

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

5

HOUSE BILL 392
Committee Substitute Favorable 4/3/13
Third Edition Engrossed 4/9/13
Senate Health Care Committee Substitute Adopted 6/26/13
Fifth Edition Engrossed 7/10/13

Short Title: Warrant Status/Drug Screen Public Assist.

(Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

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

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

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

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

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

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



1 Whereas, State agencies administering the program may have or receive information
2 that is necessary for a law enforcement agency to conduct the official duties of the agency, and
3 the location or apprehension of the applicant or recipient is within a law enforcement agency's
4 official duties; Now, therefore,
5 The General Assembly of North Carolina enacts:

6
7 **PART I. SHARE ARREST WARRANT STATUS OF APPLICANTS FOR PUBLIC**
8 **ASSISTANCE**

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

11 **"§ 108A-26.1. Information sharing of outstanding arrest warrant of applicant for or**
12 **recipient of program assistance.**

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

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

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

35 (d) This section applies to applicants for or recipients of program assistance under Part
36 2 or Part 5 of this Article only.

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

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

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

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

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

7 **"§ 108A-26.2. Fleeing felon or parole or probation violator; eligibility for program**
8 **assistance; federal approval; review by department.**

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

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

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

25 **"§ 114-19.34. Criminal record checks of applicants for or recipients of program**
26 **assistance.**

27 Upon receipt of a request from a county department of social services, the Department of
28 Justice shall, to the extent allowed by federal law, provide to the county department of social
29 services the criminal history of an applicant for, or recipient of, program assistance under Part 2
30 or Part 5 of Article 2 of Chapter 108A of the General Statutes. The county department of social
31 services shall provide to the Department of Justice, along with the request, the fingerprints of
32 the individual to be checked, any additional information required by the Department of Justice,
33 and a form signed by the individual to be checked consenting to the check of the criminal
34 record and to the use of fingerprints and other identifying information required by the State or
35 National Repositories. The fingerprints of the individual to be checked shall be forwarded to
36 the State Bureau of Investigation for a search of the State's criminal history record file, and the
37 State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of
38 Investigation for a national criminal history record check. The Department of Justice may
39 charge a reasonable fee only for conducting the checks of the criminal history records
40 authorized by this section. Except as provided under G.S. 108A-26.1, the county department of
41 social services shall keep all information obtained pursuant to this section confidential."

42 43 **PART II. DRUG SCREENING AND TESTING FOR WORK FIRST PROGRAM** 44 **ASSISTANCE**

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

46 **"§ 108A-29.1. Substance abuse treatment required; drug-Drug screening and testing for**
47 **Work First Program applicants and recipients.**

48 (a) Each applicant or current recipient of Work First Program benefits, determined by a
49 Qualified Professional in Substance Abuse (QPSA) or by a physician certified by the American
50 Society of Addiction Medicine (ASAM) to be addicted to alcohol or drugs and to be in need of
51 professional substance abuse treatment services shall be required, as part of the person's MRA

1 and as a condition to receiving Work First Program benefits, to participate satisfactorily in an
2 individualized plan of treatment in an appropriate treatment program. As a mandatory program
3 component of participation in an addiction treatment program, each applicant or current
4 recipient shall be required to submit to an approved, reliable, and professionally administered
5 regimen of testing for presence of alcohol or drugs, without advance notice, during and after
6 participation, in accordance with the addiction treatment program's individualized plan of
7 treatment, follow-up, and continuing care services for the applicant or current recipient. The
8 Department shall require a drug test to screen each applicant for or recipient of Work First
9 Program assistance whom the Department reasonably suspects is engaged in the illegal use of
10 controlled substances. The cost of the drug testing is the responsibility of the individual tested.
11 The Department shall provide notice of drug testing to each applicant or recipient. The notice
12 shall advise the applicant or recipient that drug screening, and testing if there is reasonable
13 suspicion that an individual is engaged in the illegal use of controlled substances, will be
14 conducted as a condition of receiving Work First Program assistance, and that the results of the
15 drug tests will remain confidential and will not be released to law enforcement. Dependent
16 children under the age of 18 are exempt from the requirements of this section. The Department
17 shall require the following:

- 18 (1) That for two-parent households, both parents comply with the requirements
19 of this section.
- 20 (2) That any teen parent who is emancipated pursuant to Article 35 of Chapter
21 7B of the General Statutes complies with the requirements of this section.
- 22 (3) That each applicant or recipient be advised before drug testing that he or she
23 may inform the agent administering the test of any prescription or
24 over-the-counter medication he or she is taking.
- 25 (4) That each applicant or recipient being tested signs a written
26 acknowledgement that he or she has received and understood the notice and
27 advice provided under this subsection.
- 28 (5) That each applicant or recipient who fails a drug test understands that he or
29 she has the right to take one or more additional tests.
- 30 (6) That each applicant or recipient who fails a drug test be provided with
31 information regarding substance abuse, substance abuse counseling, and
32 substance abuse treatment options, including a list of substance abuse
33 treatment programs that may be available to the individual.

34 (b) An applicant or current recipient who fails to comply with any requirement imposed
35 pursuant to this section shall not be eligible for benefits or shall be subject to the termination of
36 benefits, but shall be considered to be receiving benefits for purposes of determining eligibility
37 for medical assistance. For an applicant or current recipient who is required to undergo a drug
38 test and who tests negative for controlled substances, the Department shall increase the amount
39 of the initial Work First Program assistance by the amount paid by the applicant or recipient for
40 the drug testing. An applicant or recipient who tests positive for controlled substances as a
41 result of a drug test required under this section is ineligible to receive Work First Program
42 assistance for one year from the date of the positive drug test except as provided in subsection
43 (b1) of this section. The individual may reapply after one year. However, if the individual has
44 any subsequent positive drug tests, the individual shall be ineligible for benefits for three years
45 from the date of the subsequent positive drug test unless the individual reapplies pursuant to
46 subsection (b1) of this section.

47 (b1) An applicant or recipient deemed ineligible under subsection (b) of this section may
48 reapply for Work First Program assistance if the individual can document the successful
49 completion of a substance abuse treatment program offered by a provider under subsection (e)
50 of this section and licensed by the Department. The applicant or recipient who reapplies for
51 Work First Program assistance after completion of a substance abuse program shall pass a drug

1 test. The cost of any drug testing and substance abuse program provided under this subsection
2 shall be the responsibility of the applicant or recipient being tested and receiving treatment. An
3 applicant or recipient who reapplies for Work First Program assistance pursuant to this
4 subsection may reapply one time only.

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

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

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

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

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

19 (1) A criminal record check conducted under G.S. 114-19.34 that discloses a
20 conviction, arrest, or outstanding warrant relating to illegal controlled
21 substances within the three years prior to the date the criminal record check
22 is conducted.

23 (2) A determination by a Qualified Professional in Substance Abuse or a
24 physician certified by the American Society of Addiction Medicine that an
25 individual is addicted to illegal controlled substances.

26 (3) A screening tool relating to the abuse of illegal controlled substances that
27 yields a result indicating that the applicant or recipient may be engaged in
28 the illegal use of controlled substances.

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

31 **SECTION 5.** The Department of Health and Human Services shall report to the
32 General Assembly no later than July 1, 2014, on the implementation of Section 4 of this act.
33

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

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

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