



SPONSOR: Sen. Gay & Sen. Townsend & Rep. Griffith &
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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 204

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO DRUG TESTING BY THE
DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH, AND THEIR FAMILIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 9020, Title 29 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 9020. Drug testing required.

4 (a) The Department is authorized and required to conduct drug testing as set forth in this section of any employee
5 or prospective employee accepting a safety, security ~~sensitive~~ sensitive, or child care position, as determined by policy and
6 regulations adopted by the Department. ~~The following drug testing shall be required:~~ The following apply to drug testing by
7 the Department:

8 (1) *Preemployment testing.* — The Department shall ~~not hire or employ any person without first obtaining the~~
9 ~~results of such person's mandatory drug screening as test an applicant for employment as a safety, security sensitive, or~~
10 child care employee for the use of a drug specified in subsection (b) of this section.

11 (2) *Random testing.* — All A safety, security ~~sensitive and sensitive, or~~ sensitive, or child care ~~employees shall be~~
12 employee is subject to random testing for illegal use of ~~the drugs~~ a drug specified in subsection (b) of this section.

13 (3) *Reasonable suspicion testing.* — The ~~Department, acting through its supervisory personnel,~~ Department
14 ~~may also~~ conduct a drug test based on a reasonable suspicion that a safety, security ~~sensitive~~ sensitive, or child care
15 employee is impaired by ~~an illegal drug,~~ a drug specified in subsection (b) of this section.

16 (b)(1) ~~Any person~~ An individual employed by, or applicant offered employment with ~~with~~ the Department as a
17 safety, security ~~sensitive~~ sensitive, or child care ~~employee shall be required to~~ employee shall submit to ~~mandatory drug~~
18 ~~screening pursuant to~~ drug testing required under subsection (a) of this section and the regulations promulgated adopted by
19 the Department.

20 (2) ~~Such regulations shall~~ The Department may adopt regulations to implement and enforce this section. The
21 Department shall adopt regulations that require drug testing for the following controlled substances: drugs:

- 22 (1) Marijuana/cannabis; a. Marijuana or cannabis.
23 (2) Cocaine; b. Cocaine.
24 (3) Opiates; c. Opiates.
25 (4) Phencyclidine (“PCP”); d. Phencyclidine (“PCP”).
26 (5) Amphetamines; e. Amphetamines.
27 (6) f. Any other controlled substances or controlled prescription drugs specified by the Department in the
28 regulations promulgated pursuant to adopted under this section.

29 (c) ~~Conditional offer.~~ — Notwithstanding the provisions of this section, the Department may make a conditional
30 offer of employment to an applicant who has submitted to the required drug screening. ~~No person made a conditional offer~~
31 ~~of employment shall receive an official starting date until the results of their preemployment drug screen have been~~
32 ~~received. Any applicant made a conditional offer of employment shall be informed that the results of that applicant’s drug~~
33 ~~screen have been requested.~~ Conditional hire. – Notwithstanding subsection (a)(1) of this section, the Department may hire
34 an applicant on a conditional basis before receiving the results of the drug test required under subsection (a)(1) of this
35 section if the Department receives evidence confirming the applicant submitted to the required drug test. The final
36 employment of an applicant conditionally hired under this subsection is contingent on the Department’s receipt of
37 satisfactory results of the required drug test.

38 (d)(1) The Department shall adopt policies and procedures for imposing ~~sanctions, which may include referral to~~
39 ~~the State’s Employee Assistance Program, suspension or termination, upon any~~ sanctions on a safety, security sensitive
40 sensitive, or child care employee who wilfully refuses to submit to random or reasonable suspicion testing or whose drug
41 ~~screen test indicates that such person~~ the employee has illegally used or consumed a ~~drug or drugs.~~ drug specified in
42 subsection (b) of this section.

43 (2) The sanctions imposed under paragraph (d)(1) of this section may include referral to the State’s Employee
44 Assistance Program, suspension, or termination.

45 (3) ~~No employee shall be sanctioned when such person~~ An employee may not be sanctioned when the
46 employee has used or consumed the drug or drugs detected according to the directions and terms of a lawfully obtained
47 prescription for such drug or drugs. the drug.

SYNOPSIS

This Act amends the Department of Services for Children, Youth & Their Families (“DSCYF”) required drug testing statute to gain parity in pre-employment drug testing procedures across state agencies that provide services for children and secure care for children or adults. Secure care positions in the Department of Correction, Delaware Psychiatric Center, and DSCYF’s Prevention and Behavioral Health and Youth Rehabilitative Services facilities are historically hard to fill. Because of the sensitive nature of these positions, there is a thorough application and vetting process for applicants, the last steps of which are the pre-employment background checks and drug testing. Despite numerous ongoing efforts to

recruit and retain applicants for these positions within DSCYF's facilities, interested applicants often choose to abandon the lengthy application process in favor of opportunities for faster hiring processes at large employers located nearby.

Currently, the statute allows DSCYF to make a conditional offer of employment to an applicant who has submitted to the required pre-employment drug testing. This Act would allow DSCYF to conditionally hire an applicant and begin training the person after they have provided proof that they have submitted to the required drug testing. This ability is in line with § 5139 of Title 16 of the Delaware Code, which allows the Delaware Psychiatric Center to conditionally hire an applicant "to maintain an appropriate level of patient care," and § 8922 of Title 29 of the Delaware Code, which simply states that the Department of Correction must test "all security sensitive applicants and applicant employees."

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Gay