Georgia State University Law Review

Volume 29
Issue 1 *Fall 2012*

Article 11

4-3-2013

Social Services HB 861

Georgia State University Law Review

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Recommended Citation
Georgia State University Law Review (2013) "Social Services HB 861," *Georgia State University Law Review*: Vol. 29: Iss. 1, Article 11.
Available at: http://scholarworks.gsu.edu/gsulr/vol29/iss1/11

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SOCIAL SERVICES

Public Assistance: Provide a Short Title; Provide a Statement of Legislative Intent; Amend Article 9 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, Relating to Temporary Assistance for Needy Families, so as to Define Certain Terms; Provide that the Department of Human Services Shall Create an Established Drug Test to be Administered to Each Applicant for Temporary Assistance for Needy Families; Provide Requirements; Provide that Each Applicant Shall Undergo a Drug Test in Order to Qualify for Benefits; Provide That Any Person Who Fails Such Drug Test Shall be Ineligible to Receive Benefits; Provide for Reapplication; Provide for Children's Benefits; Provide for Confidentiality of Records; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. § 49-4-193 (new)
BILL NUMBER:	HB 861
ACT NUMBER:	583
GEORGIA LAWS:	2012 Ga. Laws 91
SUMMARY:	The Act requires law enforcement agencies to report drug related arrests to the Department of Human Services. The Act requires drug testing for applicants and recipients of state administered TANF benefits. Those who test positive for drugs become ineligible for TANF benefits for a certain period of time. When a parent of a dependent child tests positive for drugs, a protective payee shall be designated to receive benefits on behalf of the child.
EFFECTIVE DATE:	July 1, 2012

History

In 1972, Governor Jimmy Carter created the Georgia Department of Human Resources as part of an ongoing effort to consolidate state government services.[1] This department contributed to the economic independence of Georgia residents, substantially reducing the number on welfare rolls.[2] Georgia's children benefitted from the creation of the department as well; today, the State places fewer children in foster care than in previous years.[3] Further, Georgia reduced the recurrence of child maltreatment to less than 3%, a figure lower than the 5.4% national average in 2009.[4] Recently, the Georgia Department of Human Resources was renamed the Georgia Department of Human Services, for which temporary assistance for needy families is a paramount concern.[5] The stated mission of the Georgia Department of Human Services is to "provid[e] individuals and families access to services that promote self-sufficiency, independence, and protect Georgia's vulnerable children and adults."[6]

Georgia enacted the "Temporary Assistance for Needy Families Act"[7] (TANF) as an important part of its efforts to shift residents from entitlement programs to a temporary assistance program.[8] Federal welfare guidelines galvanized the enactment of this legislation by conditioning the receipt of block federal grants on compliance with federal guidelines.[9] In keeping with other initiatives of the Department of Human Services, TANF's purpose was to

1. Ga. Dept. of Hum. Resources, Joint Appropriations Committee Presentation 2 (2009), *available at* http://dhs.georgia.gov/sites/dhs.georgia.gov/files/imported/DHR/DHR_File/JointAppropriations MeetingJan23-09.pdf [hereinafter Committee Presentation].

2. *Id.* at 3.

3. *Id.* at 4.

4. *Id.*

5. O.C.G.A. § 49-4-3; *About Us*, Georgia Department of Hum. Services, http://dhs.georgia.gov/about-us-0 (last visited August 8, 2012).

6. *Mission & Core Values*, Georgia Department of Hum. Services, http://dhs.georgia.gov/portal/site/DHS/menuitem.24259484221d3c0b50c8798dd03036a0/?vgnextoid=2db8e1d09cb4ff00VgnVCM100000bf01010aRCRD (last visited August 8, 2012).

7. O.C.G.A. §§ 49-4-180 to -192 (1998).

8. Christine A. Sullivan, *Social Services Public Assistance: Extending Aid to Qualified Aliens Under The "Temporary Assistance for Needy Families Act*," 15 Ga. St. U. L. Rev. 232, 232 (1998).

9. Margaret Ann Shannon, *Public Assistance: Repeal "Aid to Dependent Children Act"; Create "Temporary Assistance for Needy Families Act*," 14 Ga. St. U. L. Rev. 284, 285 (1997).

encourage needy families with children to become self-sufficient by providing temporary assistance.[10] TANF requires recipients to participate in work activity "no later than 24 months after first receiving cash assistance,"[11] and caps the maximum assistance one may receive to forty-eight months.[12]

Shortly after TANF's enactment, commentators praised Georgia as having a model program in light of its 80% decline in TANF caseloads between 2004 and 2006.[13] Federal law requires states to meet a certain "work participation rate" in their TANF programs.[14] This rate is "the ratio of the number of adult TANF recipients who are working or in specified work-related activities to the number of families with adults receiving cash assistance through TANF-related programs."[15] In 2004, when Georgia experienced its precipitous reduction in TANF caseloads, former Department of Human Resources Commissioner B.J. Walker's goal was raising the work participation rate above 50% by 2005.[16] The rate increased from 11% in 2003 to 65% by 2006.[17] However, some critics have attributed this "success" in increasing the work participation rate to "new application procedures that, by increasing denials for procedural reasons unrelated to need, cut application approval rates in half."[18] These detractors note that "one-third of Georgia's TANF denials are due to withdrawal of application and another third are due to failure to cooperate in new application procedures."[19]

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10. *Id.* at 290.
11. O.C.G.A. § 49-4-182(a) (2011).
12. *Id.* § 49-4-182(b).
13. Tara J. Melish, *Maximum Feasible Participation of the Poor: New Governance, New Accountability, and a 21st Century War on the Sources of Poverty*, 13 Yale Hum. Rts. & Dev. L.J. 1, 39 n. 161 (2010).
14. Liz Schott, Ctr. on Budget and Pol'y Priorities Georgia's Increased TANF Work Participation Rate is Driven by Sharp Caseload Decline: Available Data Raise Questions About Whether Georgia Should Be Labeled as a Model for the Nation 1 (2007), *available at* http://www.cbpp.org/files/3-6-07tanf.pdf.
15. *Id.*
16. *TANF Work Participation Program Ends 2004 on a High Note*, Ga. Department of Hum. Services, (Dec. 16, 2004), http://dhs.georgia.gov/portal/site/DHS/menuitem.3d43c0fad7b3111b50c8798dd03036a0/?vgnextoid=1cf03343cc2e0010VgnVCM100000bf01010aRCRD&vgnextchannel=08cec92d86aa1010VgnVCM100000bf01010aRCRD.
17. Schott, *supra* note 14, at 1.
18. Melish *supra*, note 13, at 39 n.161.
19. Schott, *supra* note 14, at 3.

The latest amendment to TANF, O.C.G.A. §§ 49-4-9, -10, and -11 (Supp. 2012), imposes what some consider an additional hurdle over which TANF applicants must pass in order to receive the benefits: a mandatory drug screening test.[20] One sponsor of the bill, Representative Michael Harden (R-28th), noted that a central purpose of the legislation is to ensure tax dollars go to needy children rather than drug-addicted parents, who would presumably use the funds to support their expensive addiction.[21] In his view, the legislation protects Georgia taxpayers while also encouraging drug addicts to address their habit.[22] Upon signing the bill into law, Governor Nathan Deal expressed similar sentiments, stating that it "guarantees that the benefits are used for their intended purposes—to care for children and assist with job preparation."[23] With respect to the economics of the legislation, its supporters point to a similar law passed in Florida that saved $1.8 million.[24] However, many express skepticism that these savings would actually accrue in Georgia. At a minimum, the drug screening tests will cost $17 per test, and in the Senate Floor Debate, one senator expressed doubt that the tests could be administered so inexpensively.[25] Representative Harden observed that at a maximum, the cost could be $40 per test.[26]

Regardless of whether the savings materialize or not, the legislation will soon face a constitutional challenge from the Southern Center for Human Rights.[27] As some senators noted in the Senate Floor Debate, litigating a constitutional challenge would be costly for Georgia.[28] Prior to passage of the bill, opponents argued that drug testing of TANF recipients would violate the Fourth

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20. *See* Telephone Interview with Sen. Horacena Tate (R-38th) (Apr. 6, 2012) [hereinafter Tate Interview].

21. Video Recording of House Judiciary Committee, Mar. 5, 2012 at 2 hrs., 13 min., 50 sec. (remarks by Rep. Michael Harden (R-28th)), http://media.legis.ga.gov/hav/11_12/2012/committees/judi/judi030512EDITED.wmv p. 1 [hereinafter Record of Committee].

22. *Id.* at 2 hrs., 22 min., 56 sec. (remarks by Rep. Michael Harden (R-28th)).

23. Kristina Torres, *Deal OKs Welfare Drug Tests; Lawsuit Likely*, Atlanta J.-Const., Apr. 16, 2012, http://www.ajc.com/news/georgia-government/deal-oks-welfare-drug-1418822.html.

24. *Id.*

25. Video Recording of Senate Floor Debate, Mar. 27, 2012 at 1 hr., 44 min., 34 sec. (remarks by Sen. Steve Henson (D-41st)), http://www.gpb.org/lawmakers/2012/day-39 [hereinafter Senate Debate].

26. Record of Committee, *supra* note 21, at 2 hrs., 13 min., 17 sec. (remarks by Rep. Harden (R-28th)).

27. Torres, *supra* note 23.

28. Senate Debate, *supra* note 25, at 1 hr., 37 min., 38 sec. (remarks by Sen. Steve Henson (D-41st)).

Amendment as an unreasonable search.[29] A federal district court recently enjoined Florida TANF drug-testing under the Fourth Amendment, and that decision is currently on appeal before the Eleventh Circuit Court of Appeals in Atlanta.[30] Given the pendency of this ruling on the constitutionality of suspicionless drug testing of TANF recipients, some critics argue that the Georgia legislation is premature.[31] However, sponsors of the legislation are confident in its constitutionality.[32]

In response to assertions that the legislation is uneconomical, proponents of the legislation argued that even if the amendment fails to save the state money, it is still valuable for its protection of the children of illegal drug users.[33] Representative Wendell Willard (R-49th) observed that the finances should be a secondary concern to the wellbeing of the children, whose receipt of TANF benefits is jeopardized when they can only access the benefits through their drug-addicted parents.[34] Speaking before the House Judiciary Committee, Representative Michael Harden (R-28th) said that the bill ensures children will continue to receive their TANF benefits even if their parents are suspended from the program.[35] However, critics argue the legislation will actually harm children. When interviewed, Senator Horacena Tate (D-38th) noted that suspension of the parent's TANF benefits would not protect the children from continuing exposure to drug usage.[36] Further, senators, during the Senate Floor Debate, argued that the legislation would have the effect of reducing children's access to food and medical care.[37]

Unsurprisingly, support for and opposition to the legislation divided along party lines, with Republicans overwhelmingly

29. Record of Committee, *supra* note 21, at 2 hrs., 36 min., 12 sec. (remarks by Shelley Senterfitt on behalf of Ga. Coalition Against Domestic Violence and Ga. Women for a Change).

30. Torres, *supra* note 23.

31. Record of Committee, *supra* note 21, at 2 hrs., 36 min., 44 sec. (remarks by Shelley Senterfitt).

32. Torres, *supra* note 23.

33. *See* Telephone Interview with Rep. Wendell Willard (R-49th) (Apr. 6, 2012) [hereinafter Willard Interview].

34. *Id.*

35. Record of Committee, *supra* note 21, at 2 hrs., 12 min., 45 sec. (remarks by Rep. Michael Harden (R-28th)).

36. *See* Tate Interview, *supra* note 20.

37. Senate Debate, *supra* note 25, at 1 hr., 32 min., 26 sec. (Remarks by Sen. Sanford Bishop (D-2nd)).

supporting it and Democrats overwhelmingly opposing it.[38] Here, however, the polarity was especially striking. Of the 110 votes in favor of the bill, only a single Democrat voted for the bill in the final House vote, and no Republicans voted against it.[39] HB 861 was introduced during the 2012 Georgia General Assembly Session with Representative Michael Harden (R-28th) sponsoring it.[40]

Bill Tracking of HB 861

Consideration and Passage by House

Representatives Michael Harden (R-28th), Matt Ramsey (R-72nd), Stephen Allison (R-8th), Katie Dempsey (R-13th), Tony McBrayer (R-153rd), and Delvis Dutton (R-166th) sponsored HB 861.[41] The House read the bill for the first time on February 1, 2012,[42] and read the bill for the second time on February 2, 2012.[43] Speaker of the House David Ralston (R-7th) assigned the bill to the House Judiciary Committee, which favorably reported a Committee substitute on March 5, 2012.[44] As originally introduced, the bill would have amended Chapter 1 of Title 35 of the Official Code of Georgia Annotated to require law enforcement to report drug related arrests to the Department of Human Services.[45] However, the House Judiciary Committee substitute omitted this reporting requirement entirely.[46] The House Judiciary Committee substitute also eliminated a provision in the original bill that would have required the Department of Human Services to conduct a drug test on TANF recipients convicted of a drug related offense within thirty days of receiving notice of the offense.[47] Finally, the House Judiciary Committee

38. *See* Tate Interview, *supra* note 20.
39. Georgia House of Representatives Voting Record, HB 861 (Mar. 29, 2012).
40. HB 861, as introduced, 2012 Ga. Gen. Assem.
41. *Id.*
42. *Id.*; State of Georgia Final Composite Status Sheet, HB 861, May 10, 2012.
43. State of Georgia Final Composite Status Sheet, HB 861, May 10, 2012.
44. HB 861 (HCS), 2012 Ga. Gen. Assem.
45. HB 861, as introduced, § 2, p. 2, ln. 41–43, 2012 Ga. Gen. Assem.
46. *Compare* HB 861, as introduced, § 2, p. 2, ln. 31–43, 2012 Ga. Gen. Assem., *with* HB 861 (HCS), § 2, p. 2, ln. 28–31, 2012 Ga. Gen. Assem.
47. *Compare* HB 861, as introduced, § 3, p. 3, ln. 83–88, 2012 Ga. Gen. Assem., *with* HB 861 (HCS), § 2, p. 3, ln. 63, 64, 2012 Ga. Gen. Assem.

substitute would have moved the bill's effective date from July 1, 2012 to January 1, 2013,[48] and amended the date that the bill applies to applicants and recipients of TANF benefits from January 1, 2013 to July 1, 2013.[49] The House read the bill as substituted and adopted the House Judiciary Committee substitute by a vote of 114 to 59 on March 7, 2012.[50]

Consideration and Passage by Senate

Senator John Albers (R-56th) sponsored HB 861 in the Senate, and the Senate first read the bill on March 7, 2012.[51] Lieutenant Governor Casey Cagle (R) assigned it to the Senate Health and Human Services Committee.[52] The Health and Human Services Committee (SHHSC) favorably reported a Senate Committee substitute on March 22, 2012.[53] The SHHSC substitute removed the delayed effective date and added specific regulations for the administration of TANF drug tests, including a limitation on the amount Medicaid recipients would pay for the drug screen.[54] Further, the Senate committee substitute amended the amount of time a TANF applicant or recipient who fails a drug screen must wait before retaking the test.[55] Under the House's version of the bill, TANF applicants or recipients that failed a drug test could immediately retake the test.[56] If any TANF applicant or recipient tested positive for a second time, the House bill would have denied that person's TANF benefits for two years.[57] A third failed drug test would have resulted in the denial of all future TANF benefits.[58] However, in the SHHSC substitute, the first failed drug screen resulted in a denial of benefits for at least one

48. The Senate Health and Human Services Committee removed the effective date. HB 861 (SCS), 2012 Ga. Gen. Assem.

49. *Compare* HB 861, as introduced, § 5, p. 5, ln. 151, 152, 2012 Ga. Gen. Assem., *with* HB 861 (HCS), § 4, p. 4, ln. 125, 126, 2012 Ga. Gen. Assem.

50. State of Georgia Final Composite Status Sheet, HB 861, May 10, 2012; Georgia House of Representatives Voting Record, HB 861 (Mar. 7, 2012).

51. State of Georgia Final Composite Status Sheet, HB 861, May 10, 2012.

52. *Id.*

53. *Id.*

54. HB 861 (SCS), § 3, p. 2, ln. 35–60, 2012 Ga. Gen. Assem.

55. *Id.*, § 3, p. 3, ln. 71, 72.

56. HB 861 (HCS), § 2, p. 3, ln. 69–71, 2012 Ga. Gen. Assem.

57. *Id.* § 2, p. 3, ln. 71–73.

58. *Id.* § 2, p. 3, ln. 73–75.

month and until the applicant or recipient passed a later test.[59] A second failed test resulted in a minimum three-month denial of benefits, and subsequent failed tests required at least a one-year denial.[60] Individuals who fail three or more tests have an option to retake the test after six months following completion of an approved drug treatment program.[61]

The SHHSC substitute also added a notice provision to the bill, requiring that the Department of Human Services notify each TANF applicant of the drug testing program and the applicant's responsibility to pay for the test.[62] The substitute also required the Department of Human Services to provide individuals who test positive with a list of substance abuse treatment facilities.[63] Finally, the substitute exempted the mentally disabled from testing requirements.[64]

During the floor debate, Senators offered six amendments to the Senate Committee substitute bill; however, the Senate rejected five of the six. The first floor amendment sought to eliminate the "drug screening application fee" required of Medicaid recipients.[65] The second amendment would have placed sole responsibility for testing costs on the Department of Human Services.[66] The third amendment sought to limit the definition of TANF "applicant" to parents of a dependent child only, thereby exempting other relatives from testing.[67] The fourth amendment would have made the bill's effective date contingent on a specific funding allocation to pay for any costs associated with the implementing the bill.[68] Finally, Senator Jason Carter (D-42nd) introduced an amendment that would have only

59. HB 861 (SCS), § 3, p. 3, ln. 71, 72, 2012 Ga. Gen. Assem.
60. *Id.* § 3, p. 3, ln 73–77.
61. *Id.* § 3, p. 4, ln. 114–17.
62. *Id.* § 3, p. 3, ln. 79–81.
63. *Id.* § 3, p. 4, ln. 110–12.
64. *Id.* § 3, p. 5, ln. 145–51.
65. Failed Senate Floor Amendment to HB 861 (AM 33 1236), introduced by Sen. Lester Jackson (D-2nd) and Sen. Nan Orrock (D-36th), Mar. 27, 2012.
66. Failed Senate Floor Amendment to HB 861 (AM 33 1238), introduced by Sen. Steve Henson (D-41st) and Sen. Miriam Paris (D-26th), Mar. 27, 2012.
67. Failed Senate Floor Amendment to HB 861 (AM 33 1235), introduced by Sen. Vincent Fort (D-39th), Sen. Lester Jackson (D-2nd), Sen. Nan Orrock (D-36th), and Sen. Miriam Paris (D-26th), Mar. 27, 2012.
68. Failed Senate Floor Amendment to HB 861 (AM 33 1239), introduced by Sen. Nan Orrock (D-36th), Sen. Lester Jackson (D-2nd), and Sen. Miriam Paris (D-26th), Mar. 27, 2012.

required drug tests for individuals whom the department suspected of using illegal drugs.[69] The Senate failed to adopt these five amendments, but voted in favor of an amendment by Senator John Albers (R-56th) that exempted TANF recipients seeking long-term care services and those living in nursing home facilities from the drug-testing requirement.[70] The Senate read the bill as amended on March 27, 2012, passed the amended bill by a vote of 36 to 15, and transmitted it back to the House of Representatives.[71] The House agreed to the Senate substitute.[72]

The Act

The Act, named the "Social Responsibility and Accountability Act," amends Article 1 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated and establishes a drug-testing requirement for individuals receiving or seeking aid through the temporary assistance for needy families program.[73] The Act also outlines the legislature's purpose in instituting a drug-testing program for TANF.[74] The stated intentions include ensuring TANF funds are used for alleviating poverty—not to illicit drug use—and protecting children by reducing the danger that drugs are used in their homes.[75]

Code section 49-4-193(a) defines "established drug test" and incorporates requirements found in the Federal Workplace Drug Testing regulations.[76] Subsection 49-4-193(b) outlines rules and regulations that the Georgia Department of Human Services must adopt when implementing the drug-testing program.[77] The Act requires the Department to create procedures for testing, draft a list of drugs subject to testing and approved testing sites, and mandate

69. Failed Senate Floor Amendment to HB 861 (AM 33 1237), introduced by Sen. Jason Carter (D-42nd), Mar. 27, 2012.

70. Adopted Senate Floor Amendment to HB 861 (AM 40 0032ER), introduced by Sen. John Albers (R-56th), Mar. 27, 2012.

71. State of Georgia Final Composite Status Sheet, HB 861, May 10, 2012; Georgia State Senate Voting Record, HB 861 (Mar. 27, 2012).

72. Georgia House of Representatives Voting Record, HB 861 (Mar. 29, 2012).

73. O.C.G.A. § 49-4-193 (Supp. 2012).

74. HB 861, as passed, § 2, 1, ln. 15–23, 2012 Ga. Gen. Assem.

75. *Id.* § 2, p. 1, ln. 15-19, 2012 Ga. Gen. Assem.

76. O.C.G.A. § 49-4-193(a) (Supp. 2012).

77. *Id*. § 49-4-193(b)(1)-(9).

testing within forty-eight hours of the applicant's initial eligibility approval.[78] Subsection 49-4-193(d) provides the minimum amount of time that an individual must be denied TANF benefits following a positive test: one month for the first positive test, three months for a second positive test, and one year for each subsequent positive test.[79] Subsection 49-4-193(e) requires the Department of Human Services to notify each TANF applicant of the drug-testing policy at the time of application and mandate that for two-parent families at least one parent must comply with the testing requirements.[80] This section also exempts dependent children from the drug-testing requirement.[81] Subsection 49-4-193(f) allows individuals who are denied benefits for one year to retake the drug test after only six months, provided the applicant completes an approved drug treatment program.[82] Further, this section clarifies that the costs of testing are solely the responsibility of the applicant.[83]

Subsection 49-4-193(g) states that the Act will not affect a dependent child's eligibility for TANF benefits.[84] If a parent is deemed ineligible under the Act, the parent may designate a "protective payee" to receive benefits on behalf of an eligible child, but the chosen payee must satisfy the testing requirement.[85] Subsection 49-4-193(h) prohibits the disclosure of results from drugs tests mandated by the Act to third parties and exempts any Department of Human Services drug-testing records from the "Open Records Act."[86] Finally, subsection 49-4-193(i) exempts the mentally disabled, persons seeking care in a long-term care facility, and individuals residing in nursing homes from the drug-testing requirement.[87]

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78. *Id*. § 49-4-193(b).
79. *Id*. § 49-4-193(d).
80. *Id*. § 49-4-193(e).
81. *Id*. § 49-4-193(e)(1).
82. O.C.G.A. § 49-4-193(f) (Supp. 2012).
83. *Id.*
84. *Id*. § 49-4-193(g).
85. *Id.*
86. *Id*. § 49-4-193(h); *see also id*. § 50-18-4.
87. O.C.G.A. § 49-4-193(i) (Supp. 2012).

Analysis

Future Constitutional Challenges and Similar Statutes

This Act may face significant constitutional scrutiny and prompt litigation, including claims that the Act violates the Fourth Amendment prohibition against unreasonable searches.[88] In 2011, the Florida state legislature passed drug-testing legislation similar to Georgia's "Social Responsibility and Accountability Act," requiring the Florida Department of Children and Families to drug test every applicant to the Federal TANF program prior to disbursing benefits.[89] This Florida statute was the first drug-testing law of its kind in the United States and necessitated drug tests regardless of whether officials suspected an applicant's drug use.[90] Florida's law prompted immediate constitutional challenges on Fourth Amendment grounds. One suit, filed by a single father and former armed service member in the Middle District of Florida, requested that the court enjoin Florida from drug-testing TANF applicants and certify their suit as a class action.[91] Although the court declined to certify the plaintiff's class action, District Judge Mary S. Shriver enjoined the Florida TANF drug-testing program, holding that urinalysis drug-testing qualifies as a search under the Fourth Amendment.[92] Judge Shriver also determined that the type of suspicionless drug tests authorized by Florida Statute section 414.0652 constituted unreasonable Fourth Amendment intrusions.[93] In defending the suit, the State of Florida argued that despite the alleged unconstitutional nature of required drug tests for welfare benefits, the plaintiff consented to the search via a form submitted with his TANF application.[94] While the court acknowledged that consent is a well-recognized exception to the Constitutional prohibition against unreasonable searches, the court also rejected this argument and pointed out that the Florida law

88. Kristina Torres & Christopher Quinn, *Drug-test Bill Draws Legal Heat*, Atlanta J-Const (Apr. 9, 2012), http://www.ajc.com/news/georgia-government/drug-test-bill-draws-1411340.html.
89. See Fla. Stat. § 414.0652 (2012).
90. Torres and Quinn, *supra* note 88.
91. Lebron v. Wilkins, 820 F. Supp. 2d 1273, 1275 (M.D. Fla. 2011).
92. *Id.* at 1283.
93. *Id.* at 1284.
94. *Id.* at 1283–84.

required that applicants provided consent before applying for TANF benefits.[95] The court determined that this application requirement violated the "doctrine of unconstitutional conditions," which "prohibits terminating benefits . . . if the termination is based on motivations that other constitutional provisions proscribe."[96] In order to posit a "special need" for the Florida law, the State presented four reasons for the law's introduction: (1) "ensuring that TANF funds are used for their dedicated purpose"; (2) protecting children from drug abuse; (3) helping beneficiaries retain employment; and (4) ensuring that public money does not fund a "public health risk."[97] The district court applauded the goals, but questioned the efficacy of the Florida law. In fact, Judge Shriver found that the legislature failed to show that "rampant drug abuse exists among" TANF applicants and pointed to the five percent positive drug test rate among screened TANF applicants, a figure three percentage points lower than the average drug use rate in the Florida population as a whole.[98] The State of Florida appealed the district court's ruling to the Eleventh Circuit Court of Appeals.[99]

In its opinion, the Florida district court found a Supreme Court case regarding drug-testing for elected officials particularly instructive on the issues raised by the Florida drug-testing law.[100] In *Chandler v. Miller*, the Supreme Court examined the constitutionality of a Georgia law that required candidates for certain elected state offices to undergo drug-testing as a condition for state qualification.[101] The Supreme Court struck down Georgia Code section 21-2-140 finding that the State of Georgia failed to demonstrate a "sufficiently substantial special need"[102] for the law, such to "[depart] from the Fourth Amendment's main rule."[103]

95. *Id.* at 1284.
96. *Id.* (quoting Bourgeois v. Peters, 387 F.3d 1303, 1324 (11th Cir. 2004)).
97. Lebron, 820 F. Supp. 2d at 1286.
98. *Id.* at 1277, 1286. Of the 6,462 TANF applicants that consented to drug tests in Florida during the first several months of the law, only 335 tested positive for illegal drugs. *Id.* at 1277.
99. Torres & Quinn, *supra* note 88.
100. Lebron, 820 F. Supp. 2d at 1284.
101. Chandler v. Miller, 520 U.S. 305, 308 (1997).
102. Lebron, 820 F. Supp. 2d at 1286.
103. Chandler, 520 U.S. at 318–19.

Twenty-five other states considered drug-testing requirements for state benefits this past year, including Utah.[104] The Utah drug testing law requires that all benefit recipients fill out a questionnaire aimed at identifying potential drug abusers.[105] The Utah law also allows recipients who fail a test to keep receiving benefits if they attend a drug treatment program. In contrast, Georgia's law stops benefits immediately to any recipient that fails a drug test. The Act allows the recipient to name a temporary beneficiary, but the temporary beneficiary must also pass a drug test.[106] Further, unlike the Utah law, the Act fails to designate a particular group of beneficiaries for testing through the use of a questionnaire or targeted selection process, and it requires testing for all applicants.[107]

On two separate occasions, federal courts struck down drug-testing laws similar to the current Georgia law for failing to demonstrate an adequate special need, thereby permitting a Fourth Amendment intrusion.[108] Similar challenges and the pending litigation regarding the Florida drug testing law could directly impact the constitutionality of Georgia's "Social Responsibility and Accountability Act."[109] Given the pending Eleventh Circuit legislation, the House Judiciary Committee moved the effective date for the committee substitute to January 1, 2013, to allow for a resolution to the pending legislation.[110] However, the final version of HB 861 failed to include any effective date.[111]

Public Policy Problems

The Act's proponents point to many of the same benefits and goals touted by the Florida drug-testing law, specifically protecting children and ensuring that recipients use TANF funds for its intended purpose.[112] In fact, the final version of HB 861 provided a statement

104. Torres & Quinn, *supra* note 88.
105. Utah Code Ann. § 35A-3-304(1) (2012).
106. O.C.G.A. § 49-4-193(g) (Supp. 2012).
107. *Id*. § 49-4-193.
108. *See* Chandler, 520 U.S. 305; Lebron, 820 F. Supp. 2d 1273.
109. The Atlanta based Southern Center for Human Rights is currently preparing to file a suit challenging the Act. Torres and Quinn, *supra* note 88.
110. HB 861 (HCS), § 4, p. 4, ln. 125, 126, 2012 Ga. Gen. Assem.
111. HB 861, as passed, 2012 Ga. Gen. Assem.
112. Torres & Quinn, *supra* note 88.

of the legislature's intent, which included these aforementioned goals.[113] However, according to many opponents of Georgia's law, the legislature underestimated the financial impact the Act will take on families receiving TANF funds.[114] Although the Act anticipates that most TANF beneficiaries will use Medicare benefits when undergoing an initial drug test, opponents estimate that drug tests could cost non-Medicare recipients up to $30 a test.[115]

Other legislators worry about the programs ability to identify drug users.[116] In order to have an effective drug-screening program, the State must administer random testing.[117] However, as State Rep. Holcomb points out, "TANF recipients have jobs. So, are Government agents simply going to show up at their work? Are they going to knock on their doors? This seems highly intrusive and problematic."[118] Although advocates are hopeful that the Act will increase beneficiary accountability, the Act's opponents believe that it unfairly singles out a group of people because of their socio-economic standing.[119] For opponents like State Representative Holcomb, the Act's costs simply outweigh any potential benefits.[120]

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113. HB 861, as passed, § 2, 1, ln. 15–23, 2012 Ga. Gen. Assem.
114. *See* Interview with Rep. Scott Holcomb (D-82nd) (Apr. 16, 2012) [hereinafter Holcomb Interview].
115. Torres & Quinn, *supra* note 88.
116. *See* Holcomb Interview, *supra* note 114.
117. *Id.*
118. *Id.*
119. *Id.*
120. *Id.*