

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0131-05  
Bill No.: SCS for SB's 7, 5, 74 & 169  
Subject: Public Assistance; Department of Social Services; Drugs and Controlled Substances  
Type: Original  
Date: February 14, 2011

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Bill Summary: This legislation creates the "TANF Child Protection and Drug Free Home Act" regarding drug testing for work-eligible TANF applicants and recipients.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	(Up to \$379,457)	(Up to \$309,329)	(Up to \$315,260)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Up to \$379,457)</b>	<b>(Up to \$309,329)</b>	<b>(Up to \$315,260)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 14 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Federal	\$0	\$0	\$0
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\* Income and costs would net to \$0.

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	2 FTE	2 FTE	2 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>2 FTE</b>	<b>2 FTE</b>	<b>2 FTE</b>

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### **Section 208.027:**

Officials from the **Office of Administration-Administrative Hearing Commission** assume the proposal would have no fiscal impact on their agency.

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Department of Mental Health (DMH)** states the proposed legislation requires the Department of Social Services (DSS) to refer applicants who test positive for the use of a controlled substance to an appropriate substance abuse treatment program approved by the Division of Alcohol and Drug Abuse. DMH assumes that it will treat the referring applicant or recipient and also pay for the services.

A significant cost would be incurred if the proposed drug testing program was actually successful in identifying drug users, if drug users were effectively referred to DMH treatment providers, if the drug users in fact presented themselves for treatment, and if DMH was required to fund treatment for all referred applicants/recipients. However, the Department cannot estimate the number of TANF clients that will test positive for drugs or the number of those who test positive that will present for treatment. Treatment costs per person in a CSTAR program is \$2,809 (\$1,028 General Revenue and \$1,781 Federal). To treat an additional 100 persons will cost

ASSUMPTION (continued)

\$102,800 in General Revenue alone. Therefore, the fiscal impact is estimated as an unknown to greater than \$100,000 cost for General Revenue and Federal Funds.

**Oversight** notes that states can earn the federal medical assistance percentage (FMAP) on Medicaid program expenditures.

Officials from the **Office of the Attorney General** did not respond to Oversight's fiscal note request. However, in response to a previous version of this proposal, officials from the AGO responds that the Department of Social Services (DSS) estimates that the proposal would result in an additional 1,700 administrative hearings, and that approximately 10% of those hearings then receive judicial review in circuit court. AGO assumes it would need an additional 1.5 Assistant Attorney General I and 1 Legal Secretary to handle the increased caseload. If there is a significant increase in claims over time, the AGO may seek an additional appropriation to adequately represent DSS.

**Oversight**, assumes, based on new information from DSS, that the AGO could absorb the additional caseload that may result from this proposal within existing resources. Oversight assumes any significant increase in the workload of the AGO would be reflected in future budget request.

Officials from the **Department of Social Services-Division of Legal Services (DLS)** states in September 2010, there were 29,354 adults considered work-eligible recipients under the TANF program and would potentially be required to submit to a drug test. It is assumed that 8% of the general population of the United States engages in the use of illegal drugs. Therefore, it will be assumed that 8% of the 29,354 work-eligible adults in the TANF program engage in illegal drug use. Thus, 2,348 individuals in the TANF program are engaging in illegal drug use. It is assumed that all 2,348 individuals will be reported to the Children's Division (CD) for suspected child abuse. The assumption is made that all 2,348 individuals will demonstrate behavior that constitutes reasonable suspicion to believe the individual is engaging in the illegal use of a controlled substance that is suspected of causing child abuse. It is assumed that the child abuse investigation initiated by the report made under this section will determine that there is reasonable suspicion that 50% of the 2,348 of the work-eligible recipients have engaged in the use of an illegal controlled substance and will be subjected to drug testing. The proposed legislation does not require the CD to determine that any child abuse occurred, it just requires the Division to determine if there is reasonable suspicion that the recipient engaged in the illegal use of a controlled substance.

ASSUMPTION (continued)

Therefore, based on these assumptions approximately 1,174 recipients will be drug tested. It is assumed that 50% of this number will refuse to submit to the drug test and 50% will submit to the drug test. Therefore, 587 recipients will be drug tested. It is assumed that 75% of the 587 will test positive. Based on these assumptions, 1,027 recipients annually can potentially request an administrative hearing to either contest their refusal to submit to the drug test or to contest the outcome of the positive drug test - (587 + 440 = 1,027).

The way the proposed legislation is written Family Support Division (FSD) cannot declare a recipient ineligible until after an administrative hearing. This will likely result in a high percentage of hearings. Assuming 40% of the recipients who are adversely impacted by the testing requirement object this would result in a minimum of approximately 411 additional hearings annually. However, the increase in hearings by 411 is only the number of hearings resulting from the initial phase of testing. The proposed legislation grants FSD authority to conduct additional drug tests once the recipient submits to drug treatment. Additional administrative hearings will arise from the subsequent drug tests. It is assumed that 20% of those who test positive (440 recipients) will go to drug treatment. Thus, 88 recipients will go to drug treatment and be subjected to additional drug testing. It is assumed that 80% of those who test positive will take the two-year period of ineligibility for TANF benefits. The proposed legislation does not state who is responsible for paying for the drug treatment program. Most TANF recipients it is assumed would not be in the position of paying for drug treatment. Of those TANF recipients who do go to drug treatment, it is assumed that 44% of the 88 will successfully complete their treatment program. Therefore, 38 recipients will fail treatment and it is assumed will fail their second drug test. Assuming 40% of the 38 contest the second drug test result, this will result in 15 additional hearings for a total of 426 additional hearings per year. There will also be additional hearings over the selection of the selected protective payee. This number of hearings cannot be determined. Therefore, based on the current number of work eligible recipients, at least one additional hearing officer would need to be hired based on the assumption that the hearing officers hold approximately 900 hearings per year.

In addition to the current number of recipients, new applicants become eligible throughout the year, creating turnover in the caseload. FSD estimates that there is an average of 3,120 applications per month for TANF assistance. It is assumed that 76% (2,371) of the applications include a work-eligible individual. Using the same assumptions as above, up to 8% (2,276) may be reported to CD (2,371 X 8% X 12 months = 2,276). This basically doubles the number of referrals to CD, the number of drug tests, and ultimately the number of potential hearings for DLS. Therefore, DLS will need another hearing officer to serve the applicant population.

ASSUMPTION (continued)

A further consideration is the cost of the hearings. Drug testing cases require scientific and medical evidence as the issue in these cases usually involves a dispute over the accuracy of the scientific testing methods and of the effects of a substance in the human body. Experts in toxicology and medicine are routinely used in these hearings. These expert witnesses may require payment for their services unless this cost is included in the overall drug-testing contract. As an example, the one medical review officer who practices in Jefferson City charges \$515 dollars per hour for live testimony or \$315 dollars per hour for deposition testimony. If additional testimony from other doctors or drug testing experts is required, which is not covered by the contract, then they will require payment for the use of their expertise.

Officials from the **Department of Social Services-Information Technology Services Division (ITSD)** states the system changes that would be needed to fulfill the requirements of this proposal are:

1. A second new screen will be needed in FAMIS to display and allow entry of data related to requesting a drug test, storing the results of the test, tracking the hearing process, tracking compliance with qualified treatment program and imposing and tracking the two year period of ineligibility. The screen must also store the date and other information regarding mandatory caseworker report to the Child Abuse and Neglect hotline.
2. The Missouri Work Assistance system (currently under construction) will need to generate a record to be processed by FAMIS when a TANF recipient either tests positive for drug use or refuses to be tested when a test is required for work readiness program. FAMIS must generate an alert to the caseworker to make a report to the CAN hotline.
3. Modification to the eligibility determination modules to discontinue the portion of cash grant attributable to the offending individual and generate a letter advising of the benefit reduction and the date when the 2 year ineligibility period ends.
4. System must send the appropriate correspondence to client regarding disqualification for use of a non-prescribed controlled substance.
5. Produce reports on disqualified individuals for case management purposes and to facilitate compliance tracking through FAMIS Managed Reporting.

ASSUMPTION (continued)

<u>Function</u>	<u>Work Effort (hours)</u>
Analysis/Design	120 hours
Create/Update Specification Documents	120 hours
Update Data Model	120 hours
Modify Eligibility Determination Process	80 hours
Create Screen to Capture/Display Eligibility Factor Data	120 hours
Program to Generate MWA record for FAMIS	40 hours
Program FAMIS to Generate Alert to Caseworker	40 hours
Notices extract programming	80 hours
AFP programming for notices	80 hours
Update Code Tables	40 hours
Development Coordination	40 hours
Testing (Unit and System)	120 hours
Managed Reporting (data warehouse extracts)	120 hours
Managed Reporting (WebFOCUS report coding)	80 hours
<b>Total:</b>	<b>1,220 hrs</b>

- The report to Children's Division will not be an electronic interface with the Family and Children Electronic System. Caseworkers will call the Child Abuse and Neglect (CAN) hotline to file the report.
- No changes will be required to any Children's Division systems. The Family and Children Electronic System to supports child abuse and neglect investigations related to illegal drug use.
- Proof of participation in a DMH approved drug/alcohol abuse program will be in the form of documentation provided by the client.
- Existing programming in FAMIS will automatically adjust any cases (such as Food Stamps) that consider the TA grant as income when the eligibility determination is executed on the TA case with the reduced grant.
- State staff will perform programming to generate alert to caseworker based on receipt of record from MWA system indicating failed drug test or refusal to take drug test.
- Estimates for programming to generate notices to recipients assume that state staff will code the extracts and AFP (Advanced Function Printing) modules.

ASSUMPTION (continued)

- Estimate for the Managed Reporting function assumes that consultants will complete the changes for data warehouse extract programming and existing state staff will complete the programming for the WebFOCUS reports.
- State staff will perform all updates to code tables.
- State staff will complete any programming changes required on the Missouri Work Assistance system.
- There will be no impact after implementation in FY12 so projecting no costs beyond the first year.
- Based on the above assumptions, state staff will perform 360 hours of the effort and consultants will perform 860 hours.

Current rate for IT consultants for the FAMIS project averages \$90.00 per hour. Current rate for ITSD staff averages \$42.56 per hour.

There is not a federal match for systems work relating to the Temporary Assistance program. Cost for systems work will be funded by General Revenue.

Total Cost: (360 hours X \$42.56/hr) + (860 hours X \$90.00/hr) = \$92,722.

Officials from the **Department of Social Services-Family Support Division (FSD)** assumes this legislation states that "Case workers conducting an initial assessment...may report or cause a report to be made to the Children's Division in accordance with the provisions of section 210.109 to 210.183 for suspected child abuse as a result of drug abuse in instances where the case worker has reasonable suspicion to believe that such individual is engaging in illegal use of a controlled substance." Additionally, if a caseworker has a reason to suspect child abuse by work eligible recipients that have tested positive or refused to be tested in relation to any work activity or preparation for work activities, the case worker shall report or cause a report to be made to the Children's Division (CD) in accordance with the provisions of sections 210.109 to 210.183.

The FSD would be responsible for conducting drug testing on work-eligible recipients of TANF benefits, if during the course of the Children's Division child abuse investigation or assessment, drug use is suspected.



ASSUMPTION (continued)

The FSD expects to procure a private vendor to administer its drug testing program. At a minimum, the contractor would provide the following services: collection of samples, testing, transmitting results, program evaluation, and retention of urine samples. Based on information provided by the Office of Administration, the average cost to drug test a TANF recipient would be \$55.

In September 2010, there were 36,450 adult recipients of TANF benefits. 7,096 are exempt from work participation. 29,354 adults are considered work-eligible ( $36,450 - 7,096 = 29,354$ ). Of the 7,096 who are exempt, 1,736 are temporarily disabled, 4,933 have a child under age one, 101 are excluded because of domestic violence, 18 are over age 60, and 308 are two parent families that meet a work exemption.

According to statistics from the Substance Abuse and Mental Health Service Administration (SAMHSA), 8% of the general population abuse drugs. The FSD has no way to estimate the number of work eligible TANF recipients that would be reported to the CD as suspected child abuse due to reasonable suspicion of engaging in illegal use of a controlled substance. Or in turn, how many of those will be referred back to FSD for drug testing. The FSD also has no way to estimate the number of work eligible TANF recipients that would test positive, or refuse to complete a drug test, for the illegal use of a controlled substance in relation to a required work activity.

Therefore, the FSD is assuming that up to 8% of the work eligible population would be reported to the CD for suspicion of drug abuse ( $29,354 \times 8\% = 2,348$ ). The FSD assumes up to 50% of this population will warrant a drug test based on the CD's findings ( $2,348 / 50\% = 1,174$ ). In addition to the current population, there may be some individuals reported as they apply for assistance and become work eligible. The FSD approved an average of 3,120 applications per month for TANF assistance from January through November 2010 and it is assumed that 76% (2,371) of the applications are estimated to have a work-eligible individual. Using the same assumptions as above, up to 8% (2,276) may be reported to CD ( $2,371 \times 8\% \times 12 \text{ months} = 2,276$ ) and up to 50% of this population will warrant a drug test based on the CD's findings ( $2,276 \times 50\% = 1,138$ ). The total reported would be up to 2,312 ( $1,174 + 1,138$ ).

The FSD also assumes that based on the CD's findings, 50% of the individuals referred back to FSD to submit to a drug test will refuse. The remaining 50% would submit to a drug test. The cost for completing these drug tests would be a one-time cost for the current population of \$32,285 and an on-going annual cost of \$31,295. (One time drug tests for current population would be  $1,174 \times 50\% = 587$ ,  $587 \times \$55 = \$32,285$ ; the on-going cost would be  $1,138 \times 50\% = 569$ ,  $569 \times \$55 = \$31,295$ ).

SEC:LR:OD (12/06)

ASSUMPTION (continued)

FSD estimates that 75% or 427 individuals will test positive and will be referred to treatment. (On-going cost individuals  $569 \times 75\% = 427$ )

If any of these individuals test positive, and enroll and complete a substance abuse treatment program, the individual must not test positive for illegal use of a controlled substance in the six-month period after entering the substance abuse treatment program in order to continue receiving TANF benefits. The FSD assumes these individuals would need to be tested at a minimum of once during this six-month period.

The FSD has no way to estimate how many work eligible recipients will test positive AND participate in a substance abuse treatment program. If 20% of those tested would test positive AND participate in the substance abuse treatment program, the FSD would complete a second drug test on 85 work eligible recipients ( $427 \times 20\% = 85$ ).

The annual cost of testing a second time would be \$4,675 ( $85 \times \$55 = \$4,675$ )

The overall annual cost for FSD to drug test work-eligible recipients is unknown up to \$68,255 (\$32,285 for current recipients + \$31,295 for applicants + \$4,675 for a second test = \$68,255).

This would result in FAMIS programming costs. The OA-ITSD fiscal note will outline these costs.

The remaining members of the household who has been declared ineligible for TANF benefits, shall, if otherwise eligible, continue to receive TANF benefits through a third party payee. This would not affect the number of eligibles. There would not be a fiscal impact to FSD.

Existing FSD staff would be able to manage the increase in job duty as a result of this legislation.

Officials from the **Department of Social Services-Children's Division (CD)** states the legislation states that "Case workers conducting an initial assessment...may report or cause a report to be made to the children's division in accordance with the provisions of section 210.109 to 210.183 for suspected child abuse as a result of drug abuse in instances where the case worker has reasonable suspicion to believe that such individual is engaging in illegal use of a controlled substance." Additionally, if a caseworker has a reason to suspect child abuse by work eligible recipients that have tested positive or refused to be tested in relation to any work activity or preparation for work activities, the Case worker shall report or cause a report to be made to the CD in accordance with the provisions of sections 210.109.

ASSUMPTION (continued)

This proposed legislation would result in additional reports being made to the CD's child abuse/neglect hotline for screening as the result of mandate reports being made to the hotline for suspected child abuse as a result of drug abuse. Based upon the language of this proposed legislation, the CD would continue to follow the current screening process to determine if an investigation or an assessment is necessary to determine child abuse. If during the course of the child abuse investigation or assessment drug use is suspected, CD will refer back to FSD for drug testing.

It is unknown how many of these reports would have come to the attention of CD through the current structure. Therefore, the CD would not anticipate a significant increase in the number of investigations or assessments being conducted nor cases being opened as a result of this proposed legislation should it become law.

The CD does not anticipate a significant fiscal impact as a result of this proposed legislation.

<u>FISCAL IMPACT - State Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
 <b>GENERAL REVENUE FUND</b>			
<u>Costs - Department of Mental Health Program Cost</u>	<u>(Greater than \$100,000)</u>	<u>(Greater than \$100,000)</u>	<u>(Greater than \$100,000)</u>
 <u>Costs - Department of Social Services</u>			
Personal Service-DLS	(\$64,452)	(\$79,695)	(\$82,086)
Fringe Benefits-DLS	(\$33,734)	(\$41,712)	(\$42,964)
Equipment and Expense-DLS	(\$20,294)	(\$17,961)	(\$18,500)
<u>Total Costs - DSS-DLS</u>	<u>(\$118,480)</u>	<u>(\$139,368)</u>	<u>(\$143,550)</u>
FTE Change - DSS-DLS	2 FTE	2 FTE	2 FTE
 <u>Costs - Department of Social Services</u>			
ITSD Program Costs	<u>(\$92,722)</u>	<u>\$0</u>	<u>\$0</u>
 <u>Costs - Department of Social Services</u>			
FSD Drug Testing for Recipients	(\$32,285)	(\$33,092)	(\$33,919)
FSD Drug Testing for Applicants	(\$31,295)	(\$32,077)	(\$32,879)
FSD 2 <sup>nd</sup> Drug Testing for Recipients	(\$4,675)	(\$4,792)	(\$4,912)
<u>Total Costs - DSS-FSD</u>	<u>(\$68,255)</u>	<u>(\$69,961)</u>	<u>(\$71,710)</u>
 <b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
	<b><u>(Up to \$379,457)</u></b>	<b><u>(Up to \$309,329)</u></b>	<b><u>(Up to \$315,260)</u></b>
 Estimated Net FTE Change for General Revenue Fund			
	2 FTE	2 FTE	2 FTE

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2012 (10 Mo.)	FY 2013	FY 2014
<b>FEDERAL FUNDS</b>			
<u>Income - Department of Mental Health</u> Federal Assistance	<u>Greater than</u> <u>\$100,000</u>	<u>Greater than</u> <u>\$100,000</u>	<u>Greater than</u> <u>\$100,000</u>
<u>Costs - Department of Mental Health</u> Program Costs	<u>(Greater than</u> <u>\$100,000)</u>	<u>(Greater than</u> <u>\$100,000)</u>	<u>(Greater than</u> <u>\$100,000)</u>
<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

<u>FISCAL IMPACT - Local Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT - Small Business

***Section 208.027:***

If the drug testing is performed by small businesses, there will be an increase in their business.

If the testing facilities were part of state government, there would be no impact on small businesses.

FISCAL DESCRIPTION

**Section 208.027:**

This legislation creates the "TANF Child Protection and Drug Free Home Act" regarding drug testing for work-eligible TANF applicants and recipients.

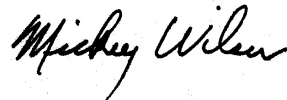
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Mental Health  
Department of Social Services  
Office of the Secretary of State  
Office of Administration-Administrative Hearing Commission

NOT RESPONDING

Office of the Attorney General



Mickey Wilson, CPA  
Director  
February 14, 2011