

HOUSE BILL NO. 596

INTRODUCED BY S. LAVIN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING DRUG SCREENING AND DRUG TESTING
5 REQUIREMENTS FOR ELIGIBILITY UNDER THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES
6 PROGRAM; PROHIBITING ASSISTANCE IN CERTAIN INSTANCES; ALLOWING A THIRD PARTY TO
7 ACCEPT PAYMENTS FOR CHILDREN WHOSE PARENTS ARE INELIGIBLE FOR TEMPORARY ASSISTANCE
8 FOR NEEDY FAMILIES BENEFITS BECAUSE OF DRUG SCREENING AND TESTING REQUIREMENTS;
9 PROVIDING FOR CONFIDENTIALITY; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS
10 53-4-201, 53-4-212, 53-4-231, AND 53-4-244, MCA."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 **NEW SECTION. Section 1. Drug screening and testing -- condition for eligibility -- penalties.** (1)(a)
15 Applicants for financial assistance shall complete as part of the application process a written questionnaire
16 designed to accurately determine the likelihood of the applicant having a substance abuse disorder involving the
17 misuse of a controlled substance.

18 (b) The department may not process an application for an individual who declines to complete the
19 questionnaire.

20 (2) (a) If the results of the written questionnaire indicate a reasonable likelihood that the applicant has
21 a substance abuse disorder involving the misuse of a controlled substance, the applicant shall complete a drug
22 test at the department's expense as part of the eligibility determination process.

23 (b) The department may not provide financial assistance under this part to an individual who refuses to
24 take a drug test required under this subsection (2). The individual may not reapply for financial assistance under
25 this part for:

- 26 (i) 90 days after a first refusal to take a drug test; or
- 27 (ii) 1 year after a second refusal within a 1-year period.

28 (3) An individual who tests positive for the unlawful use of a controlled substance may receive financial
29 assistance only if the applicant:

- 30 (a) agrees to participate at the department's expense in a substance abuse treatment program for at

1 least 60 days;

2 (b) tests negative for the unlawful use of a controlled substance in:

3 (i) each subsequent drug test required during treatment, as determined by the department by rule; and

4 (ii) an additional drug test at the conclusion of treatment; and

5 (c) meets the other requirements of receiving financial assistance under this part.

6 (4) (a) The department shall deny or terminate assistance for an individual:

7 (i) who refuses to take a drug test required under this section, including a drug test required by the
8 department by rule; or

9 (ii) who tests positive for the unlawful use of a controlled substance in a drug test required under this
10 section.

11 (b) A person who is denied financial assistance or whose financial assistance is terminated under this
12 subsection (4) may not reapply for financial assistance under this part for:

13 (i) 90 days after the date on which the department determines the individual is ineligible for financial
14 assistance because of the results of a drug test conducted pursuant to this section; or

15 (ii) 1 year after the date on which the department determines that the individual is ineligible for financial
16 assistance if the department has determined on at least one other occasion in the previous 12 months that the
17 individual is ineligible for financial assistance under this subsection (4).

18 (5) An individual required to take a drug test may advise the person administering the test of any
19 prescription or over-the-counter medication the individual is taking.

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21 **NEW SECTION. Section 2. Drug testing -- confidentiality -- penalty.** (1) Because of the privacy
22 interests of individuals involved in drug tests conducted pursuant to [section 1], the department and its employees
23 may not disclose the identity of a subject of a drug test or the results of a test except as necessary to determine
24 eligibility for financial assistance under this part.

25 (2) A person who discloses or compels another to disclose the identity of a subject of a drug test or the
26 results of a drug test in violation of this section is subject to a civil penalty of up to \$500. Fines collected pursuant
27 to this section must be deposited in the state general fund.

28

29 **Section 3.** Section 53-4-201, MCA, is amended to read:

30 **"53-4-201. Definitions.** As used in part 6 and this part, the following definitions apply:

- 1 (1) "Approved educational program" means:
- 2 (a) a program in a unit of the Montana university system, as provided in 20-25-201, a community college,
- 3 a tribal college, or any other accredited college in Montana in which an individual is enrolled in pursuit of an
- 4 associate's or baccalaureate degree; or
- 5 (b) an accredited high school or training program approved by the department by rule.
- 6 (2) (a) "Assessment" means the process of evaluating a recipient's skills, education, job readiness, and
- 7 barriers to employment. The term may include further in-depth examination to identify and access services and
- 8 resources to assist the recipient in eliminating barriers to employment if barriers are identified during the initial
- 9 assessment.
- 10 (b) The term does not include the drug screening, drug testing, or substance abuse treatment provided
- 11 for in [section 1].
- 12 (3) "Department" means the department of public health and human services provided for in 2-15-2201.
- 13 (4) (a) "Dependent child", for public assistance purposes, means:
- 14 (i) a child under 18 years of age; or
- 15 (ii) a person under 19 years of age who is a student, as defined by the department by rule.
- 16 (b) The person described in subsection (4)(a)(i) or (4)(a)(ii) must be living with a specified caretaker
- 17 relative, as defined by the department by rule.
- 18 (5) "FAIM project" means the families achieving independence in Montana project as established in
- 19 53-4-601.
- 20 (6) "Family" means a group of people who live with a dependent child, each of whom is related to the
- 21 dependent child by blood, marriage, or adoption or by law, such as:
- 22 (a) a parent, including a natural or adoptive parent, a stepparent, or a person considered by law to be
- 23 a parent in the case of a child conceived by artificial insemination; or
- 24 (b) a sibling.
- 25 (7) "Federal poverty level" means the measure of indigence established annually by the U.S. office of
- 26 management and budget.
- 27 (8) "Financial assistance" means the programs funded, in part, with temporary assistance for needy
- 28 families, as provided in 45 CFR 260.31(a).
- 29 (9) "Nonfinancial assistance" means the programs funded, in part, with temporary assistance for needy
- 30 families, as provided in 45 CFR 260.31(b).

1 (10) "Public assistance" or "assistance" means a type of monetary or other assistance furnished under
2 this title to a person by a state or county agency, regardless of the original source of the assistance.

3 (11) "Specified caretaker relative" means a person within a degree of kinship to the dependent child, as
4 specified by department rule, who lives with the child and exercises care and control over the child.

5 (12) "State plan" means the policies and procedures governing the state of Montana's FAIM project and
6 other programs funded by temporary assistance for needy families. It is prepared by the department and certified
7 by the federal agency that provides funding for those programs.

8 (13) "Temporary assistance for needy families" means the federal block grant established pursuant to
9 42 U.S.C. 601, et seq."

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11 **Section 4.** Section 53-4-212, MCA, is amended to read:

12 **"53-4-212. Department to adopt rules.** (1) The department shall adopt rules and take action as
13 necessary or desirable for the administration of public assistance programs.

14 (2) Subject to subsection (3), the department shall adopt rules that may include but are not limited to
15 rules concerning:

16 (a) eligibility requirements, including gross and net income limitations, resource limitations, and income
17 and resource exclusions;

18 (b) amounts of assistance, methods for computing benefit amounts, and the length of time for which
19 benefits may be granted;

20 (c) the degree of kinship required for a person to qualify as a specified caretaker relative in order to be
21 eligible for assistance;

22 (d) procedures for carrying out the drug screening, drug testing, and substance abuse treatment
23 requirements of [section 1];

24 (e) procedures and policies for making payments on behalf of certain dependent children as allowed
25 under 53-4-244(2), including requirements for an individual who may serve as a third party;

26 ~~(d)~~(f) procedures and policies for employment and training programs, requirements for participation in
27 employment and training programs, and exemptions, if any, from participation requirements;

28 ~~(e)~~(g) requirements for specified caretaker relatives, including cooperation with assessments, the number
29 of hours of participation required for each month, specific activities required to address employment barriers, and
30 other terms of performance;

1 ~~(f)~~(h) eligibility for and terms and conditions of child-care assistance for financial assistance recipients,
2 including maximum amounts of assistance payable and amounts of copayments required by specified caretaker
3 relatives;

4 ~~(g)~~(i) eligibility criteria and participation requirements for nonfinancial assistance recipients;

5 ~~(h)~~(j) terms of ineligibility or sanctions against a specified caretaker relative or other family member who
6 fails to enter into a family investment agreement, as provided for in 53-4-606, or to comply with the individual's
7 obligations under the agreement, including the length of the period of ineligibility, if any;

8 ~~(i)~~(k) requirements, if any, for participation in the employment and training demonstration project;

9 ~~(j)~~(l) eligibility for and terms and conditions of extended medical assistance benefits;

10 ~~(k)~~(m) reporting requirements;

11 ~~(l)~~(n) ~~sanctions~~ except as otherwise provided in [section 1], sanctions, disqualification, or other penalties
12 for failure or refusal to comply with the rules or requirements of a public assistance program;

13 ~~(m)~~(o) exemptions from the 60-month limitation on assistance provided in 53-4-231 based on hardship
14 or for families that include an individual who has been battered or subjected to extreme cruelty, as defined in
15 section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608,
16 including but not limited to the duration of the exemption;

17 ~~(n)~~(p) individuals who must be included as members of an assistance unit;

18 ~~(o)~~(q) categories of aliens who may receive assistance, if any;

19 ~~(p)~~(r) requirements relating to the assignment of child and medical support rights and cooperation in
20 establishing paternity and obtaining child and medical support;

21 ~~(q)~~(s) requirements for eligibility and other terms and conditions of other programs to strengthen and
22 preserve families;

23 ~~(r)~~(t) special eligibility or participation requirements applicable to teenage parents, if any;

24 ~~(s)~~(u) conditions under which assistance may be continued when an adult or a dependent child is
25 temporarily absent from the home and the length of time for which assistance may be continued;

26 ~~(t)~~(v) any random drug testing or reporting requirements for persons who are required to comply with
27 the conditions provided under 53-4-231(3) and graduated sanctions that may include terms of ineligibility for
28 violations of conditions of supervision or treatment requirements. The department may enter into agreements with
29 the department of corrections regarding testing and reporting on offenders under the supervision of the
30 department of corrections.

1 ~~(t)~~(w) approved educational programs, appropriate educational courses of study, employee assessment
 2 instruments, and administration of the Montana parents as scholars program provided for in 53-4-209; and
 3 (x) approved substance abuse treatment programs for the purposes of [section 1].

4 (3) ~~By October 1, 2009, the~~ The department shall adopt rules establishing a net income limit of 250%
 5 of the current federal poverty level for federal funds or state general fund money used for participating families
 6 in the child care for working caretaker relatives program. The department may incorporate an earned income work
 7 disregard of \$200 and an additional 25% disregard from the household's gross income to determine the
 8 household's net income."

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10 **Section 5.** Section 53-4-231, MCA, is amended to read:

11 **"53-4-231. Eligibility.** (1) Subject to the provisions of subsections (2) through (6), assistance may be
 12 granted under this part to:

13 (a) a dependent child;

14 (b) a specified caretaker relative or relatives, including but not limited to the natural or adoptive parents
 15 of a dependent child who:

16 (i) enters into a family investment agreement, as provided for in 53-4-606, if required by the department;
 17 and

18 (ii) cooperates in all assessments and screening required by the department;

19 (c) the stepparent of a dependent child who lives with the child and the child's natural or adoptive parent;

20 (d) persons under 18 years of age who live in the home with a dependent child, including but not limited
 21 to siblings related to the dependent child by blood, marriage, or adoption or by law;

22 (e) a needy pregnant woman with no other children who is receiving payments. Payments may begin
 23 no earlier than the third month prior to the month in which the child is expected to be born.

24 (2) Persons who are not citizens of the United States are eligible for assistance only as provided in
 25 sections 401 through 435 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as
 26 codified in Title 8 of the United States Code.

27 (3) A person who has been convicted of a felony offense, an element of which involves the possession,
 28 use, or distribution of a controlled substance, as defined in 21 U.S.C. 802, is eligible for public assistance if the
 29 person is actively complying with the conditions of supervision or has discharged the sentence associated with
 30 the felony conviction and if the person is actively participating in treatment, if required.

- 1 (4) The following are not eligible for assistance:
- 2 (a) persons who are receiving supplemental security income payments under the Social Security Act;
- 3 (b) an adult or a dependent child who is or is expected to be absent from the home of the specified
- 4 caretaker relative continuously for a period of time prescribed by the department by rule;
- 5 (c) a specified caretaker relative who fails to comply with requirements for reporting the absence of a
- 6 dependent child from the specified caretaker relative's home as prescribed by the department by rule;
- 7 (d) families in which the specified caretaker relative fails or refuses to assign child and medical support
- 8 rights to the department or to cooperate in establishing paternity or obtaining child or medical support as required
- 9 by the department by rule;
- 10 (e) families in which the specified caretaker relative or other adult household member, as specified by
- 11 the department by rule, fails or refuses to:
- 12 (i) cooperate in any required screening or assessment; or
- 13 (ii) enter into a family investment agreement required by the department under 53-4-606;
- 14 (f) teenage parents who fail or refuse to attend secondary school or another training program as required
- 15 by the department by rule;
- 16 (g) teenage parents who are not living in an adult-supervised setting as defined by the department by
- 17 rule;
- 18 (h) a fugitive felon or probation or parole violator as defined in section 103 of the Personal Responsibility
- 19 and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608; ~~and~~
- 20 (i) individuals who fail to comply with the drug screening and drug testing requirements of [section 1];
- 21 and
- 22 ~~(j)~~(j) individuals who have fraudulently misrepresented their place of residence, as defined in section 103
- 23 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608. The ineligibility
- 24 continues for a period of 10 years beginning on the date of conviction.
- 25 (5) A family is not eligible for financial assistance if the family includes an adult who has received
- 26 financial assistance in a program funded under temporary assistance for needy families in any state or states for
- 27 60 months or more, whether or not the months are consecutive, unless an exception is expressly granted by
- 28 federal law.
- 29 (6) This part may not be interpreted to entitle any individual or family to assistance under programs
- 30 funded by temporary assistance for needy families."

