

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 387**

BY SENATOR MARONEY

[Passed April 8, 2021; in effect 90 days from passage (July 7, 2021)]



1 AN ACT to amend and reenact §9-3-6 of the Code of West Virginia, 1931, as amended, relating  
2 to the program for drug screening of applicants for cash assistance; and providing  
3 extension of time frame for program.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.**

**§9-3-6. Program for drug screening of applicants for cash assistance.**

1 (a) As used in this section:

2 (1) "Applicant" means a person who is applying for benefits from the Temporary  
3 Assistance for Needy Families Program.

4 (2) "Board of Review" means the board established in §9-2-6(13) of this code.

5 (3) "Caseworker" means a person employed by the department with responsibility for  
6 making a reasonable suspicion determination during the application process for Temporary  
7 Assistance for Needy Families Program.

8 (4) "Child Protective Services" means the agency within the department responsible for  
9 investigating reports of child abuse and neglect as required in §49-2-802 of this code.

10 (5) "Department" means the Department of Health and Human Resources.

11 (6) "Drug screen" or "drug screening" means any analysis regarding substance abuse  
12 conducted by the Department of Health and Human Resources on applicants for assistance from  
13 the Temporary Assistance for Needy Families Program.

14 (7) "Drug test" or "drug testing" means a drug test which tests urine for amphetamines  
15 (amphetamine and methamphetamine) cocaine, marijuana, opiates (codeine and morphine),  
16 phencyclidine, barbiturates, benzodiazepines, methadone, propoxyphene, and expanded opiates  
17 (oxycodone, hydromorphone, hydrocodone, oxymorphone).

18 (8) "Secretary" means the secretary of the department or his or her designee.

19 (9) "Temporary Assistance for Needy Families Program" means assistance provided  
20 through ongoing cash benefits pursuant to 42 U. S. C. § 601 *et seq.* operated in West Virginia as  
21 the West Virginia Works Program pursuant to §9-9-1 *et seq.* of this code.

22 (b) Subject to federal approval, the secretary shall implement and administer a program  
23 to drug screen any adult applying for assistance from the Temporary Assistance for Needy  
24 Families Program. The secretary shall administer this program until December 31, 2026.

25 (c) Reasonable suspicion exists if:

26 (1) A case worker determines, based upon the result of the drug screen, that the applicant  
27 demonstrates qualities indicative of substance abuse based upon the indicators of the drug  
28 screen; or

29 (2) An applicant has been convicted of a drug-related offense within the three years  
30 immediately prior to an application for Temporary Assistance for Needy Families Program and  
31 whose conviction becomes known as a result of a drug screen as set forth in this section.

32 (d) Presentation of a valid prescription for a detected substance that is prescribed by a  
33 health care provider authorized to prescribe a controlled substance is an absolute defense for  
34 failure of any drug test administered under the provisions of this section.

35 (e) Upon a determination by the case worker of reasonable suspicion as set forth in this  
36 section an applicant shall be required to complete a drug test. The cost of administering the drug  
37 test and initial substance abuse testing program is the responsibility of the Department of Health  
38 and Human Resources. Any applicant whose drug test results are positive may request that the  
39 drug test specimen be sent to an alternative drug-testing facility for additional drug testing. Any  
40 applicant who requests an additional drug test at an alternative drug-testing facility shall be  
41 required to pay the cost of the alternative drug test.

42 (f) Any applicant who has a positive drug test shall complete a substance abuse treatment  
43 and counseling program and a job skills program approved by the secretary. An applicant may  
44 continue to receive benefits from the Temporary Assistance for Needy Families program while

45 participating in the substance abuse treatment and counseling program or job skills program.  
46 Upon completion of both a substance abuse treatment and counseling program and a job skills  
47 program, the applicant is subject to periodic drug screening and testing as determined by the  
48 secretary in rule. Subject to applicable federal laws, any applicant for Temporary Assistance for  
49 Needy Families Program who fails to complete, or refuses to participate in, the substance abuse  
50 treatment and counseling program or job skills program as required under this subsection is  
51 ineligible to receive Temporary Assistance for Needy Families benefits until he or she is  
52 successfully enrolled in substance abuse treatment and counseling and job skills programs. Upon  
53 a second positive drug test, an applicant shall be ordered to complete a second substance abuse  
54 treatment and counseling program and job skills program. He or she shall be suspended from the  
55 Temporary Assistance for Needy Families Program for a period of 12 months, or until he or she  
56 completes both a substance abuse treatment and counseling program and a job skills program.  
57 Upon a third positive drug test an applicant shall be permanently terminated from the Temporary  
58 Assistance for Needy Families Program subject to applicable federal law.

59 (g) Any applicant who refuses a drug screen or a drug test is ineligible for assistance.

60 (h) The secretary shall order an investigation and home visit from Child Protective  
61 Services on any applicant whose benefits are suspended and who has not designated a protective  
62 payee or whose benefits are terminated due to failure to pass a drug test. This investigation and  
63 home visit may include a face-to-face interview with the child, if appropriate; the development of  
64 a protection plan; and, if necessary for the health and well-being of the child, may also involve  
65 law enforcement. This investigation and home visit shall be followed by a report detailing  
66 recommended action which Child Protective Services shall undertake. Child Protective Services  
67 is responsible for providing, directing, or coordinating the appropriate and timely delivery of  
68 services to any child who is the subject of any investigation and home visit conducted pursuant  
69 to this section. In cases where Child Protective Services determines that the best interests of the  
70 child require court action, it shall initiate the appropriate legal proceeding.

71 (i) Any other adult members of a household that includes a person declared ineligible for  
72 the Temporary Assistance for Needy Families Program pursuant to this section shall, if otherwise  
73 eligible, continue to receive Temporary Assistance for Needy Families benefits.

74 (j)(1) No dependent child's eligibility for benefits under the Temporary Assistance for  
75 Needy Families Program may be affected by a parent's failure to pass a drug test.

76 (2) If pursuant to this section a parent is deemed ineligible for the Temporary Assistance  
77 for Needy Families Program, the dependent child's eligibility is not affected and an appropriate  
78 protective payee shall be designated to receive benefits on behalf of the child.

79 (3) The parent may choose to designate another person as a protective payee to receive  
80 benefits for the minor child. The designated person shall be an immediate family member, or if an  
81 immediate family member is not available or declines the option, another person may be  
82 designated.

83 (4) The secretary shall screen and approve the designated person.

84 (k)(1) An applicant who is determined by the secretary to be ineligible to receive benefits  
85 pursuant to subsection (f) of this section due to a failure to participate in a substance abuse  
86 treatment and counseling program or a job skills program who can later document successful  
87 completion of a drug treatment program approved by the secretary may reapply for benefits six  
88 months after the completion of the substance abuse treatment and counseling program or job  
89 skills program. An applicant who has met the requirements of this subdivision and reapplies is  
90 also required to submit to a drug test and is subject to the provisions of subsection (f) of this  
91 section.

92 (2) An applicant may reapply only once pursuant to the exceptions contained in this  
93 subsection.

94 (3) The cost of any drug screen or test and drug treatment provided under this subsection  
95 is the responsibility of the individual being screened and receiving treatment.

96 (l) An applicant who is denied assistance under this section may request a review of the  
97 denial by the Board of Review. The results of a drug screen or test are admissible without further  
98 authentication or qualification in the review of denial by the Board of Review and in any appeal.  
99 The Board of Review shall provide a fair, impartial, and expeditious grievance and appeal process  
100 to applicants who have been denied Temporary Assistance for Needy Families benefits pursuant  
101 to the provisions of this section. The Board of Review shall make findings regarding the denial of  
102 benefits and issue a decision which either verifies the denial or reverses the decision to deny  
103 benefits. Any applicant adversely affected or aggrieved by a final decision or order of the Board  
104 of Review may seek judicial review of that decision.

105 (m) The secretary shall ensure the confidentiality of all drug screen and drug test results  
106 administered as part of this program. Drug screen and test results shall be used only for the  
107 purpose of determining eligibility for the Temporary Assistance for Needy Families Program. At  
108 no time may drug screen or test results be released to any public or private person or entity or  
109 any law-enforcement agency, except as otherwise authorized by this section.

110 (n) The secretary shall promulgate emergency rules pursuant to the provisions of §29A-  
111 3-1 *et seq.* of this code to prescribe the design, operation, and standards for the implementation  
112 of this section.

113 (o) A person who intentionally misrepresents any material fact in an application filed under  
114 the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be  
115 punished by a fine of not less than \$100 nor more than \$1,000 or by confinement in jail not to  
116 exceed six months, or by both fine and confinement.

117 (p) The secretary shall report to the Joint Committee on Government and Finance by  
118 December 31, 2016, and annually after that until the conclusion of the program on the status of  
119 the federal approval and program described in this section. The report shall include, but is not  
120 limited to:

121 (1) The total number of applicants who were deemed ineligible to receive benefits under  
122 the program due to a positive drug test for controlled substances;

123 (2) The number of applicants for whom there was a reasonable suspicion due to a  
124 conviction of a drug-related offense within the five years prior to an application for assistance;

125 (3) The number of those applicants that receive benefits after successful completion of a  
126 drug treatment program as specified in this section; and

127 (4) The total cost to operate the program.

128 (q) Should federal approval not be given for any portion of the program as set forth in this  
129 section, the secretary shall implement the program to meet the federal objections and continue to  
130 operate a program consistent with the purposes of this section.

131 (r) For the purposes of the program contained in this section, pursuant to the authority and  
132 option granted by 21 U. S. C. § 862a(d)(1)(A) to the states, West Virginia hereby exempts all  
133 persons domiciled within the state from the application of 21 U. S. C. § 862a(a).

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2021.

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*Governor*