

House Bill 861 (AS PASSED HOUSE AND SENATE)

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

1 To provide a short title; to provide a statement of legislative intent; to amend Article 9 of
2 Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to temporary
3 assistance for needy families, so as to define certain terms; to provide that the Department
4 of Human Services shall create an established drug test to be administered to each applicant
5 for temporary assistance for needy families; to provide requirements; to provide that each
6 applicant shall undergo a drug test in order to qualify for benefits; to provide that any person
7 who fails such drug test shall be ineligible to receive benefits; to provide for reapplication;
8 to provide for children's benefits; to provide for confidentiality of records; to provide for
9 related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 This Act shall be known and may be cited as the "Social Responsibility and Accountability
13 Act."

14 **SECTION 2.**

15 It is the intent of the General Assembly to:

- 16 (1) Ensure that TANF funds are ultimately utilized for the intended purpose of
17 alleviating the effects of poverty and are not diverted to illicit drug use;
- 18 (2) Protect children of poverty by ensuring such funds strengthen family life and reduce
19 the danger that illicit drugs will be introduced into the home environment;
- 20 (3) Assist adults addicted to drugs to avoid the temptation and restructure their lives by
21 focusing on employment and becoming better parents; and
- 22 (4) Ensure that the government does not subsidize the public health risk posed by drug
23 use and the associated criminal activities.

24 **SECTION 3.**

25 Article 9 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to
26 temporary assistance for needy families, is amended by adding a new Code section to read
27 as follows:

28 "49-4-193.

29 (a) As used in this Code section, the term 'established drug test' means the collection and
30 testing of bodily fluids administered in a manner equivalent to that required by the
31 Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 C.F.R. 11979,
32 et seq., as amended) or other professionally valid procedures approved by the department;
33 provided, however, that where possible and practicable, a swab test shall be used in lieu of
34 a urinalysis.

35 (b) The department shall adopt rules and regulations for an established drug test which
36 shall include the following:

37 (1) Which illegal drugs will be the subject of testing;

38 (2) Methods for assuring minimal privacy intrusions during collection of body fluid
39 specimens for such testing;

40 (3) Methods for assuring proper storage, transportation, and handling of such specimens
41 in order to ensure the integrity of the testing process;

42 (4) The identity of those persons entitled to the results of such tests and methods for
43 ensuring that only authorized persons are given access to such results;

44 (5) A list of laboratories qualified to conduct established drug tests;

45 (6) A list of approved substance abuse treatment providers;

46 (7) Procedures for persons undergoing drug testing, prior to the collection of body fluid
47 specimens for such testing, to provide information regarding use of any drug pursuant to
48 a medical prescription or as otherwise authorized by law which may affect the results of
49 such test;

50 (8) A requirement that the test be conducted no later than 48 hours after the application
51 is approved by the department for TANF eligibility. Proof of eligibility from the
52 department shall be issued to the applicant. The applicant shall show proof of eligibility
53 to an authorized test examiner prior to submitting to the test; and

54 (9) A requirement that any applicant who demonstrates proof of active and current
55 Medicaid benefits shall pay a drug screening application fee of no more than \$17.00, and
56 no authorized test examiner shall conduct a drug test if an applicant demonstrates active
57 and current Medicaid benefits unless the applicant presents a receipt proving that he or
58 she has paid the required drug screening application fee. Eligible applicants who do not
59 have active and current Medicaid benefits shall be responsible for paying the full cost of
60 administering the drug test upon presentation to an authorized examiner.

61 (c) The department shall require a drug test consistent with subsection (b) of this Code
62 section to screen each individual who applies for assistance. The cost of drug testing shall
63 be the responsibility of the individual tested, provided that the individual does not submit
64 proof of active Medicaid benefits to subsidize the cost of such drug testing pursuant to
65 paragraph (9) of subsection (b) of this Code section. No assistance payment shall be
66 delayed because of the requirements of this Code section, and any payments made prior to
67 the department's receipt of a test result showing a failure shall be recoverable.

68 (d) Any recipient of cash assistance under this article who tests positive for controlled
69 substances as a result of a drug test required under this Code section shall be ineligible to
70 receive TANF benefits as follows:

71 (1) For a first positive result, the recipient shall be ineligible for TANF benefits for one
72 month and until he or she tests negative in a retest;

73 (2) For a second positive result, the recipient shall be ineligible for TANF benefits for
74 three months and until he or she tests negative in a retest; and

75 (3) For a third and each subsequent positive result, the recipient shall be ineligible for
76 TANF benefits for one year and until he or she tests negative in a retest unless the
77 individual meets the requirements of subsection (f) of this Code section.

78 (e) The department shall:

79 (1) Provide notice of drug testing to each individual at the time of application. The
80 notice shall advise the individual that drug testing will be conducted as a condition for
81 receiving TANF benefits and that the individual shall bear the cost of testing. If the
82 individual tests negative for controlled substances, the department shall increase the
83 amount of the initial TANF benefit by the amount paid by the individual for the drug
84 testing. However, if the individual used an active and current Medicaid benefit pursuant
85 to paragraph (9) of subsection (b) of this Code section to subsidize the cost of the test, the
86 individual shall not be eligible for direct TANF reimbursement. The individual shall be
87 advised that the required drug testing may be avoided if the individual does not apply for
88 TANF benefits. Dependent children under the age of 18 are exempt from the drug testing
89 requirement;

90 (2) Require that for two-parent families, one parent shall comply with the drug testing
91 requirement;

92 (3) Require that any teen parent who is not required to live with a parent, legal guardian,
93 or other adult caretaker relative shall comply with the drug testing requirement;

94 (4) Advise each individual to be tested, before the test is conducted, that he or she may,
95 but is not required to, advise the agent administering the test of any prescription or over
96 the counter medication he or she is taking;

- 97 (5) Require each individual to be tested to sign a written acknowledgment that he or she
98 has received and understood the notice and advice provided under paragraphs (1) and (4)
99 of this subsection;
- 100 (6) Assure each individual being tested a reasonable degree of dignity while producing
101 and submitting a sample for drug testing, consistent with the state's need to ensure the
102 reliability of the sample;
- 103 (7) Specify circumstances under which an individual who fails a drug test has the right
104 to take one or more additional tests;
- 105 (8) Inform an individual who tests positive for a controlled substance and is deemed
106 ineligible for TANF benefits for one year pursuant to paragraph (3) of subsection (d) of
107 this Code section that the individual may reapply for those benefits six months after the
108 date of the positive drug test if he or she meets the requirements of subsection (f) of this
109 Code section; and
- 110 (9) Provide any individual who tests positive with a list of substance abuse treatment
111 providers approved by the department which are available in the area in which he or she
112 resides. Neither the department nor the state shall be responsible for providing or paying
113 for substance abuse treatment.
- 114 (f) An individual who tests positive for an illegal drug and is denied TANF benefits for
115 one year may reapply for TANF benefits after six months if the individual can document
116 the successful completion of a substance abuse treatment program offered by a provider
117 approved by the department. An individual who has met the requirements of this
118 subsection and reapplies for TANF benefits shall also pass an initial drug test and meet the
119 requirements of subsection (c) of this Code section. Any drug test conducted while the
120 individual is undergoing substance abuse treatment shall meet the requirements of
121 subsection (b) of this Code section. The cost of any drug testing provided under this Code
122 section and substance abuse treatment shall be the responsibility of the individual being
123 tested and receiving treatment. An individual who fails the drug test required under
124 subsection (c) of this Code section may reapply for TANF benefits under this subsection
125 only once.
- 126 (g) If a parent is deemed ineligible for TANF benefits as a result of failing a drug test
127 conducted under this Code section:
- 128 (1) The dependent child's eligibility for TANF benefits shall not be affected;
129 (2) An appropriate protective payee shall be designated to receive benefits on behalf of
130 the child; and
- 131 (3) The parent may choose to designate another individual to receive benefits for the
132 parent's minor child. The designated individual must be an immediate family member
133 or, if an immediate family member is not available or the family member declines the

134 option, another individual approved by the department. The designated individual shall
135 also undergo drug testing before being approved to receive benefits on behalf of the child.
136 If the designated individual tests positive for controlled substances, he or she shall be
137 ineligible to receive benefits on behalf of the child.

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

145 (i) No testing shall be required by the provisions of this Code section for any person whom
146 the department determines is significantly hindered, because of a physical or mental
147 handicap or developmental disability, from doing so or for any person enrolled in an
148 enhanced primary care case management program operated by the Department of
149 Community Health, Division of Medical Assistance to serve frail elderly and disabled
150 beneficiaries to improve the health outcomes of persons with chronic health conditions by
151 linking primary medical care with home and community based services. In addition, no
152 testing shall be required by the provisions of this Code section for any individuals receiving
153 or on a waiting list for long-term services and supports through a non-Medicaid home and
154 community based services program or for any individual residing in a facility such as a
155 nursing home, personal care home, assisted living community, intermediate care facility
156 for the mentally retarded, community living arrangement, or host home.

157 (j) The department shall adopt rules to implement this Code section."

158 **SECTION 4.**

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