
SENATE BILL No. 482

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-7-2; IC 12-14.5; IC 31-33-8-0.5.

Synopsis: Drug testing of public assistance recipients. Requires the office of the secretary of family and social services (office) to develop and establish a pilot program in three counties to test for the use of controlled substances under certain conditions by an individual who: (1) receives assistance under the Temporary Assistance for Needy Families program for the individual or on behalf of a child; and (2) is at least 18 years of age. Requires the office to notify the department of child services (department) if a child is ineligible for assistance as a result of an individual testing positive for the illegal use of a controlled substance. Requires the department, not later than nine months after the date the department receives the office's report, to conduct a home visit at the child's residence to determine whether to pursue the report as a report of suspected child abuse or neglect.

Effective: July 1, 2013.

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January 14, 2013, read first time and referred to Committee on Health and Provider Services.

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First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

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SENATE BILL No. 482



A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 12-7-2-43.3 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2013]: **Sec. 43.3. "Controlled substance", for purposes of**
- 4 **IC 12-14.5, has the meaning set forth in IC 35-48-1-9.**
- 5 SECTION 2. IC 12-7-2-139.5 IS ADDED TO THE INDIANA
- 6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 7 [EFFECTIVE JULY 1, 2013]: **Sec. 139.5. "Pilot program", for**
- 8 **purposes of IC 12-14.5, means the pilot program established under**
- 9 **IC 12-14.5-1.**
- 10 SECTION 3. IC 12-7-2-189.9 IS ADDED TO THE INDIANA
- 11 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 12 [EFFECTIVE JULY 1, 2013]: **Sec. 189.9. "TANF assistance", for**
- 13 **purposes of IC 12-14.5, means assistance under the federal**
- 14 **Temporary Assistance for Needy Families program under 42**
- 15 **U.S.C. 601 et seq.**
- 16 SECTION 4. IC 12-7-2-190.2 IS ADDED TO THE INDIANA
- 17 CODE AS A **NEW** SECTION TO READ AS FOLLOWS



[EFFECTIVE JULY 1, 2013]: **Sec. 190.2. "Tests negative"** for purposes of IC 12-14.5, means that an individual:

(1) tests negative for the presence of a controlled substance (as defined in section 43.3 of this chapter) in the individual's body; or

(2) tests positive for the presence of a controlled substance (as defined in section 43.3 of this chapter) in the individual's body but has:

(A) a valid prescription; or

(B) an order of a practitioner acting in the course of the practitioner's professional practice; for the controlled substance.

SECTION 5. IC 12-7-2-190.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 190.3. "Tests positive" or "testing positive"**, for purposes of IC 12-14.5, means that an individual:

(1) tests positive for the presence of a controlled substance (as defined in section 43.3 of this chapter) in the individual's body; and

(2) does not have:

(A) a valid prescription; or

(B) an order of a practitioner acting in the course of the practitioner's professional practice; for the controlled substance.

SECTION 6. IC 12-14.5 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

ARTICLE 14.5. DRUG TESTING UNDER THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM

Chapter 1. Pilot Program for Drug Testing

Sec. 1. (a) The office of the secretary shall develop and establish a pilot program to test for the use of a controlled substance by an individual who:

(1) receives TANF assistance for the individual or on behalf of a child; and

(2) is at least eighteen (18) years of age.

(b) The pilot program must be implemented for two (2) years in three (3) counties selected in the manner provided under subsection (c).

(c) The office of the secretary shall select the counties under subsection (b) by the following method:

(1) The office of the secretary shall divide all the counties into

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- the following three (3) groups:
 - (A) The thirty-one (31) counties that have the highest populations.
 - (B) The thirty-one (31) counties that have the lowest populations.
 - (C) The counties not described in clause (A) or (B).
- (2) The office of the secretary shall select one (1) county from each of the three (3) groups into which counties are divided under subdivision (1) to participate in the pilot program established under this chapter.

Sec. 2. (a) The pilot program must:

- (1) allow for an individual to consent to random drug testing by signing the consent form described in section 4(1) of this chapter;
- (2) randomly administer a drug test to individuals who consent as described in subdivision (1);
- (3) require drug testing of individuals described in section 1 of this chapter who a county office believes, based on reasonable suspicion, are engaged in the illegal use of a controlled substance; and
- (4) except for individuals described in IC 12-14.5-2-1(c), require random drug testing of individuals who:
 - (A) a county office has reasonable suspicion to believe, based on their testing positive under a previous drug test administered under this article, are engaged in the illegal use of a controlled substance; and
 - (B) are eligible to continue to receive or reapply for TANF assistance as provided under this article.

(b) The office of the secretary shall:

- (1) randomly administer a drug test to at least the greater of:
 - (A) one percent (1%) of the individuals who have consented to random drug testing as described in subsection (a)(1); or
 - (B) one (1) individual if at least one (1) individual has consented to random drug testing as described in subsection (a)(1).
- (2) administer a drug test to all individuals described in section 1 of this chapter who a county office believes, based on reasonable suspicion, are engaged in the illegal use of a controlled substance; and
- (3) randomly administer a drug test to at least the greater of:
 - (A) ten percent (10%) of the individuals described in

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- 1 subsection (a)(4); or
 2 (B) three (3) individuals described in subsection (a)(4), if at
 3 least three (3) individuals described in subsection (a)(4)
 4 receive TANF assistance.
- 5 (c) The pilot program under this chapter must include an
 6 appeals process for individuals.
- 7 **Sec. 3. A drug test administered under the pilot program must**
 8 **be performed by a laboratory certified by SAMHSA (as defined in**
 9 **IC 22-10-15-3).**
- 10 **Sec. 4. After the pilot program is established under this chapter,**
 11 **a county office located in a county selected to participate in the**
 12 **pilot program shall provide the following to an individual**
 13 **described in section 1 of this chapter:**
- 14 (1) A consent form that allows the individual to consent to
 15 random drug testing of the individual.
- 16 (2) The following information in writing:
- 17 (A) A statement that the individual will be subject to
 18 random drug testing if the individual signs the consent
 19 form.
- 20 (B) A statement that the individual is not required to sign
 21 the consent form.
- 22 (C) A statement that if the individual does not sign the
 23 consent form, the individual may be subject to drug testing
 24 if the county office believes, based on reasonable suspicion,
 25 that the individual is engaged in the illegal use of a
 26 controlled substance.
- 27 (D) A statement that if the individual:
 28 (i) tests positive under this article; and
 29 (ii) is eligible to continue to receive or reapply for TANF
 30 assistance for the individual or on behalf of a child as
 31 provided in this article;
 32 the individual may be subject to random drug testing
 33 based on reasonable suspicion.
- 34 (E) A statement that the penalties under law concerning
 35 eligibility for TANF assistance are more severe if the
 36 individual tests positive on a drug test that is administered
 37 based on reasonable suspicion than if the individual tests
 38 positive on a random drug test to which the individual has
 39 consented.
- 40 (F) The penalties:
 41 (i) under IC 12-14.5-2 concerning eligibility for TANF
 42 assistance for an individual who tests positive on a

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1 random drug test to which the individual has consented;
2 and

3 (ii) under IC 12-14.5-3 concerning eligibility for TANF
4 assistance for an individual who tests positive on a drug
5 test administered based on reasonable suspicion.

6 (G) A statement that an individual will be temporarily
7 ineligible for TANF assistance if the individual refuses to
8 take a drug test under this article.

9 Sec. 5. (a) A county office shall be considered to have reasonable
10 suspicion that an individual is engaged in the illegal use of a
11 controlled substance for purposes of section 2(a)(3) of this chapter
12 if one (1) or more of the following apply:

13 (1) The individual has been convicted of a crime.

14 (2) The individual has been charged with an offense under
15 IC 35-48 (controlled substances).

16 (3) The individual has failed to attend a scheduled meeting or
17 complete online requirements regarding TANF assistance.

18 (b) A county office may require random drug testing of an
19 individual based on reasonable suspicion as described in section
20 2(a)(4) of this chapter if the individual has tested positive on a
21 previous drug test administered under this article.

22 (c) An employee of a county office may determine that
23 reasonable suspicion exists with respect to an individual under
24 section 2(a)(3) of this chapter from other factors in addition to
25 those listed in subsection (a).

26 (d) If an employee of a county office believes, based on
27 reasonable suspicion, that an individual is engaged in the illegal use
28 of a controlled substance, the employee shall document the factors
29 that the employee believes establish reasonable suspicion before the
30 individual may be required to undergo drug testing under this
31 article.

32 Sec. 6. The records of the office of the secretary concerning the
33 results of a drug test administered under this article may not be
34 admitted against a defendant in a criminal proceeding.

35 Sec. 7. A county office shall provide a list of drug abuse
36 treatment programs to any individual who tests positive under this
37 article.

38 Sec. 8. The office of the secretary may adopt rules under
39 IC 4-22-2 necessary to implement this article.

40 Chapter 2. Penalties for Failing a Random Drug Test to Which
41 an Individual Has Consented

42 Sec. 1. (a) If, after an administrative hearing under IC 4-21.5, a

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1 finding is made that an individual who consented to random drug
2 testing has tested positive on a drug test, the county office shall:

3 (1) provide to the individual a list of drug abuse treatment
4 programs approved by the office of the secretary; and

5 (2) administer a drug test to the individual regularly at
6 intervals of at least twenty (20) days and not more than thirty

7 (30) days until the individual tests negative in two (2)
8 consecutive drug tests.

9 (b) If an individual fails to test negative in two (2) consecutive
10 drug tests as described in subsection (a)(2) within four (4) months
11 after the date the county office begins testing the individual
12 regularly under subsection (a)(2), the following apply:

13 (1) The individual's failure to test negative establishes
14 reasonable suspicion that the individual is engaged in the
15 illegal use of a controlled substance.

16 (2) The individual is subject to random drug testing as
17 provided in IC 12-14.5-1-2(a)(4).

18 (3) The county office shall administer a drug test to the
19 individual based on reasonable suspicion not later than thirty
20 (30) days after the date the individual last tested positive.

21 (4) The penalties under IC 12-14.5-3 apply to any drug test in
22 which the individual tests positive after reasonable suspicion
23 is established under subdivision (1).

24 (c) If an individual tests negative in two (2) consecutive drug
25 tests as described in subsection (a)(2) within four (4) months after
26 the date the county office begins testing the individual regularly
27 under subsection (a)(2), the individual:

28 (1) shall be returned to the pool of individuals who have
29 consented to random drug testing; and

30 (2) is subject to random drug testing as described in
31 IC 12-14.5-1-2(a)(2).

32 Sec. 2. (a) If:

33 (1) an individual tested positive under a previous random
34 drug test to which the individual consented;

35 (2) the individual is subject to a second random drug test; and

36 (3) after an administrative hearing under IC 4-21.5, a finding
37 is made that the individual has tested positive on the drug test
38 administered under subdivision (2);

39 the individual is ineligible to receive TANF assistance for the
40 individual for three (3) months after the date of the finding.

41 (b) If an individual tests positive on a second random drug test
42 administered under subsection (a)(2), the county office:

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1 (1) has reasonable suspicion that the individual is engaged in
2 the illegal use of a controlled substance; and

3 (2) shall administer random drug testing to the individual as
4 required under IC 12-14.5-1-2(a)(4).

5 **Sec. 3. (a)** If an individual who consented to random drug
6 testing refuses to take a drug test under this article, the individual
7 is ineligible for TANF assistance for the individual for three (3)
8 months after the date that the individual refuses to take the drug
9 test.

10 (b) An individual who is ineligible under subsection (a) or
11 section 2(a) of this chapter may reapply for TANF assistance after
12 the applicable three (3) month ineligibility period. Upon
13 reapplying, the individual must test negative on a drug test before
14 the individual may receive TANF assistance.

15 **Chapter 3. Penalties for Failing a Drug Test Administered**
16 **Based on Reasonable Suspicion**

17 **Sec. 1. (a)** If, after an administrative hearing under IC 4-21.5, a
18 finding is made that an individual has tested positive on a drug test
19 administered based on reasonable suspicion as described in
20 IC 12-14.5-1-2(a)(3) or IC 12-14.5-1-2(a)(4):

21 (1) the individual is ineligible to receive TANF assistance for
22 the individual for six (6) months after the date of the finding;
23 and

24 (2) the TANF assistance that the individual receives on behalf
25 of a child shall be reduced by fifty percent (50%) for six (6)
26 months after the date of the finding.

27 (b) If an individual refuses to take a drug test administered
28 based on reasonable suspicion as described in IC 12-14.5-1-2(a)(3)
29 or IC 12-14.5-1-2(a)(4):

30 (1) the individual is ineligible to receive TANF assistance for
31 the individual for six (6) months after the date that the
32 individual refused to take the drug test; and

33 (2) the TANF assistance that the individual receives on behalf
34 of a child shall be reduced by fifty percent (50%) for six (6)
35 months after the date of the individual's refusal to take the
36 drug test.

37 **Sec. 2. (a)** If:

38 (1) an individual is ineligible for TANF assistance for the
39 individual under section 1 of this chapter, the individual may
40 reapply for TANF assistance after the applicable six (6)
41 month ineligibility period; or

42 (2) the TANF assistance that an individual receives on behalf

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1 of a child has been reduced under section 1 of this chapter, the
 2 individual may reapply for the full amount of TANF
 3 assistance for the child after the applicable six (6) month
 4 period.

5 Upon reapplying, the individual must test negative on a drug test
 6 before the individual may again receive TANF assistance or before
 7 the TANF assistance the individual receives on behalf of the child
 8 may be increased to the original amount.

9 (b) If, after an administrative hearing under IC 4-21.5, a finding
 10 is made that an individual described in subsection (a) has tested
 11 positive on the drug test administered under subsection (a) for the
 12 TANF reapplication process:

- 13 (1) the individual is permanently ineligible to receive TANF
 14 assistance for the individual; and
- 15 (2) a child on whose behalf the individual receives TANF
 16 assistance is ineligible for TANF assistance for as long as the
 17 child resides with the individual.

18 **Sec. 3. If an individual tests positive on a drug test under section**
 19 **1 of this chapter:**

- 20 (1) the county office is considered to have reasonable
 21 suspicion that the individual is engaged in the illegal use of a
 22 controlled substance; and
- 23 (2) the individual is subject to random drug testing based on
 24 reasonable suspicion as provided in IC 12-14.5-1-2(a)(4).

25 **Sec. 4. If, after an administrative hearing under IC 4-21.5, a**
 26 **finding is made that an individual described in section 1 of this**
 27 **chapter has tested positive on a second drug test based on**
 28 **reasonable suspicion as described in IC 12-14.5-1-2(a)(3) or**
 29 **IC 12-14.5-1-2(a)(4):**

- 30 (1) the individual is permanently ineligible to receive TANF
 31 assistance for the individual; and
- 32 (2) a child on whose behalf the individual receives TANF
 33 assistance is ineligible for TANF assistance for as long as the
 34 child resides with the individual.

35 **Chapter 4. Notice to the Department of Child Services**

36 **Sec. 1. The office of the secretary shall notify the department of**
 37 **child services concerning a child who is ineligible for TANF**
 38 **assistance under this article.**

39 **Chapter 5. Exception to Penalties Concerning TANF Assistance**
 40 **Received on Behalf of A Child**

41 **Sec. 1. (a) If an individual:**

- 42 (1) is ineligible to receive TANF assistance under

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1 IC 12-14.5-3-2(b) or IC 12-14.5-3-4;

2 (2) was not a parent or guardian to a child at the time the
3 individual became ineligible to receive TANF assistance as
4 described in subdivision (1);

5 (3) becomes a parent or guardian of a child after the
6 individual becomes ineligible to receive TANF assistance as
7 described in subdivision (1); and

8 (4) tests negative on a drug test administered by the office of
9 the secretary;

10 the child is eligible for TANF assistance under this article if the
11 child meets all the other eligibility requirements to receive TANF
12 assistance.

13 (b) If an individual described in subsection (a) tests positive on
14 the drug test administered by the office of the secretary under
15 subsection (a)(4), the child of whom the individual has become a
16 parent or guardian is ineligible to receive TANF assistance for as
17 long as the child resides with the individual.

18 **Chapter 6. Costs of Drug Testing**

19 **Sec. 1. (a) The office of the secretary shall pay for a drug test**
20 **administered under this article if the individual:**

21 (1) consents to random drug testing;

22 (2) has not previously tested positive on a drug test
23 administered under this article; and

24 (3) tests negative on the drug test.

25 (b) An individual shall reimburse the office of the secretary for
26 the cost of the drug test if the individual tests positive on a drug
27 test paid for by the office of the secretary under subsection (a).

28 (c) If an individual fails to reimburse the office of the secretary
29 for a drug test under subsection (b):

30 (1) the individual is ineligible to receive TANF assistance; and

31 (2) a child on whose behalf the individual receives TANF
32 assistance is ineligible for TANF assistance for as long as the
33 child resides with the individual;

34 until the individual reimburses the office of the secretary for the
35 cost of the drug test.

36 (d) An individual shall be responsible for any costs of additional
37 drug testing required under this article as a result of the individual
38 testing positive on a random drug test to which the individual
39 consented.

40 **Sec. 2. (a) An individual who:**

41 (1) does not consent to random drug testing; and

42 (2) is tested under this chapter based upon reasonable

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1 suspicion as described in IC 12-14.5-1-2(a)(3) or
2 IC 12-14.5-1-2(a)(4);
3 shall pay the costs of the drug test.
4 **(b) If an individual described in subsection (a) tests negative for**
5 **the use of a controlled substance, the office of the secretary shall**
6 **reimburse the individual for the cost of the drug test.**
7 SECTION 7. IC 31-33-8-0.5 IS ADDED TO THE INDIANA CODE
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 2013]: **Sec. 0.5. If the department receives a report from the**
10 **office of the secretary of family and social services under**
11 **IC 12-14.5-4-1, the department shall, not later than nine (9) months**
12 **after the date the department receives the report, conduct a home**
13 **visit at the child's residence to determine whether to pursue the**
14 **report as a report of suspected child abuse or neglect.**

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