



# No More Double Punishments

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## Lifting the Lifetime Ban on Basic Human Needs Help for People with a Prior Drug Felony Conviction

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Individuals with felony convictions, whether or not they have spent time in prison, often face significant additional consequences, from loss of voting rights to difficulty obtaining employment. In many states, individuals with a felony conviction related to drugs are also subject to restrictions or bans from receiving food assistance under SNAP (Supplemental Nutrition Assistance Program, formerly known as the Food Stamp Program), cash assistance under TANF (Temporary Assistance for Needy Families), or both.<sup>1</sup> This is a result of the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which includes a provision that denies SNAP and TANF benefits to individuals with prior drug felony convictions. This lifetime ban applies to all individuals regardless of whether they served their sentence in jail or prison or received a lighter sentence due to the non-violent and/or minor nature of the offense. However, states have the option to remove or modify this restriction, and all but four have modified the ban for at least one program; the remaining states should follow suit.

For ex-offenders who have already paid their debt to society, being able to apply for basic safety net benefits can help them get back on their feet. Successful prisoner reentry requires access to employment, training, and work support services such as food, health care, housing and, depending on individual needs, access to child care, and mental health and substance abuse treatment services.<sup>2</sup> These basic safety net benefits and services can ease the burden of barriers to reentry. Parents who lack access to these supports are at high risk of homelessness and of being charged

with child neglect. However, individuals convicted of a drug-related felony conviction since 1996 may be denied SNAP and TANF during periods of economic hardship, even if the drug felony offense was committed as long as 18 years ago, or if their sentence was reduced. Ironically, the benefit exclusions do not apply to ex-offenders with prior non-drug related felonies such as individuals who commit violent crimes including assault or murder.

These exclusions are particularly destructive in communities of color. Over the last 30 years, the enforcement of drug laws has been disproportionately harsh in low-income communities of color, resulting in the conviction and incarceration of huge numbers of individuals. One of the most affected populations is young men of color who do not have a high school diploma. In 2010, nearly one-third of black males who dropped out of high school were incarcerated or institutionalized.<sup>3</sup> While many fewer women than men are incarcerated, the number of women in prison, many of whom are convicted of drug-related crimes, has grown sharply in recent decades.<sup>4</sup>

### Families Suffer as a Result of the Harsh Lifetime Ban on Safety-Net Benefits

One drug felony conviction can result in a lifetime ban on accessing safety net supports. While ex-offenders may apply for assistance for their children, the overall household receives a much lower benefit level. Lifting the ban on SNAP and TANF will reduce material hardship, including food insecurity and hunger for ex-offenders and their families. SNAP's long-term effects on

children have been proven time and again – improving long-term health, academic performance, and economic stability in adulthood.<sup>5</sup> TANF reaches fewer families, but serves as a critical safety net for some of the most disadvantaged families with children.

For parents who have satisfied their societal debt with prison sentences, reentering society can be a difficult and arduous process. Without any income, they are unable to support their children and need short-term TANF and SNAP benefits to help them become self-reliant and support their families. Unfortunately, the lifetime ban prohibits parents from obtaining these basic resources. According to a study conducted with 134 female felony offenders in Oregon and Minnesota, access to state-sponsored support programs such as job training, education, and healthcare resources reduced recidivism by 83 percent.<sup>8</sup> Providing assistance through safety net programs for ex-offenders has also been shown to significantly reduce recidivism.<sup>9</sup> The combination of support services for employment and job readiness training with food, health care and child care, can increase employment rates among ex-offenders. As it is, an ex-offender faces significant hurdles obtaining employment. Gaining skills to secure and maintain a steady job reduces recidivism and significantly decreases correctional costs.

Banning ex-offenders with prior drug-related felony convictions only makes reentry much harder. The Bureau of Justice Statistics found that within five years of release, about three-quarters of state prisoners released were rearrested.<sup>10</sup> Without safety net programs and employment services, ex-offenders may resort to committing crime to earn income and make ends meet. Research shows that released felons who are banned from SNAP have much higher rates of food insecurity, which is also linked to higher levels of illegal activity.<sup>11</sup> A 2010 study of 110 individuals released from prisons in

California, Connecticut and Texas, found that those who were extremely food insecure were more likely to use alcohol and other illegal substances and also more likely to become sex workers.<sup>12</sup> Children of ex-offenders suffer even more as they are forced to live in poverty and are food insecure because their parents are subject to harsh rules that ban accessing these basic resources.

Given the unequal enforcement of drug laws, the ban on SNAP and TANF benefits disproportionately impacts communities of color and very poor women and children, reinforcing the “cradle-to-prison pipeline.” In California, two-

## **Families Affected By the Harsh Lifetime Ban**

Multiple articles and editorials published in local Missouri newspapers profiled parents who were denied benefits because of a drug felony conviction from many years ago. These stories showcase the harsh realities that parents face as they attempt to apply for crucial safety net benefits during times of economic hardship:

Johnny Waller Jr., a Kansas City father whose son was diagnosed with cancer, had to resign from his job to take care of his child. Because of a drug-related crime he committed many years ago when he was 18, he was unable to apply for SNAP benefits to help support himself and his family during this difficult time. As he stated, “I can go buy a firearm but I can’t get assistance to buy a sandwich.”<sup>6</sup>

Christine McDonald, a single mother who was rapidly losing her vision, could not apply for SNAP benefits due to a drug conviction from long ago. Since her prior conviction, Christine had turned her life around, having written a book, bought a house, and currently running a nonprofit agency. As she puts it, “If I would’ve killed someone I could’ve gotten food stamps.”<sup>7</sup> The lifetime ban does not apply to non-drug related violent crimes.

thirds of incarcerated parents are nonviolent offenders.<sup>13</sup> By one recent estimate, about 2.7 million children nationwide under the age of 18 have a parent in jail or prison; far more will have a parent with a previous criminal record. Black children are disproportionately affected: one in nine have a parent in jail or prison, compared to one in 28 for all children.<sup>14</sup>

As a result of the 1986 federal Anti-Drug Abuse Act, even nonviolent drug-related felony offenses can carry severe punishment with long prison sentences. By pleading guilty to a crime in return for a lighter sentence, an individual can avoid a potentially longer sentence resulting from a trial. Therefore, the pressure to plea bargain is extremely high even for people who are innocent of the crimes for which they are accused. According to a 2004 report by the American Bar Association, “defendants plead guilty, even if they are innocent, without really understanding their legal rights or what is occurring.”<sup>15</sup> One study found that in nine states, fewer than one in 40 felony cases went to a jury trial.<sup>16</sup>

Parents may be particularly likely to accept plea bargains, despite being innocent, rather than risk long prison terms that will separate them from their children. As a result, parents may face a lifetime ban on accessing basic resources for their family, which in turn puts them at risk of losing their children to the child welfare system.<sup>17</sup>

## **SNAP and TANF Employment and Training Resources Can Provide Crucial Supports to Poor Families**

SNAP recipients are eligible to receive employment and training and related supportive services under the SNAP E&T (Employment & Training) program. SNAP E&T can support participation in adult education and high school equivalency classes, postsecondary education,

vocational training, as well as other job training activities with services including child care, transportation, and other items, such as tools or uniforms, needed to participate in work activities.<sup>18</sup> These crucial supports can help recipients gain the skills needed for better jobs that allow them to support their families. However, if an individual is ineligible for SNAP benefits due to the ban, he or she cannot receive services from SNAP E&T, even if family members receive food assistance under SNAP.

Similarly, banning TANF benefits for ex-offenders reduces the amount of cash assistance a family may receive and may also reduce access to other supportive services needed to find employment. States are allowed to use TANF funds to provide services to members of low-income families regardless of an individual’s receipt of TANF cash assistance. However, in practice, many states limit certain TANF-funded services, such as child care, to individuals receiving TANF assistance. For example, in California, individuals banned from TANF assistance could not receive TANF-funded child care to enable them to work, even when their children received benefits under TANF. Excluded parents may also be denied access to employment and training services under TANF.<sup>19</sup>

## **Where States Stand on the Lifetime Ban of Safety-Net Benefits**

As discussed, PRWORA gives states the option to choose whether or not to remove this lifetime ban. Most states have recognized the need and have taken steps to lift or modify the ban by limiting the types of drug felonies subject to the restriction, implementing temporary bans, and requiring enrollment and participation in a drug education or treatment program.<sup>20</sup> More states have removed the ban on SNAP benefits than on TANF, possibly because SNAP receives more widespread popular

support, or possibly because SNAP benefits are fully federally funded.

States such as Colorado and Connecticut have modified the law to allow individuals with prior felony drug convictions to regain eligibility for TANF and SNAP benefits by successful completion of drug education or treatment.<sup>21</sup> Additionally, states including Arkansas and North Dakota allow individuals with prior felony drug convictions for *possession* to regain eligibility; the lifetime ban applies to convictions involving manufacturing or distributing drugs.<sup>22</sup> Other states have simply decreased the time limit on the ban – North Carolina bans individuals with prior felony drug convictions from safety net benefit eligibility for six months after the completion of a sentence.<sup>23</sup>

Since 2015, at least four states: Alabama, Alaska, Georgia, and Texas have lifted or modified the ban for one or more programs. Alabama enacted a provision in 2015 which expanded SNAP and TANF eligibility to individuals with felony drug

## Missouri Campaigns to Modify the Lifetime Ban

Missouri state advocates campaigned over an eight-year period to modify the harmful ban of SNAP benefits for individuals with a prior felony drug conviction. The coalition of advocates consisted of a broad and diverse range of organizations including faith-based groups, grocery associations, farmer's markets, and retail associations. Faith-based groups played a key role in expanding conservative support for the issue. SB 680 passed the legislature with bipartisan support and was signed into law June 20, 2014.<sup>24</sup> This law requires individuals with a prior drug felony to participate in substance abuse treatment, if needed, as a condition of SNAP receipt.<sup>25</sup>

convictions who have completed their sentence or are satisfactorily serving a probation sentence.<sup>26</sup> Alaska has modified the lifetime ban, requiring persons with drug felony convictions to comply with court mandated treatment and parole requirements.<sup>27</sup> Georgia lawmakers passed a Senate bill which expands eligibility on a case-by-case basis pending parole or mandatory treatment.<sup>28</sup> In Texas lawmakers expanded SNAP eligibility to persons with felony drug convictions who have completed their sentences, though violating terms of parole could result in a two-year disqualification, and new felony drug offenses can result in the lifetime ban being reinstated.<sup>29</sup>

Among the remaining states in which the lifetime ban remains on SNAP, TANF, or both, many are considering and should follow the majority of states in modifying or lifting the ban. Nebraska is one of the newest states this year to introduce legislation proposing to eliminate restrictions on SNAP eligibility for individuals with a prior drug felony conviction.<sup>30</sup> States that have already modified the ban should consider further modifications, or eliminating it entirely.

Recently introduced bi-partisan federal legislation, the REDEEM Act, proposes to seal or expunge records related to federal nonviolent criminal offenses, including drug felonies.<sup>31</sup> If enacted, this would lift the ban on individuals whose offenses fall within this category. Ex-offenders are individuals who have already paid their debt to society and deserve a second chance removing the lifetime ban on SNAP and TANF benefits can help ex-offenders get back on their feet and support their families by decreasing hunger and recidivism, and increasing financial stability.

## State SNAP and TANF Drug Felon Bans as of February 2017

	SNAP			TANF		
	Full Ban	Modified	No Ban	Full Ban	Modified	No Ban
Alabama			✓			✓
Alaska		✓			✓	
Arizona	✓			✓		
Arkansas		✓			✓	
California			✓			✓
Colorado		✓			✓	
Connecticut		✓			✓	
Delaware			✓	✓		
D.C.			✓		✓	
Florida		✓			✓	
Georgia		✓		✓		
Hawaii		✓			✓	
Idaho		✓			✓	
Illinois			✓		✓	
Indiana		✓			✓	
Iowa			✓		✓	
Kansas	✓					✓
Kentucky		✓			✓	
Louisiana		✓			✓	
Maine			✓			✓
Maryland		✓			✓	
Massachusetts			✓		✓	
Michigan		✓			✓	
Minnesota		✓			✓	
Mississippi	✓			✓		
Missouri		✓		✓		
Montana		✓			✓	
Nebraska		✓		✓		
Nevada		✓			✓	

## State SNAP and TANF Drug Felon Bans as of February 2017, Continued

	SNAP			TANF		
	Full Ban	Modified	No Ban	Full Ban	Modified	No Ban
New Hampshire			✓			✓
New Jersey			✓			✓
New Mexico			✓			✓
New York			✓			✓
North Carolina		✓			✓	
North Dakota	✓				✓	
Ohio			✓			✓
Oklahoma			✓			✓
Oregon		✓			✓	
Pennsylvania			✓			✓
Rhode Island			✓			✓
South Carolina	✓			✓		
South Dakota			✓	✓		
Tennessee		✓			✓	
Texas		✓		✓		
Utah			✓		✓	
Vermont			✓			✓
Virginia		✓		✓		
Washington			✓			✓
West Virginia	✓			✓		
Wisconsin		✓				✓
Wyoming			✓			✓
<b>Total</b>	<b>6</b>	<b>24</b>	<b>21</b>	<b>11</b>	<b>24</b>	<b>16</b>

Source: Sources include: A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits, The Sentencing Project, 2013, "Opting Out of Federal Ban on Food Stamps and TANF," Legal Action Center, accessed August 5, 2014, <http://www.lac.org/toolkits/TANF/TANF.htm#summary>, Maggie McCarty, Randy Alison Aussenberg, Gene Falk and David H. Carpenter, Drug Testing and Crime-Related Restrictions in TANF, SNAP, and Housing Assistance, Congressional Research Service, September 17, 2013, and the Urban Institute's Welfare Rules Database for 2012 (variable ei\_drgfl), accessed at <http://anfdata.urban.org/wrd/Query/query.cfm>

We were not able to resolve all inconsistencies; do not rely on this table for legal advice.



## Endnotes

<sup>1</sup> *A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits*, The Sentencing Project, 2013, [http://sentencingproject.org/doc/publications/cc\\_A%20Lifetime%20of%20Punishment.pdf](http://sentencingproject.org/doc/publications/cc_A%20Lifetime%20of%20Punishment.pdf).

<sup>2</sup> For more information on drug treatment programs in states, please see Elizabeth Kenefick and Elizabeth Lower-Basch, *Helping TANF Recipients Overcome Addiction: Alternatives to Suspicionless Drug Testing*, CLASP, October 2012, <http://www.clasp.org/resources-and-publications/files/Helping-TANF-Recipients-Overcome-Addiction.pdf>.

<sup>3</sup> Christopher Ingraham, "Charting the Shocking Rise of Racial Disparity in our Criminal Justice System," *The Washington Post*, July 15, 2014, <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/07/15/charting-the-shocking-rise-of-racial-disparity-in-our-criminal-justice-system/>.

<sup>4</sup> The Sentencing Project, *Fact Sheet: Trends in U.S. Corrections, 2013*, [http://sentencingproject.org/doc/publications/inc\\_Trends\\_in\\_Corrections\\_Fact\\_sheet.pdf](http://sentencingproject.org/doc/publications/inc_Trends_in_Corrections_Fact_sheet.pdf).

<sup>5</sup> Dottie Rosenbaum, *SNAP Is Effective and Efficient*, Center on Budget and Policy Priorities, March 11, 2013, <http://www.cbpp.org/files/7-23-10fa.pdf>; Hilary W. Hoynes, Diane Whitmore Schanzenbach, Douglas Almond, *Long Run Impacts of Childhood Access to the Safety Net*, National Bureau of Economic Research, working paper no. 18535, November 2012; and "SNAP and Public Health: The Role of the Supplemental Nutrition Assistance Program in Improving the Health and Well-Being of Americans," Food Research and Action Center, 2013, [http://frac.org/pdf/snap\\_and\\_public\\_health\\_2013.pdf](http://frac.org/pdf/snap_and_public_health_2013.pdf).

<sup>6</sup> Marie French, "Missouri Legislature Passes Bill Lifting Lifetime Ban From Food Stamps for Drug Felons," *St. Louis Post-Dispatch*, May 15, 2014, [http://www.stltoday.com/news/local/govt-and-politics/missouri-legislature-passes-bill-lifting-lifetime-ban-from-food-stamps/article\\_0a81c536-bc8e-5e62-9375-15ef265660ce.html](http://www.stltoday.com/news/local/govt-and-politics/missouri-legislature-passes-bill-lifting-lifetime-ban-from-food-stamps/article_0a81c536-bc8e-5e62-9375-15ef265660ce.html).

<sup>7</sup> The Editorial Board, "Editorial: Lawmakers Should Lift Missouri's Lifetime Ban on Food Stamps for Drug Felons," *St. Louis Post-Dispatch*, April 14, 2014, [http://www.stltoday.com/news/opinion/editorial-lawmakers-should-lift-missouri-s-lifetime-ban-on-food/article\\_1280c0c7-2f53-5c54-9d44-68e3d4aa8126.html](http://www.stltoday.com/news/opinion/editorial-lawmakers-should-lift-missouri-s-lifetime-ban-on-food/article_1280c0c7-2f53-5c54-9d44-68e3d4aa8126.html), and Marie French, "Missouri Lawmakers Consider Ending Lifetime Food Stamp Ban for Drug Felons," *St. Louis Post-Dispatch*, February 12, 2014, [http://www.stltoday.com/news/local/govt-and-politics/missouri-lawmakers-consider-ending-lifetime-food-stamp-ban-for-drug/article\\_e22848d6-699c-56dc-ad99-40d476f7677d.html](http://www.stltoday.com/news/local/govt-and-politics/missouri-lawmakers-consider-ending-lifetime-food-stamp-ban-for-drug/article_e22848d6-699c-56dc-ad99-40d476f7677d.html).

<sup>8</sup> Kristy Holtfreter, Michael D. Reissig, Merry Morash, "Poverty, State Capital, and Recidivism Among Women Offenders," *Journal of Criminology and Public Policy* 3, no. 2 (March 2004): 185-208.

<sup>9</sup> The Sentencing Project, *A Lifetime of Punishment*.

<sup>10</sup> Bureau of Justice Statistics, "Recidivism of State Prisoners," 2010, [http://www.bjs.gov/index.cfm?ty=dcdetail&iid=270#publications\\_and\\_products](http://www.bjs.gov/index.cfm?ty=dcdetail&iid=270#publications_and_products).

<sup>11</sup> The Sentencing Project, *A Lifetime of Punishment*.

<sup>12</sup> Emily A. Wang, Gefei A. Zhu, Linda Evans, et al., *A Pilot Study Examining Food Insecurity and HIV Risk Behaviors among Individuals Recently Released from Prison*, International Society for AIDS Education, August 5, 2013, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3733343>.

<sup>13</sup> Lauren E. Glaze, Laura M. Maruschak, "Parents In Prison and Their Minor Children," Bureau of Justice Statistics, Office of Justice Programs, August 8, 2008, <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=823> and Michael Leo Owens, "Mass Incarceration Does Injustice to Millions of American Children," *The Guardian*, August 19, 2013, <http://www.theguardian.com/commentisfree/2013/aug/19/mass-incarceration-injustice-american-children>.

<sup>14</sup> The Pew Charitable Trusts, *Collateral Costs: Incarceration's Effect on Economic Mobility*, 2010, [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pew\\_assets/2010/CollateralCosts1.pdf.pdf?la=en](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pew_assets/2010/CollateralCosts1.pdf.pdf?la=en).

<sup>15</sup> American Bar Association, Standing Committee on Legal Aid and Indigent Defendants, *Gideon's Broken Promise: America's Continuing Quest for Equal Justice*, 2004, as quoted in Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, 2010, p. 84.

<sup>16</sup> Richard A. Oppel, Jr., "Sentencing Shift Gives New Leverage to Prosecutors," *The New York Times*, September 25, 2011, <http://www.nytimes.com/2011/09/26/us/tough-sentences-help-prosecutors-push-for-plea-bargains.html>.

<sup>17</sup> Michelle Alexander, "Go to Trial: Crash the Justice System," *New York Times*, March 10, 2012, <http://www.nytimes.com/2012/03/11/opinion/sunday/go-to-trial-crash-the-justice-system.html>.

<sup>18</sup> For more information on SNAP Employment and Training, please see: <http://www.clasp.org/issues/work-supports/pages/snap-et-resources>.

<sup>19</sup> For more information on TANF education and training resources, please see: <http://www.clasp.org/issues/postsecondary/pages/tanf-education-and-training-resources>.

<sup>20</sup> Maggie McCarty, Randy Alison Aussenberg, Gene Falk and David H. Carpenter, Drug Testing and Crime-Related Restrictions in TANF, SNAP, and Housing Assistance, Congressional Research Service, September 17, 2013, <http://fas.org/sgp/crs/misc/R42394.pdf>.

<sup>21</sup> "Opting Out of Federal Ban on Food Stamps and TANF," Legal Action Center, accessed August 5, 2014, <http://www.lac.org/toolkits/TANF/TANF.htm#summary>.

<sup>22</sup> *Ibid.*

<sup>23</sup> Supplemental Nutrition Assistance Program, *State Options Report: Tenth Edition*, United States Department of Agriculture, Food and Nutrition Service, August 2012, [http://www.fns.usda.gov/sites/default/files/10-State\\_Options.pdf](http://www.fns.usda.gov/sites/default/files/10-State_Options.pdf).

<sup>24</sup> Jeanette Mott Oxford, phone call, Missouri Association for Social Welfare, August 12, 2014.

<sup>25</sup> Missouri Senate Bill 680, 2014 regular session, <http://legiscan.com/MO/text/SB680/2014>.

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<sup>26</sup> *The State of Sentencing 2015, Developments in Policy and Practice*, The Sentencing Project, 2015, <http://sentencingproject.org/wp-content/uploads/2016/02/State-of-Sentencing-2015.pdf>.<sup>27</sup> *Policy Brief: State Advances in Criminal Justice Reform, 2016*, The Sentencing Project, 2015, <http://www.sentencingproject.org/wp-content/uploads/2017/01/State-Advances-in-Criminal-Justice-Reform-2016-1.pdf>.

<sup>28</sup> *Policy Brief: State Advances in Criminal Justice Reform, 2016*, The Sentencing Project, 2015, <http://www.sentencingproject.org/wp-content/uploads/2017/01/State-Advances-in-Criminal-Justice-Reform-2016-1.pdf>.

<sup>29</sup> *The State of Sentencing 2015, Developments in Policy and Practice*, The Sentencing Project, 2015, <http://sentencingproject.org/wp-content/uploads/2016/02/State-of-Sentencing-2015.pdf>.

<sup>30</sup> Alan Pyke, “Nebraska May Lift Its Unfair, Counterproductive Welfare Ban For Drug Felons” *Think Progress*, January 26, 2017, <https://thinkprogress.org/nebraska-may-lift-its-unfair-counterproductive-welfare-ban-for-drug-felons-9cc3dc534b36#.vjgmalvqt>.

<sup>31</sup> REDEEM Act, S.675, 114th Congress, (2015-2016), <https://www.congress.gov/bill/114th-congress/senate-bill/675>