NOJAY, CERETTO -- Multi-Sponsored by -- M. of A. DUPREY, GIGLIO, McDONOUGH, STEC, TENNEY -- read once and referred to the Committee on Social Services

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

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. The social services law is amended by adding a new section
2 132-b to read as follows:
3 S 132-B. DRUG TESTING. 1. EVERY PERSON WHO A. IS ELIGIBLE TO RECEIVE
4 TANF ASSISTANCE OR WHO RECEIVES TANF ASSISTANCE ON BEHALF OF A CHILD;
5 AND B. IS AT LEAST EIGHTEEN YEARS OF AGE SHALL, AS A CONDITION OF
6 RECEIVING TANF ASSISTANCE, SUBMIT TO DRUG TESTING, RANDOM DRUG TESTING,
7 REASONABLE SUSPICION DRUG TESTING AND RESUMPTION OF BENEFITS DRUG TEST-
8 ING, IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION AND OTHERWISE
9 COMPLY WITH THE PROVISIONS OF THIS SECTION.
10 2. EACH LOCAL SOCIAL SERVICES OFFICE SHALL, AT THE TIME AN APPLICANT
11 APPLIES FOR TANF ASSISTANCE:
12 A. REQUIRE THE APPLICANT TO TAKE A WRITTEN SUBSTANCE ABUSE SUBTLE
13 SCREENING INVENTORY TEST ADMINISTERED BY A COUNTY OFFICE; AND
14 B. NOTIFY THE APPLICANT THAT:
15 (1) THE APPLICANT IS REQUIRED TO TAKE A WRITTEN SUBSTANCE ABUSE SUBTLE
16 SCREENING INVENTORY TEST;
17 (2) THE APPLICANT MAY BE SUBJECT TO RANDOM DRUG TESTING BASED ON THE
18 RESULTS OF THE TEST DESCRIBED IN PARAGRAPH A OF THIS SUBDIVISION;
19 (3) THE APPLICANT MAY BE SUBJECT TO DRUG TESTING IF THE COUNTY OFFICE
20 BELIEVES, BASED ON REASONABLE SUSPICION AS SET FORTH IN SUBDIVISION

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

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1 THREE OF THIS SECTION, THAT THE INDIVIDUAL IS ENGAGED IN THE ILLEGAL USE
2 OF A CONTROLLED SUBSTANCE;

3 (4) IF THE APPLICANT TESTS POSITIVE ON A DRUG TEST ADMINISTERED UNDER
4 THIS SECTION, THE INDIVIDUAL OR THE CHILD ON WHOSE BEHALF THE INDIVIDUAL
5 RECEIVES TANF ASSISTANCE MAY BE INELIGIBLE FOR TANF ASSISTANCE;

6 (5) IF THE APPLICANT TESTS POSITIVE ON A DRUG TEST ADMINISTERED UNDER
7 THIS SECTION, THE AMOUNT OF THE COST OF THE DRUG TEST WILL BE WITHHELD
8 FROM ANY FUTURE TANF ASSISTANCE THE INDIVIDUAL RECEIVES IF THE INDIVID-
9 UAL CONTINUES TO RECEIVE TANF ASSISTANCE; AND

10 (6) IF THE APPLICANT TESTS POSITIVE ON A DRUG TEST ADMINISTERED UNDER
11 THIS SECTION, THE AMOUNT OF THE COST OF ANY SUBSEQUENT DRUG TESTS THE
12 INDIVIDUAL IS REQUIRED TO UNDERGO WILL BE WITHHELD FROM THE TANF ASSIST-
13 ANCE THE INDIVIDUAL RECEIVES, IF THE INDIVIDUAL CONTINUES TO RECEIVE
14 TANF ASSISTANCE, REGARDLESS OF WHETHER THE INDIVIDUAL TESTS POSITIVE OR
15 TESTS NEGATIVE ON THE DRUG TEST.

16 3. A. A LOCAL SOCIAL SERVICES OFFICE IS CONSIDERED TO HAVE REASONABLE
17 SUSPICION TO BELIEVE THAT AN INDIVIDUAL IS ENGAGED IN THE ILLEGAL USE OF
18 A CONTROLLED SUBSTANCE IF ONE OR MORE OF THE FOLLOWING APPLY:

19 (1) THE INDIVIDUAL HAS BEEN CHARGED WITH AN OFFENSE UNDER ARTICLE TWO
20 HUNDRED TWENTY (CONTROLLED SUBSTANCES OFFENSES) OR TWO HUNDRED
21 TWENTY-ONE (OFFENSES INVOLVING MARIHUANA) OF THE PENAL CODE;

22 (2) THE RESULTS OF THE SUBSTANCE ABUSE SUBTLE SCREENING INVENTORY TEST
23 INDICATE THAT THE INDIVIDUAL IS A RISK FOR THE ILLEGAL USE OF A
24 CONTROLLED SUBSTANCE; OR

25 (3) THE INDIVIDUAL HAS PREVIOUSLY FAILED A DRUG TEST ADMINISTERED
26 UNDER THIS SECTION.

27 B. IF A LOCAL SOCIAL SERVICES OFFICE HAS KNOWLEDGE THAT AN INDIVIDUAL
28 HAS BEEN FORMALLY CHARGED WITH AN OFFENSE DESCRIBED IN SUBPARAGRAPH ONE
29 OF PARAGRAPH A OF THIS SUBDIVISION, THE LOCAL SOCIAL SERVICES OFFICE
30 SHALL ADMINISTER A DRUG TEST TO THE INDIVIDUAL.

31 C. IF A LOCAL SOCIAL SERVICES OFFICE HAS REASONABLE SUSPICION TO
32 BELIEVE FROM THE RESULTS OF A SUBSTANCE ABUSE SUBTLE SCREENING INVENTORY
33 TEST THAT AN INDIVIDUAL IS ENGAGED IN THE ILLEGAL USE OF A CONTROLLED
34 SUBSTANCE, THE INDIVIDUAL SHALL BE PLACED IN A POOL OF INDIVIDUALS WHO
35 ARE SUBJECT TO DRUG TESTING DESCRIBED IN PARAGRAPH A OF SUBDIVISION FOUR
36 OF THIS SECTION.

37 D. IF A LOCAL SOCIAL SERVICES OFFICE HAS REASONABLE SUSPICION TO
38 BELIEVE THAT AN INDIVIDUAL IS ENGAGED IN THE ILLEGAL USE OF A CONTROLLED
39 SUBSTANCE AS THE RESULT OF FAILING A DRUG TEST ADMINISTERED UNDER THIS
40 SECTION, THE INDIVIDUAL SHALL BE PLACED IN A POOL OF INDIVIDUALS WHO ARE
41 SUBJECT TO RANDOM DRUG TESTING AS DESCRIBED IN PARAGRAPH B OF SUBDIVI-
42 SION FOUR OF THIS SECTION.

43 4. A. THE LOCAL SOCIAL SERVICES OFFICE SHALL ADMINISTER A DRUG TEST TO
44 AT LEAST FIFTY PERCENT OF THE POOL OF INDIVIDUALS DESCRIBED IN PARAGRAPH
45 C OF SUBDIVISION THREE OF THIS SECTION. AN INDIVIDUAL MAY NOT BE TESTED
46 MORE THAN ONCE UNDER THIS SECTION.

47 B. THE LOCAL SOCIAL SERVICES OFFICE SHALL ADMINISTER RANDOM DRUG TESTS
48 TO TWENTY-FIVE PERCENT OF THE POOL OF INDIVIDUALS DESCRIBED IN PARAGRAPH
49 D OF SUBDIVISION THREE OF THIS SECTION EACH MONTH.

50 C. THE LOCAL SOCIAL SERVICES OFFICE SHALL PROVIDE A LIST OF DRUG ABUSE
51 TREATMENT PROGRAMS TO ANY INDIVIDUAL WHO TESTS POSITIVE UNDER THIS
52 SECTION.

53 5. A. AN INDIVIDUAL WHO TESTS POSITIVE UNDER THIS SECTION AND PROVIDES
54 EVIDENCE THAT THE INDIVIDUAL IS PARTICIPATING IN A DRUG ABUSE TREATMENT
55 PROGRAM SHALL CONTINUE TO RECEIVE TANF ASSISTANCE. HOWEVER, THE OFFICE
56 OF THE SECRETARY SHALL ADMINISTER A DRUG TEST TO THE INDIVIDUAL REGULAR-

1 LY AT INTERVALS OF AT LEAST TWENTY DAYS AND NOT MORE THAN THIRTY DAYS
2 UNTIL THE INDIVIDUAL TESTS NEGATIVE IN TWO CONSECUTIVE DRUG TESTS.

3 B. IF AN INDIVIDUAL DOES NOT TEST NEGATIVE IN TWO CONSECUTIVE DRUG
4 TESTS AS DESCRIBED IN PARAGRAPH A OF THIS SUBDIVISION NOT LATER THAN
5 FOUR MONTHS AFTER THE DATE THE OFFICE OF THE LOCAL SOCIAL SERVICES
6 OFFICE BEGINS TESTING THE INDIVIDUAL REGULARLY UNDER PARAGRAPH A OF THIS
7 SUBDIVISION, THE INDIVIDUAL, OR ANY CHILD ON WHOSE BEHALF THE INDIVIDUAL
8 RECEIVES TANF ASSISTANCE, IS INELIGIBLE TO RECEIVE TANF ASSISTANCE FOR
9 THREE MONTHS FROM THE DATE THE LOCAL SOCIAL SERVICES OFFICE DETERMINES
10 THAT THE INDIVIDUAL IS UNABLE TO TEST NEGATIVE ON TWO CONSECUTIVE DRUG
11 TESTS AS DESCRIBED IN PARAGRAPH A OF THIS SUBDIVISION.

12 C. IF AN INDIVIDUAL TESTS POSITIVE UNDER THIS SECTION AND FAILS TO
13 PROVIDE, NOT LATER THAN THIRTY DAYS AFTER THE DATE THE INDIVIDUAL TESTS
14 POSITIVE, EVIDENCE THAT THE INDIVIDUAL IS PARTICIPATING IN A DRUG ABUSE
15 TREATMENT PROGRAM, THE INDIVIDUAL OR ANY CHILD ON WHOSE BEHALF THE INDI-
16 VIDUAL RECEIVES TANF ASSISTANCE IS INELIGIBLE TO RECEIVE TANF ASSISTANCE
17 FOR THREE MONTHS AFTER THE THIRTY DAY PERIOD EXPIRES.

18 D. AN INDIVIDUAL WHO IS INELIGIBLE UNDER PARAGRAPH B OR C OF THIS
19 SUBDIVISION MAY REAPPLY FOR TANF ASSISTANCE AFTER THE APPLICABLE THREE
20 MONTH INELIGIBILITY PERIOD. UPON REAPPLYING, THE INDIVIDUAL MUST TEST
21 NEGATIVE ON A DRUG TEST BEFORE THE INDIVIDUAL MAY RECEIVE TANF ASSIST-
22 ANCE.

23 E. IF AN INDIVIDUAL DESCRIBED IN PARAGRAPH D OF THIS SUBDIVISION TESTS
24 POSITIVE ON THE DRUG TEST ADMINISTERED FOR THE TANF REAPPLICATION PROC-
25 ESS, THE FOLLOWING APPLY:

26 (1) THE INDIVIDUAL IS PERMANENTLY INELIGIBLE TO RECEIVE TANF ASSIST-
27 ANCE FOR THE INDIVIDUAL.

28 (2) A CHILD ON WHOSE BEHALF THE INDIVIDUAL RECEIVES TANF ASSISTANCE IS
29 INELIGIBLE FOR TANF ASSISTANCE FOR AS LONG AS THE CHILD RESIDES WITH THE
30 INDIVIDUAL.

31 6. A. AN INDIVIDUAL WHO REAPPLIES FOR TANF ASSISTANCE UNDER PARAGRAPH
32 D OF SUBDIVISION FIVE OF THIS SECTION AND IS ELIGIBLE TO RECEIVE TANF
33 ASSISTANCE IS SUBJECT TO RANDOM DRUG TESTING AS DESCRIBED IN PARAGRAPH B
34 OF SUBDIVISION FOUR OF THIS SECTION FOR AS LONG AS THE INDIVIDUAL
35 RECEIVES TANF ASSISTANCE.

36 B. THE LOCAL SOCIAL SERVICES OFFICE SHALL ADMINISTER RANDOM DRUG TESTS
37 TO TWENTY-FIVE PERCENT OF THE POOL OF INDIVIDUALS DESCRIBED IN PARAGRAPH
38 A OF THIS SUBDIVISION EACH MONTH.

39 7. A. IF AN INDIVIDUAL WHO IS INELIGIBLE TO RECEIVE TANF ASSISTANCE
40 UNDER THE PROVISIONS OF THIS SECTION AND WHO WAS NOT A PARENT OR GUARDI-
41 AN OF A CHILD AT THE TIME HE OR SHE BECAME INELIGIBLE TO RECEIVE TANF
42 ASSISTANCE SUBSEQUENTLY BECOMES A PARENT OR GUARDIAN OF A CHILD AND
43 TESTS NEGATIVE ON A DRUG TEST ADMINISTERED BY THE LOCAL SOCIAL SERVICES
44 OFFICE, THE CHILD IS ELIGIBLE FOR TANF ASSISTANCE UNDER THIS SECTION IF
45 THE CHILD MEETS ALL THE OTHER ELIGIBILITY REQUIREMENTS TO RECEIVE TANF
46 ASSISTANCE.

47 B. AN INDIVIDUAL DESCRIBED IN PARAGRAPH A OF THIS SUBDIVISION IS
48 SUBJECT TO RANDOM DRUG TESTING AS DESCRIBED IN PARAGRAPH B OF SUBDIVI-
49 SION SIX OF THIS SECTION FOR AS LONG AS THE INDIVIDUAL RECEIVES TANF
50 ASSISTANCE.

51 C. IF AN INDIVIDUAL DESCRIBED UNDER PARAGRAPH A OF THIS SUBDIVISION
52 TESTS POSITIVE ON A DRUG TEST ADMINISTERED BY THE LOCAL SOCIAL SERVICES
53 OFFICE, THE CHILD ON WHOSE BEHALF THE INDIVIDUAL RECEIVES TANF ASSIST-
54 ANCE IS INELIGIBLE TO RECEIVE TANF ASSISTANCE FOR AS LONG AS THE CHILD
55 RESIDES WITH THE INDIVIDUAL.

1 8. IF AN INDIVIDUAL REFUSES TO TAKE A SUBSTANCE ABUSE SUBTLE SCREENING
2 INVENTORY TEST OR DRUG TEST UNDER THIS SECTION, THE FOLLOWING APPLY:

3 A. THE INDIVIDUAL IS INELIGIBLE TO RECEIVE TANF ASSISTANCE.

4 B. A CHILD ON WHOSE BEHALF THE INDIVIDUAL RECEIVES TANF ASSISTANCE IS
5 INELIGIBLE FOR TANF ASSISTANCE FOR AS LONG AS THE CHILD RESIDES WITH THE
6 INDIVIDUAL.

7 9. A. EXCEPT AS PROVIDED IN PARAGRAPH B OF THIS SUBDIVISION, THE LOCAL
8 SOCIAL SERVICES OFFICE SHALL PAY THE COSTS OF A DRUG TEST ADMINISTERED
9 UNDER THIS SECTION.

10 B. IF AN INDIVIDUAL TESTS POSITIVE ON A DRUG TEST ADMINISTERED UNDER
11 THIS SECTION, THE LOCAL SOCIAL SERVICES OFFICE SHALL WITHHOLD THE AMOUNT
12 OF THE COST OF THE DRUG TEST FROM THE NEXT PAYMENT OF TANF ASSISTANCE
13 THE INDIVIDUAL RECEIVES IF THE INDIVIDUAL RECEIVES TANF ASSISTANCE.

14 10. ANY DETERMINATION OF INELIGIBILITY FOR TANF ASSISTANCE UNDER THE
15 PROVISIONS OF THIS SECTION IS SUBJECT TO APPEAL AND JUDICIAL REVIEW AS
16 PROVIDED IN SECTION TWENTY-TWO OF THIS CHAPTER.

17 11. A DRUG TEST ADMINISTERED UNDER THE PROGRAM MUST BE PERFORMED BY A
18 SAMHSA (AS DEFINED IN IC 22-10-15-3) CERTIFIED LABORATORY.

19 12. THE LOCAL SOCIAL SERVICES OFFICE SHALL NOTIFY THE OFFICE OF CHIL-
20 DREN AND FAMILY SERVICES REGARDING A CHILD WHO IS INELIGIBLE FOR TANF
21 ASSISTANCE UNDER THIS SECTION. THE OFFICE OF CHILDREN AND FAMILY
22 SERVICES SHALL, NOT LATER THAN NINE MONTHS AFTER THE DATE IT RECEIVES
23 THE NOTICE, CONDUCT A HOME VISIT AT THE CHILD'S RESIDENCE TO DETERMINE
24 WHETHER TO PURSUE THE REPORT AS A REPORT OF SUSPECTED CHILD ABUSE OR
25 NEGLECT.

26 13. THE LOCAL SOCIAL SERVICES OFFICE'S RECORDS CONCERNING THE RESULTS
27 OF A DRUG TEST UNDER THIS SECTION MAY NOT BE ADMITTED AGAINST A DEFEND-
28 ANT IN A CRIMINAL PROCEEDING.

29 14. AS USED IN THIS SECTION: A. "CONTROLLED SUBSTANCE" MEANS ANY
30 SUBSTANCE LISTED IN SCHEDULE I, II, III, IV OR V OF SECTION THIRTY-THREE
31 HUNDRED SIX OF THE PUBLIC HEALTH LAW OTHER THAN MARIHUANA, BUT INCLUDING
32 CONCENTRATED CANNABIS AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION FOUR OF
33 SECTION THIRTY-THREE HUNDRED TWO OF SUCH LAW.

34 B. "TANF ASSISTANCE" MEANS ASSISTANCE UNDER THE FEDERAL TEMPORARY
35 ASSISTANCE FOR NEEDY FAMILIES PROGRAM UNDER 42 U.S.C. 601 ET SEQ.

36 C. "TESTS NEGATIVE" OR "TESTING NEGATIVE" MEANS THAT AN INDIVIDUAL:

37 (1) TESTS NEGATIVE FOR THE USE OF A CONTROLLED SUBSTANCE IN THE INDI-
38 VIDUAL'S BODY; AND

39 (2) TESTS POSITIVE FOR THE USE OF A CONTROLLED SUBSTANCE IN THE INDI-
40 VIDUAL'S BODY BUT HAS A VALID PRESCRIPTION OR AN ORDER OF A PRACTITIONER
41 ACTING IN THE COURSE OF THE PRACTITIONER'S PROFESSIONAL PRACTICE FOR THE
42 CONTROLLED SUBSTANCE.

43 D. "TESTS POSITIVE" OR "TESTING POSITIVE" MEANS AN INDIVIDUAL:

44 (1) TESTS POSITIVE FOR THE PRESENCE OF A CONTROLLED SUBSTANCE IN THE
45 INDIVIDUAL'S BODY; AND

46 (2) DOES NOT POSSESS A VALID PRESCRIPTION OR AN ORDER OF A PRACTITION-
47 ER ACTING IN THE COURSE OF THE PRACTITIONER'S PROFESSIONAL PRACTICE FOR
48 THE CONTROLLED SUBSTANCE.

49 S 2. This act shall take effect on the first of January next succeed-
50 ing the date on which it shall have become a law.