

Welfare Reform: Guidance for States

How to Implement Drug Felony Conviction Provisions

Federal welfare law bars states from providing cash assistance and food stamps to anyone who is convicted of a drug-related felony, including drug use, possession, or distribution.¹ The law applies to felony convictions for *conduct* that occurred after August 22, 1996. No one, including pregnant women or people participating in drug treatment, is exempt from the ban.

However, the federal law allows states to "opt out" of or modify the drug felony conviction ban through legislation. Without such action by a state, all convicted drug felons who live in that state are **permanently** denied Temporary Assistance for Needy Families (TANF) cash benefits and Food Stamps, regardless of their rehabilitation, successful job histories, participation in drug treatment or abstinence from drug use. At this time, at least 5 states have passed legislation to opt out of the ban, while at least 12 others have enacted laws modifying its application.

This paper discusses the impact of the drug felon ban, how states may opt out or limit it and ways that some states have chosen to do so.

The Impact of the Lifetime Drug Felony Conviction Ban on States

- **The lifetime drug felony conviction ban will jeopardize drug and alcohol treatment services.**

Many treatment programs depend on public benefits (including welfare and food stamps) to help pay for treatment. Those benefits can constitute a substantial portion of funding for residential treatment, which need them to pay for recipients' room and board. For example, in California residential programs are already reporting the loss of food stamp payments due to the drug felon ban.

Loss of these funds could create significant gaps in treatment program budgets, thereby reducing access to substance abuse treatment, and even forcing some programs to close.

- **The lifetime drug felony conviction ban will undermine the criminal justice system.**

By depriving prison and jail diversion programs of the welfare and food stamp

¹ The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104- 193), Section 115.

payments upon which many programs (particularly residential alcohol and drug abuse treatment programs) depend, the federal drug felon ban could have devastating consequences on states' criminal justice systems. Reductions in funding for drug treatment and other forms of prison diversion would mean less access to these programs and more unnecessary incarcerations, which in turn could cost states and localities millions in increased jail, prison and other criminal justice expenses. It also will impede the efforts of drug courts and other initiatives that divert non-violent addicted offenders from prison to treatment, and hamstringing domestic violence programs.

- **The lifetime drug felony conviction ban will increase states' costs.**

Persons denied TANF and food stamp benefits because of the drug felony conviction ban, including those who after their conviction completed drug treatment, worked and then lost jobs, will turn to state general assistance (where available) and other social services programs for support. Parents who are denied benefits may lose their children to the child welfare and foster care systems at a great financial cost to the taxpayer and great emotional cost to the children. Some may turn to crime to support their families and themselves, and inevitably enter the crowded and costly criminal justice system.

What States Can Do to Mitigate the Effects of the Ban

- **States may "opt out" of the lifetime drug felony conviction ban entirely by statute.**

Since welfare payments are a principal source of funding for drug treatment programs, "opting out" will help ensure the continued availability of treatment, especially for women, increasing their likelihood of successfully moving from welfare to work and properly caring for their children. It also will help prevent an increase in crime that would result from the loss of support and access to drug treatment and other essential social services provided in treatment.

The following states have fully opted out of the drug felony ban: Connecticut, New York, Ohio, Oklahoma and Rhode Island.

Or, states may modify the requirements by statute.

States could ensure drug treatment availability, protect children and promote work and rehabilitation from addiction and crime by lifting the lifetime ban for individuals who: 1) since their conviction have worked, participated in treatment for drug or alcohol problems, or have otherwise demonstrated rehabilitation, or are willing to enter treatment if it is available; 2) are pregnant, adolescents, or HIV positive, or otherwise particularly vulnerable; or 3) have not been convicted of another drug felony. At this time, at least 12 states have modified the drug felon ban in state statute.

Examples of how states have modified the ban include:

- < **Hawaii (a number of other states have enacted similar provisions):** Individuals with drug felony convictions are eligible for benefits if they comply with treatment or have not refused or failed to comply with treatment.

- < **Illinois:** Persons convicted of a drug felony for major drug trafficking will be ineligible for TANF, but eligible for food stamps. Individuals convicted of other drug felonies are eligible if they are in treatment. If they are not in treatment, they are ineligible for two years.
- < **New Jersey:** Individuals who have completed treatment and who test negative for drugs 60 days after having completed treatment will continue to be eligible for benefits.
- **States may use TANF funds to provide treatment to individuals with drug felonies.**

The federal welfare law bars the provision of TANF cash “assistance” (and state maintenance of effort funds) and food stamps to convicted drug felons. However, under the Notice of Proposed Rule Making to implement the TANF program, substance abuse-related counseling and case management are not defined as forms of assistance. Therefore, we believe that federal TANF funds *can* pay for substance abuse treatment for indigent persons with drug felony convictions who might otherwise qualify for TANF benefits, regardless of whether a state has opted out of the ban.

Please note, however, that the NPRM does not have the force of law. Until the final rule is published, states may operate their TANF programs under reasonable interpretations of the statute. States may be subject to penalties for misusing TANF funds if they cannot show that they used them “for purposes that a reasonable person would consider to be within the purposes of the TANF program.” (§273.12 of the NPRM)

In addition, TANF funds transferred to the state’s Social Services Block Grant (SSBG) may also be used to fund treatment services for drug felons (states may transfer up to 10 percent of their TANF block grant allocation to the SSBG), since TANF restrictions do not apply to the SSBG. Alcohol and drug treatment is an authorized activity of the SSBG, but SSBG funds may only be spent on children and families with incomes below 200 percent of poverty.

C **States may urge Congress to repeal the drug felony conviction ban.**

By denying federal benefits to people with drug felony convictions, the federal welfare law will increase criminal justice, general assistance, and child welfare burdens on states. Repeal of the drug felony conviction ban will redress this cost shift and the injustices and other policy missteps the ban will engender.

What States Must Do If They Do Not Opt Out of Or Modify the Ban

Applicants for TANF and food stamps will be required to disclose their own or a household member's drug-related convictions in writing (the federal law does not require the welfare system to have access to criminal justice records to check whether applicants have convictions). A family's benefits will be reduced by the amount that would have been provided for the individual with the felony conviction. This provision applies only

to TANF and food stamps and does not affect eligibility for Medicaid or any other federal benefit.

For further information: please contact Gwen Rubinstein at the Legal Action Center at (202) 544-5478.