
HOUSE BILL No. 1007

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 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 of the secretary of family and social services 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 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, 2012.

McMillin, VanNatter

January 9, 2012, read first time and referred to Committee on Family, Children and Human Affairs.

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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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HOUSE BILL No. 1007



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, 2012]: **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, 2012]: **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, 2012]: **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**
- 15 **42 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



1 [EFFECTIVE JULY 1, 2012]: **Sec. 190.2. "Tests negative" or**
 2 **"testing negative", for purposes of IC 12-14.5, means that an**
 3 **individual:**

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

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

10 (A) **a valid prescription; or**

11 (B) **an order of a practitioner acting in the course of the**
 12 **practitioner's professional practice;**

13 **for the controlled substance.**

14 SECTION 5. IC 12-7-2-190.3 IS ADDED TO THE INDIANA
 15 CODE AS A NEW SECTION TO READ AS FOLLOWS
 16 [EFFECTIVE JULY 1, 2012]: **Sec. 190.3. "Tests positive" or "testing**
 17 **positive", for purposes of IC 12-14.5, means an individual:**

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

21 (2) **does not possess:**

22 (A) **a valid prescription; or**

23 (B) **an order of a practitioner acting in the course of the**
 24 **practitioner's professional practice;**

25 **for the controlled substance.**

26 SECTION 6. IC 12-14.5 IS ADDED TO THE INDIANA CODE AS
 27 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 28 2012]:

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

31 **Chapter 1. Pilot Program for Drug Test**

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

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

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

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

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

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- 1 (1) The office of the secretary shall divide all the counties into
 2 the following three (3) groups:
 3 (A) The thirty-one (31) counties that have the greatest
 4 populations.
 5 (B) The thirty-one (31) counties that have the lowest
 6 populations.
 7 (C) The counties not described in clause (A) or (B).
 8 (2) The office of the secretary shall select one (1) county from
 9 each of the groups in subdivisions (1)(A), (1)(B), and (1)(C) to
 10 participate in the pilot program established under this
 11 chapter.
- 12 **Sec. 2. (a) The pilot program must:**
 13 (1) allow for an individual to consent to random drug testing
 14 by signing the consent form described in section 4(1) of this
 15 chapter;
 16 (2) randomly administer a drug test to individuals who
 17 consent as described in subdivision (1);
 18 (3) require drug testing of individuals who a county office
 19 believes, based on reasonable suspicion, are engaged in the
 20 illegal use of a controlled substance; and
 21 (4) except for individuals described in IC 12-14.5-2-1(c),
 22 require random drug testing of individuals who:
 23 (A) a county office has reasonable suspicion to believe,
 24 based on testing positive under a previous drug test
 25 administered under this article, are engaged in the illegal
 26 use of a controlled substance; and
 27 (B) are eligible to continue to receive or reapply for TANF
 28 assistance as provided under this article.
- 29 **(b) The office of the secretary shall:**
 30 (1) randomly administer a drug test to at least the greater of:
 31 (A) one percent (1%) of the individuals who have
 32 consented to random drug testing as described in
 33 subsection (a)(1); or
 34 (B) one (1) individual if at least one (1) individual has
 35 consented to random drug testing as described in
 36 subsection (a)(1).
 37 (2) administer a drug test to all individuals who a county
 38 office believes, based on reasonable suspicion, are engaged in
 39 the illegal use of a controlled substance; and
 40 (3) randomly administer a drug test to at least the greater of:
 41 (A) ten percent (10%) of the individuals described in
 42 subsection (a)(4); or

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

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suspicion.

(G) An individual will be temporarily ineligible for TANF assistance if the individual refuses to take a drug test under this article.

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

- (1) The individual has been convicted of a crime.**
- (2) The individual has been charged with an offense under IC 35-48 (controlled substances).**
- (3) The individual failed to attend a scheduled meeting or complete online requirements regarding TANF assistance.**

(b) A county office has reasonable suspicion to randomly administer a drug test to an individual based on reasonable suspicion as described in section 2(a)(4) of this chapter if an individual has tested positive on a previous drug test administered under this article.

(c) An employee of a county office may determine when reasonable suspicion exists under section 2(a)(3) of this chapter from other factors in addition to those listed under subsection (a).

(d) If an employee of a county office believes, based on reasonable suspicion, that an individual is engaged in the illegal use of a controlled substance, the employee shall document the factors the employee believes establish reasonable suspicion before the individual is tested under this article.

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

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

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

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

Sec. 1. (a) If, after an administrative hearing under IC 4-21.5, a finding is made that an individual who consented to random drug testing tests positive on a drug test, the county office shall:

- (1) provide to the individual a list of drug abuse treatment programs approved by the office of the secretary; and**
- (2) administer a drug test to the individual regularly at**

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1 intervals of at least twenty (20) days and not more than thirty
 2 (30) days until the individual tests negative in two (2)
 3 consecutive drug tests.

4 (b) If an individual does not test negative in two (2) consecutive
 5 drug tests as described in subsection (a)(2) not later than four (4)
 6 months after the date the county office begins testing the individual
 7 regularly under subsection (a)(2), the following apply:

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

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

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

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

19 (c) If an individual tests negative in two (2) consecutive drug
 20 tests as described in subsection (a)(2) not later than four (4) months
 21 after the date the county office begins testing the individual
 22 regularly under subsection (a)(2), the individual:

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

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

27 Sec. 2. (a) If:

28 (1) an individual tested positive under a previous random
 29 drug test to which an individual consented;

30 (2) an individual is subject to a second random drug test; and

31 (3) after an administrative hearing under IC 4-21.5, a finding
 32 is made that the individual tests positive on the drug test
 33 described under subdivision (2);

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

36 (b) If an individual tests positive on two (2) separate drug tests
 37 under subsection (a), the county office:

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

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

42 Sec. 3. (a) If an individual who consented to random drug

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1 testing refuses to take a drug test under this article, the individual
 2 is ineligible for TANF assistance for the individual for three (3)
 3 months after the date that the individual refuses to take the drug
 4 test.

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

10 **Chapter 3. Penalties for Failing a Drug Test Administered**
 11 **Based on Reasonable Suspicion**

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

16 (1) the individual is ineligible to receive TANF assistance for
 17 the individual for six (6) months after the date of the finding;
 18 and

19 (2) the child on whose behalf the individual receives TANF
 20 assistance shall have that child's TANF assistance reduced by
 21 fifty percent (50%) for six (6) months after the date of the
 22 finding.

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

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

29 (2) the child on whose behalf the individual receives TANF
 30 assistance shall have that child's TANF assistance reduced by
 31 fifty percent (50%) for six (6) months after the date of the
 32 finding.

33 **Sec. 2. (a) An individual who is ineligible under section 1 of this**
 34 **chapter may reapply for TANF assistance after the applicable six**
 35 **(6) month ineligibility period. Upon reapplying, the individual must**
 36 **test negative on a drug test before the individual may receive**
 37 **TANF assistance.**

38 (b) If, after an administrative hearing under IC 4-21.5, a finding
 39 is made that an individual described in subsection (a) tests positive
 40 on the drug test administered for the TANF reapplication process:

41 (1) the individual is permanently ineligible to receive TANF
 42 assistance for the individual; and

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1 (2) a child on whose behalf the individual receives TANF
2 assistance is ineligible for TANF assistance for as long as the
3 child resides with the individual.

4 Sec. 3. If an individual tests positive on a drug test under section
5 1 of this chapter, the:

6 (1) county office is considered to have reasonable suspicion
7 that the individual is engaged in the illegal use of a controlled
8 substance; and

9 (2) individual is subject to random drug testing based on
10 reasonable suspicion as provided under IC 12-14.5-1-2(a)(4).

11 Sec. 4. If, after an administrative hearing under IC 4-21.5, a
12 finding is made that an individual described under section 1 of this
13 chapter tests positive on a second drug test based on reasonable
14 suspicion as described in IC 12-14.5-1-2(a)(3) or
15 IC 12-14.5-1-2(a)(4):

16 (1) the individual is permanently ineligible to receive TANF
17 assistance for the individual; and

18 (2) a child on whose behalf the individual receives TANF
19 assistance is ineligible for TANF assistance for as long as the
20 child resides with the individual.

21 Chapter 4. Notice to the Department of Child Services

22 Sec. 1. The office of the secretary shall notify the department of
23 child services concerning a child who is ineligible for TANF
24 assistance under this article.

25 Chapter 5. Exception to Penalties Concerning TANF Assistance
26 Received on Behalf of A Child

27 Sec. 1. (a) If an individual:

28 (1) is ineligible to receive TANF assistance under
29 IC 12-14.5-3-2(b) or IC 12-14.5-3-4;

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

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

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

38 the child is eligible for TANF assistance under this article if the
39 child meets all the other eligibility requirements to receive TANF
40 assistance.

41 (b) If an individual described under subsection (a) tests positive
42 on the drug test administered by the office of the secretary under

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1 subsection (a)(4), the child on whose behalf the individual receives
 2 TANF assistance is ineligible to receive TANF assistance for as
 3 long as the child resides with the individual.

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

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

- 7 (1) consented to random drug testing;
 8 (2) has not previously tested positive on a drug test
 9 administered under this article; and
 10 (3) tests negative on the drug test.

11 (b) An individual shall reimburse the office of the secretary if
 12 the individual tests positive on a drug test paid for by the office of
 13 the secretary under subsection (a).

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

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

20 until the individual reimburses the office of the secretary for the
 21 drug test.

22 (d) An individual shall be responsible for any costs of additional
 23 drug testing required under this article as a result of the individual
 24 testing positive on a random drug test to which the individual
 25 consented.

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

- 27 (1) does not consent to random drug testing; and
 28 (2) is tested under this chapter based upon reasonable
 29 suspicion as described in IC 12-14.5-1-2(a)(3) or
 30 IC 12-14.5-1-2(a)(4);

31 shall pay the costs of the drug test.

32 (b) If an individual described under subsection (a) tests negative
 33 for the use of a controlled substance, the office of the secretary
 34 shall reimburse the individual for the cost of the drug test.

35 SECTION 7. IC 31-33-8-0.5 IS ADDED TO THE INDIANA CODE
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 37 1, 2012]: **Sec. 0.5. If the department receives a report from the**
 38 **office of the secretary of family and social services under**
 39 **IC 12-14.5-4-1, the department shall, not later than nine (9) months**
 40 **after the date the department receives the report, conduct a home**
 41 **visit at the child's residence to determine whether to pursue the**
 42 **report as a report of suspected child abuse or neglect.**



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