

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR

PAT McCrORY
GOVERNOR

August 15, 2013

GOVERNOR'S OBJECTIONS AND VETO MESSAGE

House Bill 392: *"An act requiring a County Department of Social Services (DSS) to verify whether an applicant for or recipient of Temporary Assistance for Needy Families (TANF) benefits or Food and Nutrition Services (FNS) benefits is a fleeing felon or a probation or parole violator, to direct interagency cooperation and information sharing in order to verify the eligibility status of an applicant or recipient, to deny TANF or FNS benefits to an applicant or recipient who is a fleeing felon or a probation or parole violator, and to require drug screening and testing for certain applicants and recipients of work first program assistance."*

It is critical that funding for public benefits be protected from abuses by felons and those fleeing prosecution. The criminal background requirements make sense in House Bill 392. Therefore under my existing executive authority, I am directing the Department of Health and Human Services and our state Chief Information Officer to develop a plan and recommendations to ensure that fugitive felons and probation or parole violators do not receive these public benefits and that law enforcement has access to the most up to date information.

This Administration believes that there are better ways to fight addiction and prevent criminal drug abuse. However, this is not the best way forward and I must veto this bill because of my concerns about the implementation of the drug testing provisions, which were not thoroughly analyzed prior to passing this legislation.

Additional veto reasons include:

- The changes that would be required are not funded in this bill or the 2013-15 budget.
- The bill is a step backward for DHHS in its efforts to assist people in combating substance abuse. The Department currently screens all adult applicants for substance abuse issues and, as appropriate, facilitates a treatment plan with which the applicant must comply prior to receiving benefits.
- I am concerned that the means for establishing reasonable suspicion, as outlined in the bill, are not sufficient to mandate a drug test under the Fourth Amendment.
- The punitive mandates of this bill go too far in restricting future access to benefits that could have a negative impact on children and families.
- Similar efforts in other states have proven costly for taxpayers and did little to help fight drug addiction.
- There are potential obstacles to consistent application across 100 counties.

I continue to recommend further study on this issue.

Pat McCrory
Governor of the State of North Carolina

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

HOUSE BILL 392
RATIFIED BILL

07-29-13 P12:29 IN

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

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

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

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

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

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

Whereas, state agencies administering the program may have or receive information that is necessary for a law enforcement agency to conduct the official duties of the agency, and the location or apprehension of the applicant or recipient is within a law enforcement agency's official duties; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. SHARE ARREST WARRANT STATUS OF APPLICANTS FOR PUBLIC ASSISTANCE

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

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

(a) A county department of social services shall notify an applicant for program assistance under Part 2 or Part 5 of this Article that release of confidential information from the



applicant's records may not be protected if there exists an outstanding warrant for arrest against the applicant. A county department of social services shall notify a recipient under a program of public assistance under Part 2 or Part 5 of this Article at the time of renewal of the recipient's application for such program assistance that release of confidential information from the recipient's records may not be protected if there exists an outstanding warrant for arrest against the recipient.

(b) Notwithstanding G.S. 108A-80, and to the extent otherwise allowed by federal and State law, a county department of social services shall ensure that the criminal history of an applicant, or of a recipient at the time of benefits renewal, is checked in a manner and to the extent necessary to verify whether an applicant for or recipient of program assistance under Part 2 or Part 5 of this Article is (i) fleeing to avoid prosecution, custody, or confinement after conviction under the laws of the place from which the individual flees, for a crime or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or (ii) violating a condition of probation or parole imposed under federal or State law.

(1) A criminal history check utilizing currently accessible databases shall be conducted by the county department of social services, subject to G.S. 114-19.34 and to the extent permitted by allocated county and State resources.

(2) Nothing in this section requires fingerprints to be taken of every applicant for or recipient of a program of public assistance.

(3) Counties are not required to allocate funds to comply with this section but are authorized to make such allocations on a voluntary basis.

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

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

(e) The Social Services Commission shall adopt any rules necessary to implement this section, including rules addressing the sharing of confidential information between county departments of social services and law enforcement agencies.

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

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

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

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

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

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

(b) If federal approval is required in order to prevent the loss of federal reimbursement as a result of the application of this section to an applicant for or recipient of program

assistance, the Department of Health and Human Services shall promptly take any action necessary to obtain federal approval."

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

"§ 114-19.34. Criminal record checks of applicants and recipients of programs of public assistance.

(a) Upon receipt of a request from a county department of social services pursuant to G.S. 108A-26.1, the Department of Justice shall, to the extent allowed by federal law, provide to the county department of social services the criminal history from the State or National Repositories of Criminal Histories of an applicant for, or recipient of, program assistance under Part 2 or Part 5 of Article 2 of Chapter 108A of the General Statutes.

(b) The county department of social services shall provide to the Department of Justice, along with the request, any information required by the Department of Justice and a form signed by the individual to be checked consenting to the check of the criminal record and to the use of any necessary identifying information required by the State or National Repositories. The county department of social services shall keep all information pursuant to this section confidential and privileged, except as provided in G.S. 108A-26.1.

(c) The Department of Justice may charge a reasonable fee only for conducting the checks of the criminal history records authorized by this section."

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

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

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

(a) Each applicant or current recipient of Work First Program benefits, determined by a Qualified Professional in Substance Abuse (QPSA) or by a physician certified by the American Society of Addiction Medicine (ASAM) to be addicted to alcohol or drugs and to be in need of professional substance abuse treatment services shall be required, as part of the person's MRA and as a condition to receiving Work First Program benefits, to participate satisfactorily in an individualized plan of treatment in an appropriate treatment program. As a mandatory program component of participation in an addiction treatment program, each applicant or current recipient shall be required to submit to an approved, reliable, and professionally administered regimen of testing for presence of alcohol or drugs, without advance notice, during and after participation, in accordance with the addiction treatment program's individualized plan of treatment, follow-up, and continuing care services for the applicant or current recipient. The Department shall require a drug test to screen each applicant for or recipient of Work First Program assistance whom the Department reasonably suspects is engaged in the illegal use of controlled substances. The Department shall provide notice of drug testing to each applicant or recipient. The notice shall advise the applicant or recipient that drug screening, and testing if there is reasonable suspicion that an individual is engaged in the illegal use of controlled substances, will be conducted as a condition of receiving Work First Program assistance, and that the results of the drug tests will remain confidential and will not be released to law enforcement. Dependent children under the age of 18 are exempt from the requirements of this section. The Department shall require the following:

- (1) That for two-parent households, both parents comply with the requirements of this section.
- (2) That any teen parent who is emancipated pursuant to Article 35 of Chapter 7B of the General Statutes complies with the requirements of this section.
- (3) That each applicant or recipient be advised before drug testing that he or she may inform the agent administering the test of any prescription or over-the-counter medication he or she is taking.
- (4) That each applicant or recipient being tested signs a written acknowledgement that he or she has received and understood the notice and advice provided under this subsection.
- (5) That each applicant or recipient who fails a drug test understands that he or she has the right to take one or more additional tests at his or her own expense.

(6) That each applicant or recipient who fails a drug test be provided with information regarding substance abuse, substance abuse counseling, and substance abuse treatment options, including a list of substance abuse treatment programs that may be available to the individual.

(b) An applicant or current recipient who fails to comply with any requirement imposed pursuant to this section shall not be eligible for benefits or shall be subject to the termination of benefits, but shall be considered to be receiving benefits for purposes of determining eligibility for medical assistance. An applicant or recipient who tests positive for controlled substances as a result of a drug test required under this section is ineligible to receive Work First Program assistance for one year from the date of the positive drug test except as provided in subsections (b1) and (b2) of this section. The individual may reapply after one year. However, if the individual has any subsequent positive drug tests, the individual shall be ineligible for benefits for three years from the date of the subsequent positive drug test unless the individual reapplies pursuant to subsection (b1) or (b2) of this section.

(b1) An applicant or recipient deemed ineligible under subsection (b) of this section may reapply for Work First Program assistance after the expiration of 30 days from the date of the positive drug test if the individual can document either the successful completion of or the current satisfactory participation in a substance abuse treatment program offered by a provider under subsection (e) of this section and licensed by the Department. The applicant or recipient who reapplies for Work First Program assistance after successful completion of a substance abuse program shall pass a drug test. The cost of any drug testing and substance abuse program provided under this subsection shall be the responsibility of the individual being tested and receiving treatment. An applicant or recipient who reapplies for Work First Program assistance pursuant to this subsection may reapply one time only.

(b2) An applicant or recipient deemed ineligible under subsection (b) of this section may reapply for Work First Program assistance after the expiration of 30 days from the date of the positive drug test if a qualified professional in substance abuse or a physician certified by the American Society of Addiction Medicine determines a substance abuse program is not appropriate for the individual and that individual has passed a subsequent drug test. The cost of any drug testing provided under this subsection shall be the responsibility of the individual being tested. An applicant or recipient who reapplies for Work First Program assistance pursuant to this subsection may reapply one time only.

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

(d) An applicant or current recipient shall not be regarded as failing to comply with the requirements of this section if an appropriate drug or alcohol treatment program is unavailable. The Social Services Commission shall adopt rules pertaining to the testing of applicants and recipients under this section. The Social Services Commission shall adopt rules pertaining to the successful completion of, or the satisfactory participation in, a substance abuse treatment program under subsection (b1) of this section, including rules regarding timely reporting of completion of or participation in the substance abuse treatment programs.

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

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

(g) For the purposes of this section, reasonable suspicion that an applicant for, or recipient of, Work First Program assistance is engaged in the illegal use of controlled substances may be established only by utilizing the following methods:

- (1) A criminal record check conducted under G.S. 114-19.34 that discloses a conviction, arrest, or outstanding warrant relating to illegal controlled substances within the three years prior to the date the criminal record check is conducted.
- (2) A determination by a qualified professional in substance abuse or a physician certified by the American Society of Addiction Medicine that an individual is addicted to illegal controlled substances.
- (3) A screening tool relating to the abuse of illegal controlled substances that yields a result indicating that the applicant or recipient may be engaged in the illegal use of controlled substances.

(4) Other screening methods, as determined by the Social Services Commission under subsection (d) of this section.

(h) Child only cases shall be exempt from the requirements of this section."

SECTION 5. The Social Services Commission shall adopt rules implementing this act. The Social Services Commission may issue temporary rules, in addition to its permanent rule-making authority, to enforce this act. Rules for the implementation of Section 4 of this act shall be adopted no later than February 1, 2014.

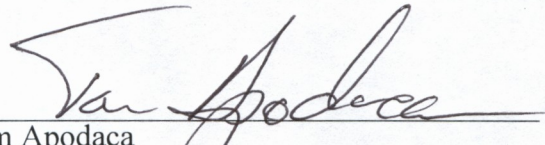
SECTION 6. The Department of Health and Human Services shall report to the General Assembly no later than April 1, 2014, on the implementation of Section 4 of this act.

PART III. EFFECTIVE DATE AND SEVERABILITY

SECTION 7. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

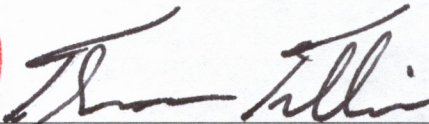
SECTION 8. Section 4 of this act becomes effective August 1, 2014. The remainder of this act becomes effective October 1, 2013.

In the General Assembly read three times and ratified this the 26th day of July, 2013.

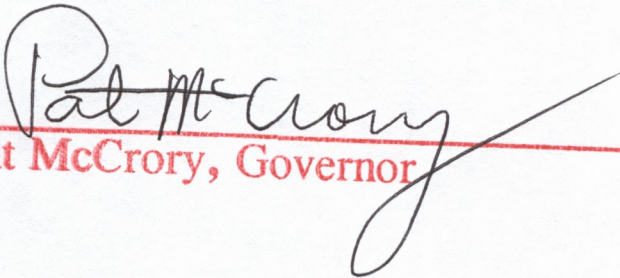


Tom Apodaca
Presiding Officer of the Senate

VETO



Thom Tillis
Speaker of the House of Representatives



~~Pat McCrory, Governor~~

8/15/13

Date

Pat McCrory
Governor

Approved 10:50a.m. this 15 day of August, 2013