

The House Committee on Judiciary offers the following substitute to SB 292:

A BILL TO BE ENTITLED
AN ACT

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

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

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

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

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

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

21 WHEREAS, if the state is to take responsibility for breaking the tragic cycle of the
22 interrelated conditions of poverty, crime, and drug abuse, then it is necessary and proper for

23 the state to adopt a practice that will identify those substance abusers who receive state
24 benefits rather than continuing to allow government tax dollars to support these
25 self-destructive behaviors.

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

28 SECTION 2.

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

32 "49-4-3.1.

33 (a) As used in this Code section, the term:

34 (1) 'Applicant' means any person applying or reapplying for TANF benefits with the
35 Department of Human Services or any public or private entity working on behalf of the
36 department in the administration of TANF benefits.

37 (2) 'Drug test' means the collection and testing of bodily fluids or other matter for the
38 presence of marijuana or controlled substances administered in a manner equivalent to
39 that required by the Mandatory Guidelines for Federal Workplace Drug Testing Programs
40 (HHS Regulations 53 C.F.R. 11979, et seq., as amended) or other professionally valid
41 procedures approved and adopted by the department. The term 'drug test' shall include
42 any initial test or tests and any follow-up test required to meet or exceed federal or other
43 professional standards for ensuring the accuracy of the testing process.

44 (3) 'Failing a drug test' means test results indicating the presence of marijuana or a
45 controlled substance in a person's system; provided, however, that where a person has a
46 valid medical prescription for a controlled substance for which he or she tested positive,
47 he or she shall not be considered to have failed a drug test for such substance.

48 (4) 'Recipient' means a person currently receiving TANF benefits from or through the
49 Department of Human Services.

50 (5) 'TANF benefits' means state administered federal benefits under the Temporary
51 Assistance For Needy Families (TANF) program but shall not include any public
52 assistance related to the provision of medical care.

53 (b) Not later than July 1, 2013, the Department of Human Services shall institute a drug
54 testing program for applicants of TANF benefits who are 18 years of age or older,
55 excluding individuals who are receiving TANF benefits based on being victims of domestic
56 violence and are residing in a domestic violence shelter. The drug testing program for

57 TANF benefits shall require that a drug test be administered to each applicant for TANF
58 benefits prior to the receipt of any such benefits.

59 (c) Contingent upon available funding, in addition to administering a drug test to
60 applicants for TANF benefits, the department shall institute a random drug testing program
61 for recipients of TANF benefits. A recipient of TANF benefits shall submit, not more than
62 once every two years, to the department's random drug testing program as a requirement
63 for continued receipt of such benefits. The department shall be responsible for ensuring
64 that recipients chosen for drug testing are selected at random and not by any other criteria.

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

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

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

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

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

94 (i) The department shall provide for an administrative hearing and interdepartmental
 95 appeal for review of the findings of the department to the commissioner or his or her
 96 designee. A decision by the commissioner or his or her designee shall be considered a final
 97 agency decision. A review of the final agency decision may be conducted by appeal to the
 98 superior court of the county where the applicant or recipient resides. An appeal of a final
 99 agency decision shall be filed within 30 days of the decision and such decision shall be
 100 affirmed provided there is any evidence to support the findings of the department. The
 101 administrative appeal proceedings authorized under this subsection shall be conducted by
 102 the department and shall not be conducted by the Office of Administrative Hearings or any
 103 other agency outside of the department.

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

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

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

118 (m) This Code section shall not apply to any individuals receiving long-term services and
 119 supports through a non-Medicaid home and community based services program, through
 120 a Medicaid waiver program, or in a facility, including, but not limited to, nursing homes,
 121 personal care homes, assisted living communities, intermediate care facilities, community
 122 living arrangements, or host homes."

123 SECTION 3.

124 In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared
 125 or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other
 126 sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full
 127 force and effect as if the section, subsection, sentence, clause, or phrase so declared or
 128 adjudged invalid or unconstitutional were not originally a part hereof. The General

129 Assembly declares that it would have passed the remaining parts of this Act if it had known
130 that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

131 **SECTION 4.**

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

134 **SECTION 5.**

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