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HOUSE BILL 392
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PROPOSED SENATE COMMITTEE SUBSTITUTE H392-PCS80405-TK-48

Short Title: Warrant Status/Drug Screen Public Assist.

(Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

1 AN ACT REQUIRING A COUNTY DEPARTMENT OF SOCIAL SERVICES (DSS) TO
2 VERIFY WHETHER AN APPLICANT FOR OR RECIPIENT OF TEMPORARY
3 ASSISTANCE FOR NEEDY FAMILIES (TANF) BENEFITS OR FOOD AND
4 NUTRITION SERVICES (FNS) BENEFITS IS A FLEEING FELON OR A PROBATION
5 OR PAROLE VIOLATOR, TO DIRECT INTERAGENCY COOPERATION AND
6 INFORMATION SHARING IN ORDER TO VERIFY THE ELIGIBILITY STATUS OF
7 AN APPLICANT OR RECIPIENT, TO DENY TANF OR FNS BENEFITS TO AN
8 APPLICANT OR RECIPIENT WHO IS A FLEEING FELON OR A PROBATION OR
9 PAROLE VIOLATOR, AND TO REQUIRE DRUG SCREENING AND TESTING FOR
10 CERTAIN APPLICANTS AND RECIPIENTS OF WORK FIRST PROGRAM
11 ASSISTANCE.
12

13 Whereas, federal law, specifically 42 U.S.C. § 601, et seq., requires that states
14 receiving funds under certain federal grant programs shall not use any part of the grant to
15 provide assistance to any individual who is (i) fleeing to avoid prosecution, custody, or
16 confinement after conviction under the laws of the place from which the individual flees, for a
17 crime or an attempt to commit a crime, which is a felony under the laws of the place from
18 which the individual flees, or (ii) violating a condition of probation or parole imposed under
19 federal or State law; and

20 Whereas, states receiving these federal grant funds are authorized under federal law
21 to establish safeguards against the use or disclosure of information about applicants or
22 recipients for assistance under the state program funded under federal law; and

23 Whereas, federal law expressly authorizes the State agency administering the
24 program to furnish a federal, State, or local law enforcement officer, upon the request of the
25 officer, with the current address of any recipient if the officer furnishes the agency with the
26 name of the applicant or recipient under specified circumstances; and

27 Whereas, conducting a criminal background check on applicants for or recipients of
28 public assistance benefits is necessary in order to ensure compliance with federal laws
29 prohibiting a fleeing felon or probation or parole violator from receiving public assistance
30 benefits; and

31 Whereas, the apprehension of individuals by law enforcement may be necessary to
32 protect and safeguard the public; and

33 Whereas, State agencies administering the program may have or receive information
34 that is necessary for a law enforcement agency to conduct the official duties of the agency, and



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1 the location or apprehension of the applicant or recipient is within a law enforcement agency's
2 official duties; Now, therefore,
3 The General Assembly of North Carolina enacts:

4
5 **PART I. SHARE ARREST WARRANT STATUS OF APPLICANTS FOR PUBLIC**
6 **ASSISTANCE**

7 **SECTION 1.** Part 1 of Article 2 of Chapter 108A of the General Statutes is
8 amended by adding the following new section to read:

9 **"§ 108A-26.1. Information sharing of outstanding arrest warrant of applicant for or**
10 **recipient of program assistance.**

11 (a) A county department of social services shall notify an applicant for program
12 assistance under Part 2 or Part 5 of this Article that release of confidential information from the
13 applicant's records may not be protected if a warrant for arrest is issued against the applicant. A
14 county department of social services shall notify all recipients under a program of public
15 assistance under Part 2 or Part 5 of this Article at the time of renewal of the recipient's
16 application for such program assistance that release of confidential information from the
17 recipient's records may not be protected if a felony or misdemeanor arrest warrant is issued
18 against the recipient.

19 (b) Notwithstanding G.S. 108A-80, and to the extent otherwise allowed by federal and
20 State law, a county department of social services shall verify whether an applicant for or
21 recipient of program assistance under Part 2 or Part 5 of this Article is (i) fleeing to avoid
22 prosecution, custody, or confinement after conviction under the laws of the place from which
23 the individual flees, for a crime or an attempt to commit a crime, which is a felony under the
24 laws of the place from which the individual flees, or (ii) violating a condition of probation or
25 parole imposed under federal or State law by ensuring that the criminal history of an applicant,
26 or of a recipient at the time of benefits renewal, is checked. A county department of social
27 services shall conduct the criminal history check necessary to verify whether an applicant is a
28 fleeing felon or a probation or parole violator utilizing all currently accessible databases to the
29 extent permitted by allocated county and State resources. Counties are not required to allocate
30 funds for this program but are authorized to do so on a voluntary basis.

31 (c) Nothing in this section shall be construed to authorize the disclosure of any
32 information otherwise protected by State or federal law or regulation.

33 (d) This section applies to applicants for or recipients of program assistance under Part
34 2 or Part 5 of this Article only.

35 (e) The Social Services Commission shall adopt rules regarding (i) the sharing of
36 information between county departments of social services and local law enforcement agencies,
37 (ii) the accuracy of information shared pursuant to this section, and (iii) any other rules the
38 Commission deems necessary to implement this section. The Secretary of the Department of
39 Health and Human Services shall oversee implementation of these rules.

40 (f) The Secretary of the Department of Health and Human Services shall promote
41 cooperation among State and local agencies to perform the functions described in this section.
42 The Department of Health and Human Services shall cooperate and collaborate with the Office
43 of the State Controller, the Administrative Office of the Courts, and the Department of Public
44 Safety to develop protocols to implement this section.

45 (g) Annually on April 1, each county department of social services shall report to the
46 Department of Health and Human Services on the number of individuals who are denied
47 benefits under this section during the preceding calendar year.

48 (h) Annually on May 1, the Department of Health and Human Services shall report to
49 the Joint Legislative Oversight Committee on Health and Human Services of the General
50 Assembly on the number of individuals who are denied assistance under this section. The
51 report shall include a breakdown by county."

1 SECTION 2. Part 1 of Article 2 of Chapter 108A of the General Statutes is
2 amended by adding the following new section to read:

3 **"§ 108A-26.2. Fleeing felon or parole or probation violator; eligibility for program**
4 **assistance; federal approval; review by department.**

5 (a) Subject to subsection (b) of this section, a department of social services shall not
6 grant public assistance under Part 2 or Part 5 of Article 2 of Chapter 108A of the General
7 Statutes if the department receives information described in G.S. 108A-26.1 that the applicant
8 for or recipient of program assistance is subject to arrest under an outstanding warrant arising
9 from a charge of violating conditions of parole or probation or from a felony charge against that
10 applicant or recipient in any jurisdiction. This section does not affect the eligibility for
11 assistance of other members of the applicant's or recipient's household. An applicant or
12 recipient described in this section is eligible for program assistance if all other eligibility
13 criteria of the law are met when the applicant or recipient is no longer subject to arrest under an
14 outstanding warrant as described in this section.

15 (b) If federal approval is required in order to prevent the loss of federal reimbursement
16 as a result of the application of this section to an applicant for or recipient of program
17 assistance, the Department of Health and Human Services shall promptly take any action
18 necessary to obtain federal approval."

19 SECTION 3. Part 2 of Article 4 of Chapter 114 of the General Statutes is amended
20 by adding the following new section to read:

21 **"§ 114-19.33. Criminal record checks of applicants for or recipients of program**
22 **assistance.**

23 The Department of Justice may provide to a county department of social services from the
24 State and National Repositories of Criminal Histories the criminal history of any person who
25 applies for program assistance under Part 2 or Part 5 of Article 2 of Chapter 108A of the
26 General Statutes. The county department of social services shall provide to the Department of
27 Justice, along with the request, a form signed by the applicant or recipient acknowledging
28 receipt of the notification required by G.S. 108A-26.1(a), any identifying information required
29 by the State and National Repositories, and any additional information required by the
30 Department of Justice. Except as provided under G.S. 108A-26.1, the county department of
31 social services shall keep all information obtained pursuant to this section confidential."
32

33 **PART II. DRUG SCREENING AND TESTING FOR WORK FIRST PROGRAM**
34 **ASSISTANCE**

35 SECTION 4. G.S. 108A-29.1 reads as rewritten:

36 **"§ 108A-29.1. Substance abuse treatment required; drug screening and testing for**
37 **Work First Program applicants and recipients.**

38 (a) ~~Each applicant or current recipient of Work First Program benefits, determined by a~~
39 ~~Qualified Professional in Substance Abuse (QPSA) or by a physician certified by the American~~
40 ~~Society of Addiction Medicine (ASAM) to be addicted to alcohol or drugs and to be in need of~~
41 ~~professional substance abuse treatment services shall be required, as part of the person's MRA~~
42 ~~and as a condition to receiving Work First Program benefits, to participate satisfactorily in an~~
43 ~~individualized plan of treatment in an appropriate treatment program. As a mandatory program~~
44 ~~component of participation in an addiction treatment program, each applicant or current~~
45 ~~recipient shall be required to submit to an approved, reliable, and professionally administered~~
46 ~~regimen of testing for presence of alcohol or drugs, without advance notice, during and after~~
47 ~~participation, in accordance with the addiction treatment program's individualized plan of~~
48 ~~treatment, follow up, and continuing care services for the applicant or current recipient.~~
49 The Department shall require a drug test to screen each applicant for or recipient of Work First
50 Program assistance whom the Department reasonably suspects is engaged in the illegal use of
51 controlled substances. The cost of the drug testing is the responsibility of the individual tested.

1 The Department shall provide notice of drug testing to each applicant or recipient. The notice
2 shall advise the applicant or recipient that drug screening, and testing if there is reasonable
3 suspicion that an individual is engaged in the illegal use of controlled substances, will be
4 conducted as a condition of receiving Work First Program assistance, and that the results of the
5 drug tests will remain confidential and will not be released to law enforcement. The applicant
6 or recipient shall be advised that the required drug screening and testing may be avoided if the
7 applicant or recipient does not apply for Work First Program assistance. Dependent children
8 under the age of 18 are exempt from the requirements of this section. The Department shall
9 require the following:

10 (1) That for two-parent households, both parents comply with the requirements
11 of this section.

12 (2) That any teen parent who is emancipated pursuant to Article 35 of Chapter
13 7B of the General Statutes complies with the requirements of this section.

14 (3) That each applicant or recipient be advised before drug testing that he or she
15 may inform the agent administering the test of any prescription or
16 over-the-counter medication he or she is taking.

17 (4) That each applicant or recipient being tested signs a written
18 acknowledgement that he or she has received and understood the notice and
19 advice provided under this subsection.

20 (5) That each applicant or recipient who fails a drug test understands that he or
21 she has the right to take one or more additional tests.

22 (b) An applicant or current recipient who fails to comply with any requirement imposed
23 pursuant to this section shall not be eligible for benefits or shall be subject to the termination of
24 benefits, but shall be considered to be receiving benefits for purposes of determining eligibility
25 for medical assistance. For an applicant or current recipient who is required to undergo a drug
26 test and who tests negative for controlled substances, the Department shall increase the amount
27 of the initial Work First Program assistance by the amount paid by the applicant or recipient for
28 the drug testing. An applicant or recipient who tests positive for controlled substances as a
29 result of a drug test required under this section is ineligible to receive Work First Program
30 assistance for one year from the date of the positive drug test except as provided in subsection
31 (b1) of this section. The individual may reapply after one year. However, if the individual has
32 any subsequent positive drug tests, the individual shall be ineligible for benefits for three years
33 from the date of the subsequent positive drug test unless the individual reapplies pursuant to
34 subsection (b1) of this section.

35 (b1) An applicant or recipient deemed ineligible under subsection (b) of this section may
36 reapply for Work First Program assistance if the individual can document the successful
37 completion of a substance abuse treatment program offered by a provider under subsection (e)
38 of this section and licensed by the Department. The applicant or recipient who reapplies for
39 Work First Program assistance after completion of a substance abuse program shall pass a drug
40 test. The cost of any drug testing and substance abuse program provided under this subsection
41 shall be the responsibility of the applicant or recipient being tested and receiving treatment. An
42 applicant or recipient who reapplies for Work First Program assistance pursuant to this
43 subsection may reapply one time only.

44 (c) The children of any applicant or current recipient shall remain eligible for benefits,
45 and these benefits shall be paid to a protective payee pursuant to G.S. 108A-38.

46 (d) An applicant or current recipient shall not be regarded as failing to comply with the
47 requirements of this section if an appropriate drug or alcohol treatment program is
48 unavailable. The Social Services Commission shall adopt rules pertaining to the testing of
49 applicants and recipients under this section.

50 (e) Area mental health authorities organized pursuant to Article 4 of Chapter 122C of
51 the General Statutes shall be responsible for administering the provisions of this section.

1 (f) ~~The requirements of this section may be waived or modified as necessary in the case~~
2 ~~of individual applicants or recipients to the degree necessary to comply with Medicaid~~
3 ~~eligibility provisions.~~

4 (g) For the purposes of this section, a criminal record check of an applicant for or
5 recipient of Work First Program assistance conducted under G.S. 114-19.33 that discloses a
6 conviction, arrest, or outstanding warrant within the three years prior to the date the criminal
7 record check is conducted relating to illegal controlled substances shall constitute reasonable
8 suspicion under this section and that applicant or recipient shall be required to undergo drug
9 testing as a condition of receipt of Work First Program assistance benefits."

10 **SECTION 5.** The Department of Health and Human Services shall report to the
11 General Assembly no later than July 1, 2014, on the implementation of Section 4 of this act.
12

13 **PART III. EFFECTIVE DATE AND SEVERABILITY**

14 **SECTION 6.** If any provision of this act or its application is held invalid, the
15 invalidity does not affect other provisions or applications of this act that can be given effect
16 without the invalid provisions or application, and to this end the provisions of this act are
17 severable.

18 **SECTION 7.** This act becomes effective October 1, 2013.