

ASSEMBLY, No. 1388

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman PASCRELL

1 AN ACT concerning drug testing of certain Division of Youth and  
2 Family Services employees and supplementing chapter 4 of Title 30  
3 of the Revised Statutes.

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5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

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8 1. The Division of Youth and Family Services in the Department  
9 of Human Services may test its caseworkers and all other employees  
10 who have direct contact with children for usage of controlled  
11 dangerous substances as defined in the "New Jersey Controlled  
12 Dangerous Substances Act," P.L.1970, c.226 (C.24:21-1 et seq.) and  
13 in chapters 35 and 36 of Title 2C of the New Jersey Statutes:

14 a. prior to employment;

15 b. upon reasonable suspicion that an employee is using or has used  
16 a controlled dangerous substance. There is created a rebuttable  
17 presumption that the division had reasonable suspicion to test for  
18 controlled dangerous substances if the specimen provided by the  
19 employee tested positive in a confirmed test;

20 c. on a random basis during the course of employment based upon  
21 neutral selection criteria. For the purposes of this subsection the term  
22 "neutral selection criteria" shall mean criteria for selecting employees  
23 for tests that (1) results in an equal probability that any employee from  
24 a group of employees subject to the mechanism will be selected and  
25 (2) does not give the division discretion to waive the selection of any  
26 employee selected under the criteria.

27 The collection of specimens under this act shall be performed  
28 during or immediately after the regular work period for current  
29 employees.

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31 2. A refusal to submit to a test or a positive confirmed test for  
32 controlled dangerous substances under this act may serve as the basis  
33 for a refusal to hire a prospective employee or the discharge of a  
34 current employee unless the employee was using the substance  
35 pursuant to a valid prescription or order form.

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37 3. The collection of specimens and testing under this act shall be

1 performed in accordance with the regulations and guidelines issued by  
2 the Department of Human Services pursuant to section 7 of this act.

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4 4. All information, reports, statements and test results, written or  
5 otherwise, received by the Division of Youth and Family Services  
6 through its drug testing program shall be deemed confidential  
7 communications and may not be used or disclosed except as may be  
8 necessary to effectuate the purposes of this act.

9 Any information obtained by the division pursuant to this act shall  
10 be the property of the employer.

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12 5. The Division of Youth and Family Services which, in good faith  
13 implements a drug testing program or procedure pursuant to this act,  
14 shall not be liable for civil damages arising therefrom except to the  
15 extent the complaint establishes a cause of action for defamation of  
16 character, libel, slander, or damage to reputation arising from a  
17 violation of section 4 of this act.

18 Nothing in this section is intended to preclude the protection  
19 provided in section 2 of P.L.1971, c.414 (C.2A:62A-4) or otherwise  
20 provided by law.

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22 6. The provisions of the "New Jersey Clinical Laboratory  
23 Improvement Act," P.L.1975, c.166 (C.45:9-42.26 et seq.) shall not  
24 apply to drug testing performed pursuant to this act.

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26 7. The Commissioner of Human Services, in consultation with the  
27 Attorney General, shall adopt rules and procedures pursuant to the  
28 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)  
29 necessary to effectuate the provisions of this act.

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31 8. This act shall take effect immediately.

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#### STATEMENT

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36 This bill authorizes the Division of Youth and Family Services in  
37 the Department of Human Services to perform preemployment and  
38 random in-service drug tests on caseworkers and all other employees  
39 who have direct contact with children and to perform a drug test on  
40 any caseworker or employee if there exists a reasonable suspicion that  
41 the employee is using or had used drugs.

42 The random tests must use "neutral selection criteria" so as to be  
43 fair to all employees. The refusal to submit to the test or a positive  
44 confirmed test result may serve as the basis for the refusal to hire or  
45 subject the employee to discharge.

46 The bill provides for all information and test results to be

1 confidential and grants immunity to the Division of Youth and Family  
2 Services against civil damages resulting from the drug testing program  
3 required under this act except for damages resulting from a breach of  
4 confidentiality.

5 The Department of Human Services, in conjunction with the  
6 Attorney General, is directed to adopt procedures governing the  
7 collection of specimens and testing.

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12 Authorizes drug testing for certain DYFS employees.