

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5398

FISCAL
NOTE

By Delegates Brooks, Ridenour, and Martin

[Introduced January 31, 2024; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section
 2 designated §49-2-128a, all relating to establishing a drug screening program for adults
 3 who apply to serve as foster parents, kinship parents, or caregivers to children in the legal
 4 custody of the Department of Human Services.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-128a. Program for drug screening of foster or kinship parents, or caregivers.

1 (a) As used in this section:

2 (1) "Caregiver" means a foster parent, kinship parent, or a designated official in a
 3 residential treatment facility.

4 (2) "Department" means the Department of Human Services.

5 (3) "Drug screen" or "drug screening" means any analysis regarding substance abuse
 6 conducted by the Department of Human Services on foster parents.

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

11 (5) "Secretary" means the secretary of the department or his or her designee.

12 (b) The department shall implement and administer a program to drug screen any adult
 13 applying to become a foster parent, kinship parent, or caregiver of any displaced child in the legal
 14 custody of the Department of Human Services.

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

18 (d) The cost of administering the drug test and initial substance abuse testing program is
 19 the responsibility of the Department of Human Services. Any foster parent, kinship parent, or

20 caregiver applicant whose drug test results are positive may request that the drug test specimen
21 be sent to an alternative drug-testing facility for additional drug testing. Any applicant who
22 requests an additional drug test at an alternative drug-testing facility shall be required to pay the
23 cost of the alternative drug test.

24 (e) Any foster parent, kinship parent, or caregiver applicant who has a positive drug test
25 shall complete a substance abuse treatment and counseling program approved by the secretary.
26 Upon completion of a substance abuse treatment and counseling program, the applicant is subject
27 to periodic drug screening and testing as determined by the secretary in rule if approved as a
28 foster parent, kinship parent, or caregiver. Any applicant who fails to complete, or refuses to
29 participate in, the substance abuse treatment and counseling program as required under this
30 section is ineligible for foster parent, kinship parent, or caregiver child placement. Upon a second
31 positive drug test, an applicant shall be ordered to complete a second substance abuse treatment
32 and counseling. He or she shall be suspended from being considered for foster parent, kinship
33 parent, or caregiver placement with the department or any child placing agency for a period of 12
34 months, or until he or she completes a substance abuse treatment and counseling program. Upon
35 a third positive drug test an applicant shall be permanently terminated from being considered for
36 foster parent, kinship parent, or caregiver placement with the department or any child placing
37 agency.

38 (f) Any applicant who refuses a drug screen or a drug test is ineligible for foster parent,
39 kinship parent, or caregiver placement with the department or any child placing agency.

40 (g) The secretary shall order an investigation and home visit from Child Protective Services
41 on any applicant who has been suspended from being considered for foster or kinship parent
42 placement with the department or any child placing agency for a period of 12 months. This
43 investigation and home visit may include a face-to-face interview with any child in the home, if
44 appropriate; the development of a protection plan; and, if necessary for the health and well-being
45 of the child, may also involve law enforcement. This investigation and home visit shall be followed

46 by a report detailing recommended action which Child Protective Services shall undertake. Child
47 Protective Services is responsible for providing, directing or coordinating the appropriate and
48 timely delivery of services to any child who is the subject of any investigation and home visit
49 conducted pursuant to this section. In cases where Child Protective Services determines that the
50 best interests of the child requires court action, it shall initiate the appropriate legal proceeding.

51 (h) The secretary shall ensure the confidentiality of all drug screen and drug test results
52 administered as part of this program. Drug screen and test results shall be used only for the
53 purpose of determining eligibility for foster or kinship parent child placement. At no time may drug
54 screen or test results be released to any public or private person or entity or any law-enforcement
55 agency, except as otherwise authorized by this section.

56 (i) The secretary shall promulgate emergency rules pursuant to the provisions of §29A-3-1
57 et seq. of this code to prescribe the design, operation, and standards for the implementation of this
58 section.

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

63 (k) The secretary shall report to the Joint Committee on Government and Finance by
64 December 31, 2024, and annually after that. The report shall include, but is not limited to:

65 (1) The total number of foster parent, kinship parent, or caregiver applicants who were
66 deemed ineligible to provide child placement services under the program due to a positive drug
67 test for controlled substances;

68 (2) The number of those applicants that are approved for child placement after successful
69 completion of a drug treatment program as specified in this section; and

70 (3) The total cost to operate the program.

NOTE: The purpose of this bill relates to establishing a drug testing program for adults who

apply to serve as foster parents, kinship parents, or caregivers to displaced children in the legal custody of the Department of Human Services.

Strike-throughs language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.