House Bill 861 (COMMITTEE SUBSTITUTE)
By: Representatives Harden of the 28th, Ramsey of the 72nd, Allison of the 8th, Dempsey of the 13th, McBrayer of the 153rd, and others

A BILL TO BE ENTITLED
AN ACT

To amend Article 1 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to general provisions for public assistance, so as to require drug testing for applicants and recipients of state administered TANF benefits; to provide for legislative intent; to provide for related matters; to provide for severability; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.
WHEREAS, the citizens of this state have a great concern for the abuse of illegal substances by recipients of public benefits not only because such benefits are paid with limited public funds that are potentially wasted on illegal drug users, but also because of the need to identify and provide help to those who are caught in the trap of drug addiction; and

WHEREAS, the Georgia General Assembly recognizes the importance of encouraging a drug-free lifestyle and believes that the state should discourage rather than support the abuse of illegal substances; and

WHEREAS, the use of illegal drugs by those on the lower end of the economic scale makes it more likely that such persons will remain in poverty and commit other criminal offenses; and

WHEREAS, serious drug abuse by lower income parents is more likely to result in the children of impoverished families failing in school, developing emotional or behavior problems, and being neglected or abused; and

WHEREAS, if the state is to take responsibility for breaking the tragic cycle of the interrelated conditions of poverty, crime, and drug abuse, then it is necessary and proper for
the state to adopt a practice that will identify those substance abusers who receive state
benefits rather than continuing to allow government tax dollars to support these
self-destructive behaviors.

Therefore, the Georgia General Assembly by this Act adopts a just and effective means of
identifying illegal drug users receiving public benefits.

SECTION 2.

Article 1 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to
general provisions relating to public assistance, is amended by adding a new Code section
to read as follows:

'49-4-3.1.

(a) As used in this Code section, the term:
(1) 'Applicant' means any person applying or reapplying for TANF benefits with the
Department of Human Services or any public or private entity working on behalf of the
department in the administration of TANF benefits.
(2) 'Drug test' means the collection and testing of bodily fluids or other matter for the
presence of marijuana or controlled substances administered in a manner equivalent to
that required by the Mandatory Guidelines for Federal Workplace Drug Testing Programs
(HHS Regulations 53 C.F.R. 11979, et seq., as amended) or other professionally valid
procedures approved and adopted by the department. The term 'drug test' shall include
any initial test or tests and any follow-up test required to meet or exceed federal or other
professional standards for ensuring the accuracy of the testing process.
(3) 'Failing a drug test' means test results indicating the presence of marijuana or a
controlled substance in a person's system; provided, however, that where a person has a
valid medical prescription for a controlled substance for which he or she tested positive,
he or she shall not be considered to have failed a drug test for such substance.
(4) 'Recipient' means a person currently receiving TANF benefits from or through the
Department of Human Services.
(5) 'TANF benefits' means state administered federal benefits under the Temporary
Assistance For Needy Families (TANF) program but shall not include any public
assistance related to the provision of medical care.
(b) Not later than July 1, 2013, the Department of Human Services shall institute a drug
testing program for applicants of TANF benefits who are 18 years of age or older. The
drug testing program for TANF benefits shall require that a drug test be administered to
each applicant for TANF benefits prior to the receipt of any such benefits.
(c) Contingent upon available funding, in addition to administering a drug test to applicants for TANF benefits, the department shall institute a random drug testing program for recipients of TANF benefits. A recipient of TANF benefits shall submit, not less than once every two years, to the department's random drug testing program as a requirement for continued receipt of such benefits. The department shall be responsible for ensuring that recipients chosen for drug testing are selected at random and not by any other criteria.

(d) The department shall deny TANF benefits to an applicant for or recipient of TANF benefits if the applicant or recipient fails a drug test.

(e) Failure of an applicant or recipient to comply with the drug testing requirements of this Code section or the rules and regulations of the department for the administration of such test shall be deemed to be equivalent to failing a drug test, and the applicant or recipient shall be denied or deemed ineligible to receive TANF benefits.

(f) A person denied TANF benefits for failing a drug test pursuant to this Code section may reapply for such benefits but shall be required to pass a drug test in the same manner as an original applicant for such benefits. Any person failing a second drug test administered under the provisions of this Code section shall not be permitted to reapply for TANF benefits for a period of two years following the results of such test. Any person failing a third drug test administered under the provisions of this Code section shall be indefinitely prohibited from reapplying for TANF benefits.

(g) The department shall be responsible for ensuring the confidentiality of any and all drug test results administered as part of the program. Random drug test results shall be used only for the purpose of denying or determining eligibility for continued receipt of state public assistance, state administered federal public assistance, or both. At no time shall drug test results be released to any public or private person or entity except as requested by the person tested.

(h) If a parent is deemed ineligible for TANF benefits as a result of failing a drug test conducted under this Code section, the dependent child's eligibility for TANF benefits shall not be affected. An appropriate protective payee shall be designated and approved by the department to receive benefits on behalf of the child. The parent may recommend another individual to receive benefits for the parent's minor child. The recommended individual must be an immediate family member. If an immediate family member is not available or the family member declines the option, another individual shall be designated and approved by the department. The designated individual shall also undergo drug testing before being approved to receive benefits on behalf of the child. If the designated individual fails a drug test, he or she shall be ineligible to receive benefits on behalf of the child.

(i) The department shall provide for an administrative hearing and interdepartmental appeal for review of the findings of the department to the commissioner or his or her

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designee. A decision by the commissioner or his or her designee shall be considered a final agency decision. A review of the final agency decision may be conducted by appeal to the superior court of the county where the applicant or recipient resides. An appeal of a final agency decision shall be filed within 30 days of the decision and such decision shall be affirmed provided there is any evidence to support the findings of the department. The administrative appeal proceedings authorized under this subsection shall be conducted by the department and shall not be conducted by the Office of Administrative Hearings or any other agency outside of the department.

(j) The administrative costs of the drug test administered pursuant to this Code section shall be paid by the recipient of TANF benefits by deducting such costs from the benefits over a period of 12 months; provided, however, that a recipient of public benefits shall not be charged more than a total of $40.00 per drug test nor be required to pay for more than two tests in a two-year period.

(k) The results of any drug test done according to this Code section shall not be subject to disclosure under Article 4 of Chapter 18 of Title 50, relating to inspection of public records. Such results shall not be used as a part of a criminal investigation or criminal prosecution. Such results may not be used in a civil action or otherwise disclosed to any person or entity without the express written consent of the person tested or his or her heirs or legal representative. All such records shall be destroyed five years after the date of the test.

(l) The department shall adopt rules and regulations for the administration of a drug testing program in accordance with the provisions of this Code section.

SECTION 3.

In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect as if the section, subsection, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

SECTION 4.

This Act shall become effective on January 1, 2013, and shall apply to applicants or recipients of TANF benefits on or after July 1, 2013.
SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.