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Joint Committee on Finance

Paper #216

Work Experience Program Drug Testing and Treatment (Children and Families -- Economic Support and Child Care)

[LFB 2015-17 Budget Summary: Page 100, #3]

CURRENT LAW

Drug Testing under Wisconsin Works

Wisconsin Works (W-2) is a work-based program administered by the Department of Children and Families (DCF) providing training and support services to assist low-income parents to obtain permanent and stable employment. Pursuant to contracts, local W-2 agencies administer the program and help applicants participate in work preparation activities, find or keep jobs, and pay for the costs of maintaining employment.

Participants in W-2 are assigned by the local W-2 agency to either unsubsidized employment or a subsidized W-2 employment position. In order to be eligible for a W-2 employment position for any month, an individual must meet certain financial and nonfinancial eligibility requirements. The most common subsidized employment positions (placements) under W-2 are community service jobs (CSJ) and W-2 transitional placements (W2T).

Consistent with federal law, individuals applying for a W-2 employment position or job access loan must state in writing whether they have been convicted of a felony that has as an element possession, use, or distribution of a controlled substance. If a participant in a community service job or transitional placement was convicted in any state or federal court of such a felony within five years of applying for a W-2 employment position, the W-2 agency must require the individual to submit to a test for use of a controlled substance as a condition of continued eligibility.

If the test results are positive, the W-2 agency must decrease the pre-sanction benefit amount for that participant by up to 15% for at least 12 months, or for the remainder of the

participant's period of participation in the employment position, if less than 12 months. If, at the end of 12 months, the individual is still a participant in the employment position and submits to another test for the use of controlled substances, and if the results of the test are negative, the full benefit amount must be restored. The W-2 agency may require an individual who tests positive for use of a controlled substance to participate in a drug abuse evaluation, assessment, and treatment program as part of the work or education and training requirements for that employment position. These provisions have been in effect since the implementation of the W-2 program in 1997.

Work Programs Available to Non-Custodial Parents

The Children First program provides job training and work experience to noncustodial parents. A noncustodial parent who has no current means of meeting a child support obligation may be ordered by the court into the program. The Children First Program is administered by DCF; however, DCF may contract with a county child support agency, county human/social services agency, tribal governing body, or W-2 agency to administer the program locally.

DCF is required to pay a W-2 agency, county, or tribal governing body administering Children First not more than \$400 per year for each participant. Allocations for participating agencies, county departments, or tribal governing bodies are budgeted at \$400 per year for each estimated participant. Additional program costs are paid by the agency, county, or tribal governing body.

In 2014, 2,133 non-custodial parents were ordered to participate in the Children First program. Children First does not drug test applicants.

The Transform Milwaukee program provides employers in the City of Milwaukee with financial subsidies if they hire eligible low-income individuals. In contrast with W-2, noncustodial parents and childless individuals may qualify for the Transform Milwaukee program. The income eligibility limit is also higher. The Transitional Jobs program is a substantially similar program meant to be conducted outside of Milwaukee County. The DCF administrates each program.

As of February, 2015, there were 725 participants in Transform Milwaukee. There were no participants in Transitional Jobs, which had not yet expanded outside of Milwaukee. Drug testing is not required under the Transform Milwaukee or Transitional Jobs programs.

The W-2 non-custodial parent placement is a voluntary program for unemployed or underemployed non-custodial parents. The W-2 non-custodial parent placement may provide job search assistance and case management services, a four-month stipend, and/or a subsidized work placement through the W-2 trial employment match program (TEMP). Noncustodial parents are eligible if they: (a) meet the W-2 financial and non-financial eligibility criteria; (b) are subject to a child support order; and (c) are participating in a W-2 employment position or receiving certain other services under W-2.

DCF has not yet implemented the noncustodial parent placement or TEMP. As a result there are currently no participants in either program.

GOVERNOR

The bill would require substance abuse screening, testing, and treatment as a condition of eligibility requirement for: (a) persons who apply to participate in the Transform Milwaukee program or the Transitional Jobs program; (b) persons applying for W-2 services and benefits for noncustodial parents; and (c) persons who are ordered by a court to register for Children First because they are not meeting their child support obligations.

The bill would require applicants to these work programs to complete a questionnaire that screens for the abuse of a controlled substance as a condition of eligibility. Based on the answers to the questionnaire, if DCF (or the agency with which DCF has contracted to administer the program) determines that there is a reasonable suspicion that an individual who is otherwise eligible for the work program is abusing a controlled substance, the individual would have to undergo a test for the use of a controlled substance in order to remain eligible. If the individual refuses to submit to a test, the individual would not be eligible until the individual complies with the requirement to undergo a test for the use of a controlled substance.

If the test results are negative, the eligibility requirements for testing, screening, and treatment would be fulfilled. If the test results are positive and the individual does not present satisfactory evidence of a valid prescription for the controlled substance, then the individual would have to participate in substance abuse treatment to remain eligible. The individual would satisfactorily complete the substance abuse screening, testing, and treatment requirements for the work program if the individual completes treatment and tests negative or positive with a valid prescription at the completion of treatment.

While undergoing treatment, the individual would have to submit to random testing for the use of a controlled substance, and the test results would have to be negative, or positive with evidence of a valid prescription, in order for the individual to remain eligible. If any test results are positive and the individual does not have a valid prescription, the individual could restart treatment one time and remain eligible so long as all subsequent test results are negative or positive with a valid prescription.

It must be noted that a substantially similar bill, AB 191, also provides for screening, testing, and treatment of work experience programs. AB 191 also contains provisions which provide \$250,000 GPR annually in a new appropriation to support substance abuse treatment costs and clarifies that DCF would have to pay the costs of substance abuse treatment. Such provisions are not in the budget bill.

DISCUSSION POINTS

Drug Screening, Testing, and Treatment of Work Program Participants

1. In her testimony before the Joint Committee on Finance, the DCF Secretary indicated that most employers in Wisconsin utilize some form of drug screening or testing of employees and job applicants.

2. The Secretary indicated that training, work experience, education, and case management are not sufficient to achieve the goal of making participants employable if the participant is ultimately unable to pass an employer's drug test. Thus, drug testing could serve an important role in state work programs to ensure that participants can obtain and maintain family-sustaining employment.

3. The drug screening, testing, and treatment requirements are intended to assist work program participants in becoming employable (and thereby enable them to support their families) and to reduce the traumatic effect on children of drug abuse by their participating parents.

4. W-2 and the work programs identified above are funded, in part, by the federal temporary assistance for needy families (TANF) block grant. Under federal law, the goals of TANF are to: (a) provide assistance to needy families so that children can be cared for in their own homes; (b) reduce the dependency of needy parents by promoting job preparation, work, and marriage; (c) prevent and reduce the incidence of out-of-wedlock pregnancies; and (d) encourage the formation and maintenance of two-parent families. The proposed drug screening, testing, and treatment could fulfill several TANF goals by promoting job preparation, promoting self-sufficiency, and protecting children from the effects of drug-related child abuse.

5. The Governor's proposal could also help to ensure that public funds are used for their intended purpose: to support families in need and not to support drug use.

Privacy and Unreasonable Searches

6. Drug tests are generally considered to be searches for the purposes of the Fourth Amendment of the United States Constitution and Section 11 of the Wisconsin Constitution. Historically, courts have found that in order for a search to be reasonable, it must be based upon individualized suspicion or a special need (or important governmental interest) which goes beyond the need for law enforcement, such as public safety. Regulations in other states which conditioned the receipt of public assistance upon suspicionless drug testing, such as Florida and Michigan, have been struck down by courts as unreasonable searches.

7. The bill requires and DCF indicates that drug testing of applicants would be based upon individualized suspicion depending on the answers given to the screening questionnaire. The purpose of the questionnaire would be to reduce the costs associated with testing those who are less likely to be abusing drugs and to provide a basis for conducting a drug test of an applicant.

8. The proposed drug screening, testing, and treatment for work programs is not intended to serve a law enforcement purpose. As stated above, the intent is to protect children and to assist work program participants support their families by becoming employable.

9. However, the bill does not provide for drug testing procedures that would restrict the sharing of test results or limit the negative consequences of failed tests to work programs. The bill does not indicate who would maintain the records of the testing results or whether such results could be shared with other parties, such as child welfare case workers, law enforcement officials, or the courts that order applicants to participate in Children First. As a result, the bill could create unintended consequences for applicants if the drug testing results are shared in ways which

negatively impact participants and violate their expectation of privacy.

10. The Committee may wish to modify the Governor's proposal to: (a) restrict the use of testing results to determining eligibility for work programs; and (b) require that drug screening, testing, and treatment results be kept confidential except for the non-law-enforcement officials responsible for administering the work programs, including when requested by the court which orders participation into Children First (Alternative 5).

Drug Use and Current W-2 Testing of Drug Felons

11. The National Institute on Drug Abuse and Health indicated in its national survey of drug use and health in 2013 that 9.4% of the general population older than twelve years of age used illicit drugs within the preceding month. Of those older than 26, 7.4% used illicit drugs within the preceding month. Of those aged 18 up to 25, 21.5% used illicit drugs within the preceding month.

12. The Department of Health Services indicates in the 2014 Wisconsin Epidemiological Profile on Alcohol and Other Drug Use that illicit drug use by persons aged 12 and older in Wisconsin mirrors national trends in 2011 and 2012:

TABLE 1

2011 and 2012 Wisconsin Drug Use Profile, Age 12 and Older

	<u>Past Month</u>	
	<u>Wisconsin</u>	<u>U.S.</u>
Any illicit drugs	8%	9%
Marijuana	7%	7%

13. The following table shows the number of W-2 participants tested under the current W-2 drug testing provisions for applicants who are drug felons, the percentage who tested positive, and the amount of sanctions levied upon those who tested positive. DCF does not track those who refused to take the drug test or decided not to apply upon learning of the drug test requirement, and as a result the data only reflect those who agreed to take the drug test.

TABLE 2

W-2 Drug Testing of Drug Felons

<u>Year</u>	<u>W-2 Participants Tested</u>	<u>Positive (%)</u>	<u>Negative (%)</u>	<u>Total Drug Felon Sanctions</u>
2010	129	1 (<1%)	128 (99%)	\$1,146
2011	185	17 (9%)	168 (91%)	1,856
2012	199	18 (9%)	181 (91%)	2,248
2013	334	27 (8%)	307 (92%)	3,359
2014	365	28 (8%)	337 (92%)	2,009

14. As shown in Table 2, drug felons tested positive at a rate of 8% to 9% in each of the last four years. This rate is similar to that of the general population in Wisconsin.

15. In 2014, approximately \$5.50 of sanctions were levied per drug felon tested.

16. DCF indicates that drug test costs range from \$20 up to \$100 per test because local W-2 agencies use different drug test providers throughout the state and use different testing methods which detect different kinds of drugs.

17. As a result, the cost of testing W-2 drug felons appears to be greater than the savings generated from sanctioning them. It should be noted, however, that in many cases W-2 agencies will not incur drug testing costs, because they will rely on testing conducted by other agencies, such as the criminal justice system and FoodShare.

18. Because drug testing of drug felons in the TANF program suggests that such persons are no more likely than the general population to use drugs, it could be argued that it is unlikely that applicants for work programs use drugs at rates higher than the general population. Further, it could be argued that such applicants are no more likely than the general population to be unemployed due to drug abuse or to engage in drug-related child abuse. As a result, it could be argued that there is no need to incur expenses to test such persons for drug use.

19. If the Committee finds that applicants for work programs are no more likely to engage in drug abuse than the general population, the Committee could delete the Governor's proposal from the bill (Alternative 4).

20. On the other hand, the statistics kept for W-2 drug testing of drug felons do not account for those who refused a drug test or delayed taking the drug test. It may be the case that some drug felons know that a drug test would be positive and thus do not undergo testing or strategically time their application to avoid detection of their drug use. As a result, the actual rate of drug use could in fact be higher than the statistics shown in Table 2.

21. Further, as discussed above, there may also be other benefits from drug testing that are not reflected in Table 2, such as deterrence of drug use and increased employability of participants.

22. It must be noted that the number of drug felons is much smaller than the total number of applicants for W-2 and other work programs (DCF estimates that the number of W-2 participants over a 12-month period is approximately 30,000). As a result, it is questionable as to whether the testing results for drug felons are comparable to or predictive of drug testing for work programs in general.

Drug Testing - Funding and Costs

23. Potential costs and savings from drug screening, testing, and treatment would be affected by a number of unknown factors, many of which would depend on the policies implemented by DCF and the reaction of applicants to the work programs.

24. The cost of drug testing depends on the accuracy of the drug screening and the types of

drugs tested for. Accurate screening will reduce the unnecessary drug testing costs associated with testing applicants who are not abusing a controlled substance. The administration and DCF estimate that drug testing would cost \$33 for each individual who is screened in and agrees to take the test.

25. The costs of drug treatment largely depend on the type of drug treatment provided and upon whether the applicants would qualify for medical assistance for substance abuse rehabilitation services. DCF anticipates that most of the costs for drug treatment would be covered by medical assistance. The administration estimates that non-residential drug treatment would cost \$825 for each individual who is screened and agrees to undergo treatment.

26. The bill does not express what kind of drug treatment DCF must provide to applicants. DCF indicates that the individual would be referred for a formal assessment by a qualified professional to determine the level of treatment necessary and provide recommendations for an individualized service plan, including whether there are underlying, undiagnosed mental health issues. Outreach would occur to county human service directors and to alcohol and other drug abuse and mental health professionals to develop placement options and funding options for comprehensive screening, assessment, testing, and treatment. The selection of a treatment provider would depend on capacity issues, including costs, caseload sizes, and wait lists.

27. Although DCF indicates that it would obtain drug treatment for applicants, it is important to note that the bill does not expressly state that DCF must provide for, or pay the costs of, drug treatment. For this reason, the Committee may wish to modify the bill to ensure that program participants will not be required to obtain and pay for their own treatment program as a condition of eligibility for work programs (Alternative 7).

28. The main source of savings associated with drug screening, testing, and treatment are caseload reductions resulting from applicants who refuse to be tested or treated for drug use. Such savings are uncertain because it is unknown how many applicants would decline to respond to a drug questionnaire, comply with a drug test, or undergo substance abuse treatment. Further, it is not known how many applicants would successfully complete the treatment and participate in the work program.

29. Notwithstanding the uncertainty involved, the administration estimates that the costs of drug testing would be small enough to be offset by the savings from caseload reductions. The administration indicates that, even assuming there were no such savings, such costs could be absorbed by the current funding levels allocated to the W-2, Transform Milwaukee, Transitional Jobs, and Children First programs.

30. For this reason, the bill would not provide any additional funding for drug screening, testing, or treatment. All costs of drug screening, testing, and treatment would be borne by the respective work programs. Any savings resulting from reduced caseloads would remain with the programs.

31. The administration's estimate for the W-2 non-custodial placement, Transform Milwaukee, and Transitional Jobs is reasonable given the relatively small number of estimated

participants compared to the total funding allotted for these programs. Therefore, the Committee may wish to approve the Governor's proposal without modification (Alternative 1).

32. However, it must be noted that funding for Children First (\$1.14 million annually) could be negatively impacted if more applicants are screened in for testing or treatment than anticipated. This is especially true for cases in which drug treatment is not covered by medical assistance. Drug treatment for one participant could potentially exceed the total funding provided under Children First for two or more participants.

Children First

33. Children First is the largest of the programs included within the Governor's proposal. The administration estimates that Children First will have 2,222 applicants per year and thus consist of approximately 75% of all the applicants that would be subject to bill's provisions for drug testing, screening, and treatment.

34. Because participation in Children First is court ordered, an applicant would not be able to refuse the drug screening, testing, or treatment without violating a court order. It is not clear what court sanctions an individual would be subject to for refusing a test, testing positive for drug use, or failing to complete drug treatment.

35. It is reasonable to assume that there would be no savings from caseload reductions in Children First under the Governor's proposal because such applicants would not be able to lawfully refuse the drug screening, testing, or treatment.

36. Because DCF provides only \$400 for each estimated participant and no savings are expected from caseload reductions, the costs of drug screening, testing, and treatment could potentially represent a significant financial burden on the Children First program.

37. Because the Children First program is court-ordered and funding is limited to \$400 per individual, the Committee may wish to remove the drug screening, testing, and treatment requirements for the Children First program (Alternative 3).

38. On the other hand, the fact that Children First applicants participate under a court order does not lessen the above stated costs and benefits of drug screening, testing, and treatment. If the Committee finds that it is beneficial for applicants, their children, and the public to implement drug testing and treatment for work programs, it is reasonable to believe that it would be similarly beneficial to provide for such requirements in the Children First program.

39. Alternatively, the Committee could provide additional funding to administer the Children First program (Alternative 2). Assuming that: (a) there are 2,222 applicants per year; (b) between 20% and 25% of applicants are screened in for drug testing; (c) 10% of applicants will test positive; (d) an average of three follow up drug tests will be needed for each person who tests positive at cost of \$33 up to \$50 per drug test; and (e) each individual undergoing drug treatment will cost between \$825 and \$1,000; it is reasonable to estimate a range of costs between \$55,700 and \$91,700 annually. Actual costs may be much higher or lower depending on whether drug

treatment will be covered by medical assistance. Given this, Alternative 2 would provide \$100,000 annually for this purpose.

ALTERNATIVES

Work Program Drug Testing

1. Approve the Governor's recommendation.
2. Modify the Governor's recommendation to provide an additional \$100,000 in TANF funding annually for the Children First program to administer the drug screening, testing, and treatment requirements.

ALT 2	Change to Bill
FED	\$200,000

3. Modify the Governor's recommendation to remove drug screening, testing, and treatment requirements for the Children's First program. There is no fiscal impact because no funding is provided under the bill for drug screening, testing, and treatment.

4. Delete the provision. There is no fiscal impact because no funding is provided under the bill for drug screening, testing, and treatment.

Privacy Restrictions

5. Modify the Governor's recommendation to: (a) restrict the use of drug screening, testing, and treatment results to determining eligibility for work programs; and (b) require that results be kept confidential except for the non-law-enforcement officials responsible for administering the work programs, including when requested by the court which orders participation into Children First.

6. Approve the Governor's recommendation without modifications to restrict the use of the results of drug screening, testing, and treatment.

Drug Treatment

7. Modify the Governor's recommendation to clarify that the DCF shall provide for, and pay for all costs of, substance abuse treatment under the provision.

8. Approve the Governor's recommendation without clarifying that DCF would be responsible for paying the costs of drug treatment.

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