

Welfare Reform: Guidance for States

How to Implement the Ban on TANF and Food Stamps for Individuals in Violation of Their Parole and Probation

Under federal welfare law, fugitive felons or individuals who are "violating a condition" of probation or parole are ineligible for Temporary Assistance for Needy Families (TANF) assistance, food stamps and Supplemental Security Income (SSI). This paper explains how states can implement these bans to ensure that non-compliant violators are denied benefits while those that come into compliance regain benefits, and without compromising the resources available to alcohol and drug treatment programs, which in part depend on welfare and food stamps for funding. We include as a model the statutory language enacted in New York State.

Provisions of the Federal Welfare Law Barring Assistance to Parole/Probation Violators

Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193), states are prohibited from providing assistance to fugitive felons or individuals who are "violating a condition" of probation or parole (section 408 (a)(9)). The law also bars fugitive felons and persons who are "violating a condition" of probation or parole from eligibility for food stamps "during such period" that they have either absconded or are out of compliance with the conditions of their release, or from receiving Supplemental Security Income (SSI) during "any such month" they are violating parole or probation (sections 821 and 202).

However, the federal law leaves unclear two important issues: (1) what constitutes a violation of parole or probation that would invoke the benefits ban (or at what point is an individual "violating" the terms of his or her release); and (2) when does the period of ineligibility begin and end. The absence of guidance on these questions in both the law and proposed federal regulations to implement the law leaves the decisions about these questions to states.

The Potential Impact of the Parole/Probation Violator Bans

It is important for states to address these ambiguities in their welfare laws and regulations. Otherwise, confused interpretation of the bans could hamstring criminal justice initiatives, especially those designed to divert non-violent addicted violators into less costly alternatives, such as residential alcohol and drug abuse treatment programs.

Public assistance benefits are crucial sources of funding for many residential treatment programs, which use these payments to cover room and board expenses when treating welfare recipients. For this reason, eliminating eligibility for benefits not only denies cash assistance to the individual, it effectively denies access to treatment as well. Since parole and probation departments often require participation in drug or alcohol

treatment as a condition for successful completion of a sentence, it is critical for states to implement the ban on benefits for violators carefully lest they make it impossible for parolees and probationers to enter the very treatment they are required to obtain.

The following is one example of how ambiguities in federal law could jeopardize the resources on which the probationer's or parolee's drug treatment or prison diversion program depends, even though participation in treatment is what the probation or parole department itself requires:

- A formerly addicted probationer living in a halfway house for recovering substance abusers breaches a condition of her release by missing an appointment with her probation officer. While such a technical breach might not actually result in a formal probation violation, under the language of the federal law it is conceivable that, depending on how her state implements it, she could be considered to be "violating" the terms of her release and therefore ineligible for TANF or food stamps for an indeterminate period of time. Losing these benefits could cost the probationer her housing and her access to treatment and cost the half-way house needed funds that pay for her room and board.

Another potentially disruptive consequence of the ban is the administrative burdens it could create for law enforcement and welfare officials. If state laws require parole and probation departments to report non-compliance to welfare offices, states will need to develop new information management and retrieval systems that reconcile the different identification numbers and other data that the two systems use.

How States Can Implement the Parole/Probation Violator Bans Effectively

States must enforce the parole/probation violator bans in the federal welfare law. Unlike the federal drug felon ban, the parole/probation violator bans contain no options for opting out or modifying their application. However, states may clarify ambiguities in their own statutes.

By clearly defining what constitutes a parole or probation violation and the period of ineligibility, states can continue to rely on effective treatment and alternatives-to-incarceration programs. They can also avoid the unintended – and disastrous – consequence of reducing treatment funding and access for the very individuals that parole and probation agencies want to mandate into treatment.

States can address these issues in the following ways:

- C **States should limit what it means to be "violating" a condition of parole or probation to violations adjudicated by a court or administrative hearing:** A state could decide that an individual is in violation of parole or probation only upon the determination of a court or administrative hearing. Such a clarification would avoid confusion about whether alleged but not proven technical violations should lead to the loss of benefits, and both the due process issues and administrative nightmare that would result from such a policy.

- C States should make clear that the period of benefit ineligibility ends when the violator returns to compliance:** To comply with the letter and spirit of the federal law, as well as to ensure that benefits are available to support treatment or other needed services, states should restore benefit eligibility to individuals who are no longer in violation of the terms of their release in a timely fashion.

States also should be careful about ensuring the confidentiality of client treatment records. Even if social services officials share information with law enforcement officials, federally funded alcohol and drug treatment programs still must comply with federal law governing disclosure of client-identifying information (42 CFR Part 2).

Model Legislative Language: New York State's Statutory Ban on Assistance to Parole/Probation Violators

New York has adopted language in its welfare law which implements the ban in a way that denies benefits to absconders but does not reduce resources available for important criminal justice programs, including alcohol and drug treatment.

The following is language from New York State's Welfare Reform Act of 1997:

- (a) Notwithstanding any provision of this chapter or other law to the contrary, no public assistance shall be given to any individual who is (i) [a fugitive felon] . . . or (ii) violating a condition of parole or probation imposed under federal or state law.
- (b) For purposes of this section, if and to the extent permitted by federal law, a person shall be considered to be violating a condition of probation or parole if:
 - (i) he or she is currently an absconder from probation or parole supervision and a warrant alleging such violation is outstanding;
or
 - (ii) he or she has been found by judicial determination to have violated probation or by administrative adjudication by the division of parole to have violated parole.

Such person shall be considered to be violating a condition of probation or parole only until he or she is restored to probation or parole supervision or released from custody, or until the expiration of the person's maximum period of imprisonment or supervision, whichever occurs first.

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