



Freed Today, Hungry Tomorrow

An Assessment of the Drug Felony Disqualification in Washington's Food Stamp Program

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Executive summary

Washington Citizen Action's report, *Freed Today, Hungry Tomorrow: An Assessment of the Drug Felony Disqualification in the Food Stamp Program*, documents the harmful effects of Washington state's policy of denying food stamps to former drug felons. This report shows who is hurt by the drug felony disqualification as well identifying how it is unsound public policy for Washington state.

Report highlights:

The drug felony disqualification

- Washington state denies food to many hungry Washington residents by restricting the eligibility of individuals with drug-related felonies for the Food Stamp Program. No other felony convictions, including rape, murder, assault, or embezzlement, result in losing food stamp eligibility.
- Eleven states and the District of Columbia have fully opted out of the federal drug felony disqualification in the Food Stamp Program.

Individuals impacted by the disqualification

- People infected with HIV require adequate nutrition in order to adhere to complex drug regimens and manage toxic side effects. Food stamps help low-income, HIV-positive individuals maintain good nutrition.
- Victims of domestic violence often develop addictions to deal with their pain. They need food stamps during their transition from addiction to recovery.
- The disqualification leads to higher rates of family dissolution at an enormous financial cost to the taxpayer and an even greater emotional cost to the children.
- The disqualification has a disproportionate impact on people of color.

Impact of opting out of the disqualification

- In SFY 2002, Washington state lost \$2.9 million in federal food stamp funding because of the drug felony disqualification.
- Opting out of the disqualification would generate \$26 million in yearly economic activity in Washington state, without any additional state expenditures.
- Opting out of the disqualification would reduce recidivism.
- Opting out of the disqualification would decrease state costs in foster care, criminal justice, and public health.

Recommendation

- Washington state, by specific reference in state law, should take full advantage of the federal option to completely restore access to food stamps for individuals convicted of drug-related felonies.

Introduction

In the summer of 1996, Congress passed and President Clinton signed into law the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Public Law 104-193), radically transforming the nation's welfare system.

Section 115 of PRWORA created a lifetime ban on receiving TANF or Food Stamp Program benefits for any individual convicted of a drug-related felony after August 22, 1996. States may "opt out" of or modify the ban by specific reference in a law enacted after August 22, 1996. Since that time, 11 states and the District of Columbia have fully opted out of the lifetime ban on Food Stamps.¹

In 1997, Washington state passed legislation that modified the federal disqualification of former drug felons from receiving TANF and food stamps. According to the Washington law, individuals convicted of a felony committed after August 21, 1996 involving an element of possession, use, or distribution of an illegal drug are ineligible for TANF or food stamps, unless they meet all of four very specific criteria. Former drug felons regain eligibility if they:

- a) were convicted only of possession or use of an illegal drug; and
- b) were not convicted of a felony for illegal drugs within three years of the latest conviction; and
- c) were assessed as chemically dependent by a program certified by the division of alcohol and substance abuse (DASA); and
- d) are taking part in or have completed a rehabilitation plan consisting of chemical dependency treatment and job services.²

This report examines the impact that the drug felony disqualification, specifically in the Food Stamp Program, has on former drug felons who have served their time in Washington state. It will analyze the barriers that former drug felons face when trying to obtain a healthy and nutritious diet, support themselves and their families, and move from addiction to recovery. In addition, the report highlights the effects that the drug felony disqualification has on our state's economy and our criminal justice and foster care systems. The report not only identifies how the drug felony disqualification is harmful and unjust to individuals who have served their time, but also demonstrates the many ways in which it makes unsound public policy for Washington state. Finally, it recommends that Washington follow the lead of the 11 other states (and the District of Columbia) that have fully opted out of the drug felony disqualification in the Food Stamp Program by fully restoring access to food stamps for former drug felons.

The drug felony disqualification is harmful and unjust

The disqualification hurts persons with HIV and AIDS

Although everyone needs access to adequate nutrition, people with chronic conditions are especially harmed by poor nutrition. Prevalence of HIV/AIDS is high among populations with histories of intravenous drug use. In fact, intravenous drug use has been associated with nearly 20 percent of HIV cases reported to the Washington State Department of Health since 1982.³

Individuals with HIV and AIDS need adequate nutrition in order to adhere to complex drug regimens and manage toxic side effects. Poor nutrition weakens the immune system, increases weight loss, and limits the effectiveness of medications, increasing vulnerability to opportunistic infections and the likelihood of developing drug resistant strains of the HIV virus.⁴ Opportunistic infections like tuberculosis and drug resistant strains of HIV can be devastating for infected individuals, who risk developing additional health problems and even shortening their life span — but the general public also pays a serious price in the form of increased treatment and the spread of drug resistant strains of TB and HIV.⁵ Denying food stamps to former drug felons who are HIV-positive critically undercuts efforts to improve public health in Washington state.

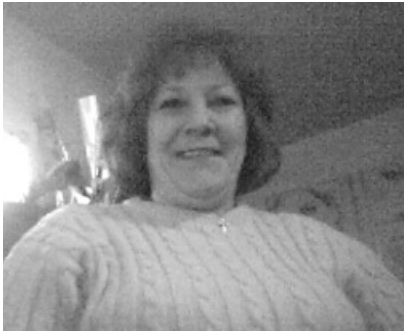
The disqualification hurts victims of domestic violence

There is growing recognition and evidence of the connection between substance abuse, sexual assault, and domestic violence.⁶ Individuals in abusive relationships are often forced into criminal activities by their abusers, and victims of domestic violence and sexual assault commonly develop addictions to deal with their pain. Denying food stamps to former drug felons who have been victims of domestic violence and sexual assault increases the likelihood that these individuals, upon release from prison, will return to abusive situations out of financial necessity.

The racial disparity in drug prosecutions is a product of bias and discrimination in the law enforcement and criminal justice systems, and cannot be linked to disproportionate involvement in illicit drug use or sale.

The disqualification hurts children

When a parent is denied food stamps, the children also suffer. A household budget goes toward providing for the entire family's needs. When parents are denied food stamps for themselves because of past drug felonies, but receive food stamps for their children, those food stamps still have to pay for the food of the entire household. Parents denied benefits may be unable to sufficiently feed and house their children on a reduced budget and may lose them to the foster care system, at an enormous financial cost to the taxpayer and an even greater emotional cost to the children.



Rhonda Sparks — Yakima, WA

I'm 41 years old and I have been struggling with the disease of addiction since 1993. I need food stamps to keep my health up and succeed in my recovery, but I am denied them because of a former drug felony conviction.

In May of 1996 I received a drug possession felony. A year later, I received another drug felony for selling \$40 of rock cocaine to an undercover officer. After a few months in jail, I served a prison sentence of 13 and a half months, and then was paroled to Yakima for one year of community placement. I also did an eight-month relapse prevention program.

I stayed clean and got back custody of my 15-year-old son in 1998. I went to the Department of Social and Health Services (DSHS) and applied for assistance for my son and me. When I went, I told them that I was a two-time drug felon and had only recently gotten out of prison. They gave us food stamps, TANF, and Medicaid.

In April of 2001, I was no longer receiving public assistance and was working at a hotel restaurant. I received a letter from DSHS saying that they had overpaid me \$1,127.06 because when I was receiving food stamps and TANF, I was actually ineligible due to my drug felony.

I immediately went in to DSHS and spoke with my former caseworker. She told me that she remembered me telling her that I had a drug felony and that it was their mistake. But she told me that I would still have to pay it back. At that point I didn't feel like there was any way that I could fight it, but I told them I couldn't start paying it back until 2002.

I continue to struggle with my addiction and recovery. In 2002, I went to a 90-day treatment program in Spokane. When I got out in October I applied at DSHS for General Assistance (GA). I received GA and Medicaid, but was denied food stamps because of my drug felony. They told me that I'm banned for life from receiving food stamps. In December of 2002 I received a letter from DSHS saying that they were going to cut my GAU benefit from \$339 per month to \$322.05 per month to gradually repay the \$1,227.06 overpayment.

In 1995 I tested positive for HIV and Hep C. Thankfully, I am currently healthy, but I need to maintain a nutritious diet to keep up my health. Sometimes I don't have enough food to stay healthy. I've gone to the food bank, but they have such a limited amount there. You can't get milk, eggs, bread or meat. And you just can't get good nutrition from Top Ramen. Once I start losing weight from not eating, my friends think I'm back to using. It makes my self-esteem go down and it frustrates me. If I have food, my self-esteem is high and I thrive in my recovery program.

I need food to succeed and half the time I don't have that. I'm currently living in a clean and sober house, and once I pay rent, I have no money for food. Thankfully, the people I live with right now are helping me out by buying me food. If it weren't for their help, I don't know what I'd do.

The disqualification has a disproportionate impact on people of color

One third of all drug offenders in confinement in Washington state are African-American, despite the fact that African-Americans account for only three percent of Washington's total population.⁷ In King County, African-American men are sentenced for drug offenses at a ratio that is *25 times greater* than for white men.⁸ Statewide this represents an enormous racial disproportionality in the sentencing of drug offenders. (See table entitled "Disproportion in sentencing of drug offenders," and Figure entitled "Drug felony sentencing ratio by race.") The racial disparity in drug prosecutions is a product of bias and discrimination in the law enforcement and criminal justice systems, and cannot be linked to disproportionate involvement in illicit drug use or sale.⁹

The Center on Juvenile and Criminal Justice cites a Harvard Law Review assessment of Section 115 of PROWRA:

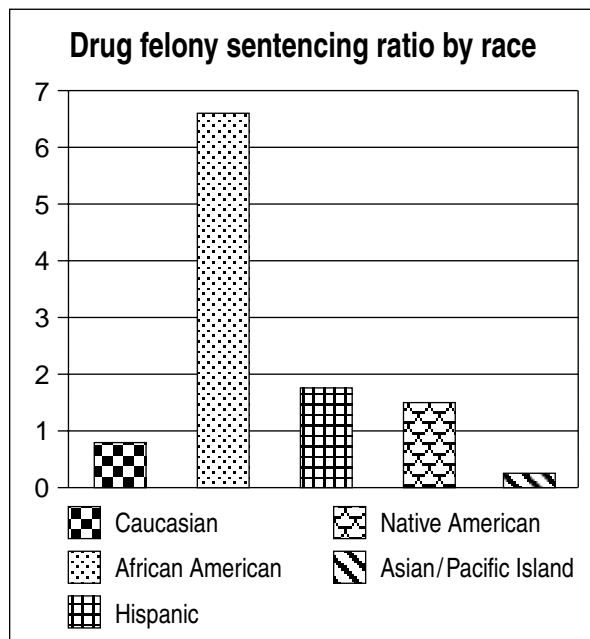
Denying welfare benefits to drug offenders will...take a disproportionate toll on African-Americans and Hispanics. Not only are members of these groups already over-represented among the ranks of the poor, but the government officials responsible for enforcing drug laws focus disproportionate attention on African-American and Hispanic communities...The combination of racial bias in law enforcement and poverty virtually guarantees that the weight of the [drug felony disqualification] will fall most heavily on African-Americans and Hispanics.¹⁰

In this manner, communities of color are systemically discriminated against through the racially disproportionate denial of food stamp benefits based on drug felony convictions.

	Percent of population	Percent of drug sentences	Sentence ratio
Statewide			
Caucasian	83.40%	75.10%	0.8
African American	3.00%	19.70%	6.6
Hispanic	6.20%	10.80%	1.8
Native American	1.40%	2.00%	1.5
Asian/Pacific Island	6.10%	1.60%	0.3

The disqualification is an unjust double penalty

At the most basic and fundamental moral level, denying food to any individual, regardless of past offenses is unjust. Food is essential to survival and it is also a basic human right. Hunger and insufficient nutrition can lead to immediate and long-term health problems.¹² A lack of proper nutrition weakens the immune



system and increases the risk of chronic diseases.¹³ In addition, hunger and malnutrition make it difficult to be productive and hold a steady job. No one deserves to be denied food.

The drug felony disqualification is also unjust because it constitutes a double penalty for individuals who have already served their time. The criminal justice system already has an established sentencing mechanism to address criminal behavior. No other felony conviction results in a denial of food stamp benefits — only people convicted of drug-related felonies, many of whom are battling chemical dependency, are singled out for this double penalty. The eligibility of an individual convicted of rape, murder, assault, embezzlement,



Vernon Owens — Seattle, WA

I made a mistake in my past, I served my time, but even today I'm being denied food because of it. In 1997 I received a felony conviction for the delivery and possession of cocaine. It was my first and only time attempting to sell any kind of drug, and it was a very small amount. I just got caught up in it that one time, and I quickly learned I wasn't meant to be doing that.

I spent nine months in jail and four months at the Work Ethics Program on McNeil Island. In July of 1998 I was released, having served my time. When I was released, I spent three months in treatment at Cedar Hills.

I am disabled because of injuries I've had to my lower back and right hip. But the only jobs I qualify for based on my education and training are manual labor. I went to the Seattle Vocational Institute for computer training, but the way the job market is, there are more qualified people than me for any computer-related jobs. And now I can't get more education because of my student debt that I can't afford to pay on my current income.

After serving my time, I applied for General Assistance (GA), Medicaid, and food stamps. I was accepted for GA and Medicaid, but was denied food stamps because of my past drug felony conviction. So the only income since that time that I have had to pay for my rent, all my bills, and food is \$339 per month in GA. I go to the food bank to help with getting food, but I am a diabetic and have difficulty getting enough of the right foods there that I need for my diet.

Any other criminal that goes through the penitentiary, once they're released, that ends the repercussions they might face. The law states that double jeopardy is against the law, but in fact the government is breaking the law by not allowing former drug felons to receive food stamps. It's like trying somebody twice for the same crime: reconvicting me and sending me back for the same offense.

It's hard enough to get housing and employment with a felony record. With all the other problems that individuals face when they come out of jail, why add another nail in the coffin?

No other felony conviction results in a denial of food stamp benefits — only people convicted of drug-related felonies, many of whom are battling chemical dependency, are singled out for this double penalty.

or any other crime, violent or non-violent in nature, is not restricted. The drug felony disqualification is an exceptional exclusion that imposes an additional penalty on top of the sentence given by judge or jury, a double jeopardy that no other ex-felon faces when they try to access the food stamp program.

The drug felony disqualification is unsound public policy

In the six years since President Clinton signed PRWORA into law, 11 states and the District of Columbia have fully opted out of the drug felony disqualification in the Food Stamp Program (Connecticut, the District of Columbia, Maine, Massachusetts, Michigan, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Oregon, and Vermont). The decision in these states to opt out of the disqualification received broad community support, and was spurred by a growing recognition that denying food to former drug felons makes for unsound public policy.

The federal government funds 100 percent of Food Stamp Program benefits

Fully restoring access to food stamps for former drug felons will not strain Washington's budget. Benefits issued through the Food Stamp Program are funded entirely by the federal government. States pay only half of administrative costs. Not only would restoring access to food stamps cost the state nothing, it would bring much needed federal funding into our state and local economies.

In state fiscal year 2002 (July 2001 to June 2002), Washington State Department of Social and Health Services (DSHS) denied food stamps to 3,223 individuals because of a previous drug felony conviction.¹⁴ These denials cost the state \$242,000 in federal food stamp dollars each month, which amounts to \$2.9 million in annual lost funding (see table entitled "Impacts of restoring access to food stamps for former drug felons").

Federal food stamp dollars act as an economic stimulus for local and state economies. Every five additional food stamp dollars creates nearly ten dollars worth of total economic activity.¹⁵ Had 3,223 food stamp applicants not been denied food stamps in SFY 2002, Washington state would have generated \$5.3 million in total economic activity and created 88 new jobs, all without spending a penny from the state budget (see table entitled "Impacts of restoring access to food stamps for former drug felons").

Over 25,000 individuals in Washington state could potentially become newly eligible for food stamps from a full opt-out of the drug felony disqualification (see table entitled "Drug felony sentences 1997-2002 & projected eligibility for food stamps"). By fully opting out of the drug felony disqualification, Washington would likely see an additional \$14 million annually in new federal food stamp dollars, generating 422 new jobs and \$26 million in total economic activity. Through targeted outreach to ensure the full participation of all eligible individuals, Washington could even see as much as \$22.9 million annually in new federal food stamp dollars, generating 692 jobs and \$42 million in total economic activity. (See table entitled "Impacts of restoring access to food stamps for former drug felons.")

Washington state should remove the drug felony disqualification to maximize the amount of federal food stamp dollars coming into our state.

Impacts of restoring access to food stamps for former drug felons			
	Denials and lost funding in SFY 2002¹⁶	Potential impact¹⁷	Likely impact¹⁸
Enrollment			
Number of new Food Stamp Program participants	3,223	25,454	15,527
Influx of federal dollars			
Additional monthly influx of federal food stamp dollars into WA state¹⁹	\$241,725	\$1,909,050	\$1,164,521
Additional yearly influx of federal food stamp dollars into WA state	\$2,900,700	\$22,908,600	\$13,974,246
Economic multiplier effects			
Resulting increase in total yearly economic activity in WA state²⁰	\$5,337,288	\$42,151,824	\$25,712,613
Number of new jobs created by stimulating economic activity with additional federal money²¹	88	692	422

The disqualification increases state costs in the foster care and criminal justice systems

When parents are unable to provide their children with an adequate diet, the risk of abuse and neglect increases. State costs are then increased in the form of more neglect investigations and higher foster care caseloads. Similarly, a former felon who does not receive sufficient assistance for his or her household may return to drug use to alleviate stress through self-medication and may even take part again in criminal behavior in order to make ends meet. In this way, denying benefits to former drug felons increases the risk of recidivism, which diverts more taxpayer dollars into the criminal justice system.²⁶

Leaders in law enforcement recognize the importance of access to food stamps for people convicted of drug felonies. In New York state, opting out of the disqualification received support from district attorneys, parole and probation officials, and legislators sitting on the criminal justice, alcoholism, and drug abuse committees in the state Senate and Assembly.²⁷

Drug felony sentences 1997-2002 & projected eligibility for food stamps

Sentences²²

Year	PRISON		JAIL		OTHER
	Number of sentences	Average sentence length in months	Number of sentences	Average sentence length in months	Number of sentences
1997	2,236	33.5	4,648	2.6	290
1998	2,383	34.4	5,196	2.3	276
1999	2,390	34.9	5,388	2.5	326
2000	2,534	31.5	5,891	2.5	264
2001	2,637	29.8	5,783	2.6	255
2002	2,815	29.9	6,320	2.6	322

Sentences completed and public defender eligibility

	PRISON	JAIL	OTHER
Number of sentences completed in 2003	7,009 ²³	33,226	1,733
Number of former drug felons no longer in custody ²⁴	5,838	21,331	1,113
Number of released drug felons who likely qualify for food stamps ²⁵	5,255	19,198	1,001
Total number of former drug felons newly eligible for food stamps			25,454

On December 17, 2002, Washington Governor Gary Locke announced his two-year proposed budget, which includes plans to accelerate implementation of a new sentencing grid and increase the amount of “good time” an offender can earn in prison. This measure is projected to save \$100 million and will reduce the number of non-violent offenders in prison by 1,200.²⁸ Nine hundred of these proposed prison releases will be drug felons. Restoring access to food stamps for former drug felons will ensure that these and other former drug felons paroling from prison have the some of the support services they need to successfully return to the community.

Access to treatment should be prioritized for those who need it

Due to insufficient funding, the Washington State Department of Alcohol and Substance Abuse (DASA) provides treatment to only one-fifth of those who are eligible for services and suffering from chemical dependency, according to the agency’s own estimates.²⁹ A 2001 report of the King County Bar Association’s Task Force on Drug Addiction Treatment identified extensive waiting lists for treatment.³⁰ At the same time, not every individual who receives a drug felony conviction is



Shelia Floyd — Seattle, WA

In January of 1999, I was arrested and then convicted of a drug felony for conspiracy to commit a Violation Under the Controlled Substances Act (VUCSA). At that time I was dealing with an addiction to crack cocaine. I served my time, paid my fines, and was released. I was finished with the Department of Corrections in 2000, and I thought that my drug felony was behind me.

But, in September of 2002, I found myself in a situation where I was homeless, jobless, penniless, and hungry. So I applied for food stamps. When I applied, I was told that because of my drug felony, I couldn't get food stamps. I was being punished again even though I had already served my time.

That made me angry, since I'm just trying to walk the straight and narrow. Because of mistakes I've made in the past, I'm being denied the help I need now.

I just think that to eat is a basic right. If you're walking around hungry, how are you going to be able to get a job, when all you can think about is "how can I eat," when your stomach's growling, and you can't concentrate?

If you can't get help, you may have to turn back to the same thing you were trying to get away from. I do know people who go back out and do the same things that got them in trouble in the first place because they have to eat. It's a never ending circle. If you can't get help where they tell you, then you'll have to make your own way. It might not be legal, it might not be what you want to do, but it will provide you with a meal.

People with past drug felonies should not be denied food stamps. Not being able to get that assistance keeps people on the wrong side of the law instead of helping them get on the right side.

chemically dependent and in need of treatment. Imposing participation in treatment and an affirmative chemical dependency assessment as conditions for receiving food stamps limits the availability of treatment services for people who need it. In addition, individuals who cannot get into treatment because of limited availability and long waiting lists should not be penalized by being denied food.

Individuals who cannot get into treatment because of limited availability and long waiting lists should not be penalized by being denied food.

The disqualification puts Washington state at risk of federal penalties

The federal government evaluates state implementation of the Food Stamp Program by monitoring "error rates," a measure of mistakes made in the issuance of food stamp benefits. States with the highest error rates can be sanctioned by the federal government, and similarly states with the lowest error rates and most improved error rates can receive performance bonuses. In the past, Washington state has been subject to sanctions because of high error rates.

Stephen Rondeau — Olympia, WA

I am disabled, and I've raised my son as a single father. I haven't had access to the food assistance I've desperately needed because of a drug felony that occurred six years ago. In 1996, I was arrested and I received a felony conviction in 1998 for possession of methamphetamine. I served my sentence and was evaluated for drug and alcohol dependency through a state and federally accredited program called The Right Step. My drug and alcohol dependency evaluation showed that I was not dependent.

In November of 2000 I applied for food stamps, TANF, and Medicaid for my son and me. I told my caseworker that I had a drug felony conviction, but my application was approved, and my son and I received the assistance we needed.

But, in March of 2001, I was dropped from food stamps. DSHS told me that because I had a drug felony I could not receive food stamps unless I saw a psychologist and received a chemical dependency assessment. I went to the assessment and I was told that I would have to go to outpatient treatment at BHR, a specific drug treatment program in Olympia. I told DSHS that my assessment at The Right Step showed that I did not need to go through treatment. But they told me that in order to receive food stamps I would have to go through this specific treatment program that cost \$80 per month. I was also told that if I signed up to do the treatment program but couldn't complete it, I would be cut off everything, not just food stamps.

I was receiving only \$310 per month in my TANF grant, though, so I was very worried that I wouldn't be able to come up with the money and might have to miss an appointment if I couldn't pay. At that time I was getting ready to have open heart surgery scheduled for June 2001, so I had to make keeping our medical coverage a priority over having food stamps. But without food assistance my son and I were really struggling to make ends meet.

In December of 2001 my son turned 18 and I was switched from TANF to GA. Again, I was denied food stamps because of my drug felony conviction, and DSHS told me that I would have to do another chemical dependency assessment in order to receive food stamps. I really don't understand why these restrictions on receiving food stamps exist. I served my time for my drug felony, and I was evaluated and told that I do not have a drug or alcohol problem. But I am disabled and diabetic, and I have difficulty getting enough food and the right kinds of food to make sure that I can simply live a healthy life.

Because the disqualification requires tracking and identifying additional information about program participants, it is highly error prone. It involves tracking and verifying the number, types, and dates of drug felonies received, the outcome of chemical dependency assessment, and participation in treatment. It is easy for caseworkers to make mistakes when tracking and verifying all of this information. The least error prone policy would be to fully opt out of the drug felony disqualification in the Food Stamp Program.



Ursula Bestgen — Seattle, WA

Between 1996 and 1998 I struggled with a heroin addiction and homelessness in Seattle. During this time I was convicted of a drug felony for selling a small amount of heroin, which I did to support my addiction. I was sentenced to 17 months in prison, but I went to boot camp instead of regular prison. After spending four months in boot camp, I was released and became homeless again. I hadn't received any kind of drug treatment aside from attending AA meetings.

Finally, after I was back out on the streets, I sought out help with my addiction on my own and went through drug treatment, which I completed on November 16, 1998. I've been clean and sober ever since.

When I got sober I tried to get food stamps, but I couldn't because of my past drug felony conviction even though I had completed a 90-day, in-patient drug treatment program; even though I was in compliance with my Department of Probation Correction Office; even though I was in compliance with King County Drug Court Diversion; even though I was going to intensive out-patient treatment three days a week; even though I was living in clean and sober transitional housing, in compliance with my case manager; and even though I was trying to do everything right -- I was denied access to food assistance.

Since I couldn't obtain food stamps, I had to rely on the food bank and on the support of friends so that I did not go hungry. Having access to food stamps would have been extremely helpful during my recovery from addiction because it would have meant that I had a reliable and secure source of food at a time when I was struggling to create stability in my life.

Since then I have bought a house, I have a two year old, I've graduated college, and I am attending graduate school. I've accomplished things that I never imagined were possible when I was dealing with my addiction. I am also currently the program director at Street Outreach Services where, every day, I help people who are in situations similar to where I once was.

It's not right that people with past drug felonies who have done their time are then punished again by being denied access to the programs, like food stamps, that can assist them during their recovery. People struggling with addiction need access to opportunities, open doors, and helpful hands -- not denial, rejection, and wait lists. You never know when someone's going to turn that corner. I did.

Food stamps can be used only to buy food

The original impetus to create the exceptional exclusion of denying food stamps only to individuals convicted of *drug-related* felonies may have come from concern over individuals selling their food stamps for money to purchase drugs and continue their addiction. However, food stamps are no longer issued as paper coupons. Now they are distributed through an Electronic Benefits Transfer (EBT) system on a debit card that can only be used for food purchases at grocery store and cannot be easily exchanged or sold for money or used to purchase drugs or alcohol.

Washington state should fully “opt out” of the drug felony disqualification

This report has demonstrated how the drug felony disqualification in the Food Stamp Program is unjust and harmful to:

- Individuals infected with HIV/AIDS who require adequate nutrition to ensure the effectiveness of complex drug regimens and maintain a healthy immune system;
- Victims of domestic violence who need adequate support to transition to health and safety;
- Children of former drug felons who need a loving, supportive, stable and secure home; and
- People of color who are disproportionately impacted by discriminatory drug enforcement and sentencing practices; and
- Individuals who have already served their time and should not be penalized twice.

The report has also documented the numerous public policy advantages of fully opting out of the drug felony disqualification in terms of:

- Maximizing the federal food stamp funding coming into Washington state;
- Reducing recidivism;
- Decreasing state costs in the foster care and criminal justice systems;
- Prioritizing available treatment opportunities for those who really need it; and
- Reducing Washington state’s risk of financial penalty for high error rates.

Following the example of the 11 other states (and the District of Columbia) that have fully opted out of the drug felony disqualification in the Food Stamp Program, Washington state, by specific reference in state law, should take full advantage of the federal option to completely restore access to food stamps for individuals convicted of drug-related felonies.

Endnotes

- 1 Patricia Allard, "Executive Summary," *Life Sentences: Denying Welfare Benefits to Women Convicted of Drug Offenses*, The Sentencing Project, February 2002 (State modifications chart updated October 2002), available at <http://www.sentencingproject.org/policy/lifesent-exec-sum.pdf>. Massachusetts has fully opted out of the lifetime ban in the Food Stamp Program, and modified the disqualification in the TANF Program. Pat Baker, Massachusetts Law Reform Institute, Personal Communication, January 13, 2003.
- 2 WAC 388-422-0010.
- 3 *Washington State HIV/AIDS Surveillance Report*, Washington State Department of Health, Table 6, December 2002, available at http://www.doh.wa.gov/cfh/HIV_AIDS/Prev_Edu/0212.pdf.
- 4 Victoria Nixon and Brenda Vitale, *Loss of Income Support and Nutritional Benefits for High Risk Populations With Drug-Related Felony Convictions: A Matter of Public Health*, The Boston AIDS Consortium, March 17, 1998. Nixon and Vitale cite the following articles and studies in their analysis of the affects of the federal drug ban on HIV-infected individuals: See, e.g., J.P. Tulskey, M.C. White, "Screening for Tuberculosis in Jail and Clinic Follow-up after Release," *Amer. Jour. of Public Health*, Feb.1998, vol. 88, no. 2. Peter Selwyn and Seven Batki, Consensus Panel Co-Chairs, Substance Abuse and Mental Health Services Administration, *Treatment for HIV-Infected Alcohol and Other Drug Abusers: Treatment Improvement Protocols*, (TIP) Series 15, 1995. S. Matava and R. Beinecke, Pathways to Care, Suffolk University, Boston MA, 1995 ("[o]pportunistic infection results in increased treatment costs because of its association with an increased need for inpatient care, acute care, prophylaxis, nutritional support, and respite care," p. 1; "Poor nutrition has been shown to correspond with higher rates of weight loss, opportunistic infection, and shortened life span," p. 3); The Panel on Clinical Practices for Treatment of HIV Infection convened by the Department of Health and Human Services and the Henry J. Kaiser Family Foundation, *Guidelines for the Use of Antiretroviral Agents in HIV-Infected Adults and Adolescents*, 1997 ("Many medication regimens must be accompanied by special diets in order for the medication to be properly absorbed and metabolized," p. 3).
- 5 *Ibid.*
- 6 Amy E. Hirsch, *Some Days are Harder than Hard: Welfare Reform and Women with Drug Convictions in Pennsylvania*, Center for Law and Social Policy, December 1999, available at <http://www.clasp.org/DMS/Documents/997993897.158/some%20days%20are%20harder%20than%20hard.pdf>. Hirsch cites the following articles and studies in her analysis of the women affected by substance abuse and the federal drug felon ban: Christine Sanderson, *Counseling Adult Survivors of Child Sexual Abuse*, Jessica Kingsley Publishers, 1990 ("child sexual abuse and substance abuse are closely associated," pp. 60, 93-4); *Substance Abuse and the American Woman: Illicit Drugs*, The National Center on Addiction and Substance Abuse at Columbia University, June 1996 ("female drug abusers and addicts are four times more likely to have suffered sexual assaults than women without drug problems," p. 2); Timothy P. Janikowski and Noreen M. Glover, "Incest and Substance Abuse: Implications for Treatment Professionals," *Journal of Substance Abuse Treatment*, vol. 11, no. 3, 1994 ("adult women's drug usage is an effort to self-medicate from long term affects of abuse," p. 10); Caroline Wolf Harlow, "Prior Abuse Reported by Inmates and Probationers" ("Bureau statistics found that 37% of women in state prison and jails had been abused as children, compared with estimates that 12 -17% of women in the general population were abused as children," p. 10); Angela Browne, Brenda Miller, Eugene Maguin, "Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women," *International Journal of Law and Psychiatry*, 2000 ("study of 150 incarcerated women finding that 70% of these women reported childhood physical abuse and 59% reported childhood sexual molestation," p. 10).
- 7 Roger Goodman, King County Bar Association Fact Sheet: *Drug Sentencing, Racial Disparities and the Cost of Incarceration: Selected Findings*, source: Washington State Sentencing Guidelines Commission, *Representation and Equity in Washington State: An Assessment of Disproportionality and Disparity in Adult Felony Sentencing, FY 2000*, Olympia, WA, 2002.
- 8 *Ibid.*
- 9 Roger Goodman, King County Bar Association Fact Sheet: *Race, Class and the War on Drugs Community Forum*, December 5, 2002. Goodman cites the following sources in his assessment that racially disproportionate drug sentencing is not a matter of disproportionate involvement in illicit drug use or sale: Office of Applied Studies, Substance Abuse and Mental Health Services Administration (SAMHSA), *National Household Survey on Drug Abuse*, 2001; K. Jack Riley, *Crack, Powder Cocaine, and Heroin: Drug Purchase and Use Patterns in Six U.S. Cities*, National Institute of Justice and ONDCP, 1997; Lockwood *et al.*, "Crack Use, Crime by Crack Users, and Ethnicity," in Hawkins, ed., *Ethnicity, Race and Crime*, SUNY Press, 1995; Patricia Davis and Pierre Thomas, "In Affluent Suburbs, Young Users and Sellers Abound," *Washington Post*, December 14, 1997; David H. Albert, *Tobacco, Alcohol, and Other Drug Abuse Trends in Washington State*, Division of Alcohol and Substance Abuse, Washington State Department of Social and Health Services, 2002.
- 10 Rukaiyah Adams, David Okek, and Alissa Riker, *Double Jeopardy: An Assessment of the Felony Drug Provision of the Welfare Reform Act, Center on Juvenile and Criminal Justice*, 1998, available at <http://www.cjclj.org/pubs/doublejep/doublejep.html>. Adams *et al.* cite *Welfare Reform — Punishment of Drug Offenders — Congress Denies Assistance and Food Stamps to Drug Felons — Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, PUB. L. NO. 104-193, S 115, 110 STAT. 2105 HARV. L. REV. 983, 988 (1997) for this quote. Section 115 of PRWORA is sometimes referred to as "the Gramm Amendment" because it was sponsored by Senator Phil Gramm from Texas.
- 11 Roger Goodman, King County Barr Association Fact Sheet: *Race, Class and the War on Drugs Community Forum*, December 5, 2002, source: Nella Lee *et al.*, *Representation and Equity in Washington State: An Assessment of Disproportionality and Disparity in Adult Felony Sentencing*, Washington State Sentencing Guidelines Commission, 2001.
- 12 "Health Consequences of Hunger," *Hunger in the U.S.*, Food Research Action Center, available at: www.frac.org/html/hunger_in_the_us/health.html.
- 13 "Position of the American Diabetic Association: Domestic Food and Nutrient Security," *Journal of the American Diabetic Association*, March 1998, vol. 98, no. 3, pp. 337-343.
- 14 *Applicants Denied Basic Food Assistance, SFY 2002*, source: ESA-MRDA, received from Pam Raymond, Washington State Department of Social and Health Services, January 24, 2003.
- 15 Based on 2002 ERS data that an additional \$5 billion of Food Stamp Program (FSP) expenditures triggers a \$9.2 billion increase in total economic activity (production, sales, and value of shipments). Kenneth Hanson and Elise Golan, *Effects of Changes in Food Stamp Expenditures Across the U.S. Economy*, FANRR-26-6, U.S. Department of Agriculture, Economic Research Service, August 2002, available at <http://ers.usda.gov/publications/fanrr26/fanrr26-6/fanrr26-6.pdf>.

16 Based on the number of denials (Jun 01-Jul 02) in the Food Stamp Program because of possession of a drug felony. During this 12-month period, DSHS denied food stamps to 3,223 individuals because of a previous drug felony. This figure would likely be an underestimate of the number of new Food Stamp Program participants if Washington fully opted out of the drug felony disqualification because 1) it doesn't account for individuals denied before July 2001 who would also regain eligibility, and 2) it doesn't account for individuals who knew they were ineligible and therefore did not apply.

17 Based on Washington State Sentencing Guidelines Commission data on the number of drug felony sentences issued between 1997 and 2002 (see table entitled "Drug Felony Sentences 1997-2002 & Projected Eligibility for Food Stamps").

18 Based on adjusting the number of individuals who would be newly eligible for the Food Stamp Program by the Food Stamp Program participation rate in Washington state. 2000 Food and Nutrition Service (FNS) data puts Washington's Food Stamp Program participation rate (the number of participants divided by the number of eligible individuals) at 61 percent. Allen L. Schirm and Laura Castner, Mathematica Policy Research, Inc. *Reaching Those in Need: State Food Stamp Participation Rates in 2000*, U.S. Department of Agriculture, Food and Nutrition Service, December 2002, available at <http://www.fns.usda.gov/oane/MENU/Published/FSP/FILES/Participation/Reaching2000.pdf>. There are several reasons why Washington state enrolls only 61 percent of eligible households. For a discussion of some of the inexpensive policy options that Washington state could utilize to remove barriers to accessing the Food Stamp Program, see John Galfione, *A State of Hunger: Improving Washington's Food Stamp Program*, Washington Citizen Action, June 2002, available at www.nwco.org.

19 Based on 2001 FNS data that gives the average monthly food stamp benefit per individual as \$75 nationally. Christina Tuttle, Mathematica Policy Research, Inc. *Characteristics of Food Stamp Households: Fiscal Year 2001 (Advance Report)*, U.S. Department of Agriculture, Food and Nutrition Services, July 2002, available at <http://www.fns.usda.gov/oane/MENU/Published/FSP/FILES/Participation/2001advrpt.pdf>.

20 Based on 2002 ERS data that an additional \$5 billion of Food Stamp Program (FSP) expenditures triggers a \$9.2 billion increase in total economic activity (production, sales, and value of shipments). Kenneth Hanson and Elise Golan, *Effects of Changes in Food Stamp Expenditures Across the U.S. Economy*, FANRR-26-6, U.S. Department of Agriculture, Economic Research Service, August 2002, available at <http://ers.usda.gov/publications/fanrr26/fanrr26-6/fanrr26-6.pdf>.

21 Based on 2002 ERS data that an additional \$5 billion in FSP expenditures triggers an increase in jobs of 82,100. *Ibid*.

22 *Statistical Summary of Adult Felony Sentencing*, Washington State Sentencing Guidelines Commission, 1997-2002. Reports for 1997-2001 available at <http://www.sgc.wa.gov/publications>. 2002 report received from Ed Vukich, Washington State Sentencing Guidelines Commission, January 23, 2003.

23 Sum of 1997-1999 prison sentences. The average prison sentence length suggests that individuals who received a prison sentence for a drug felony between 2000 and 2002 would likely still be incarcerated.

24 To estimate the number of offenders from the number of sentences, the "discount" figures of 0.833 for prison sentences and 0.642 for jail and "other" sentences were used. Discount figures are a measure of the number of admissions divided by the number of sentences. These discount figures are averages from 1997-2001 and were obtained from Ed Vukich, Washington State Sentencing Guidelines Commission, January 23, 2003.

25 Approximately 90 percent of felony defendants are eligible for a public defender, meaning they have a gross income below 125 percent of the Federal Poverty Level (FPL), and would therefore also be gross income eligible for the Food Stamp Program, which has a 130 percent FPL threshold. Therefore, 90 percent of the number of individuals who received a drug felony between 1997 and 2002 and are no longer in custody was used as an estimate of individuals who would be newly eligible by opting out of the drug felony disqualification. Figure for public defender eligibility obtained from Christie Hedman, Washington Defender Association, January 23, 2003. Hedman notes that the percent of drug felony defendants who are eligible for a public defender may even be higher than 90 percent.

26 Rukaiyah Adams, David Okek, and Alissa Riker, *Double Jeopardy: An Assessment of the Felony Drug Provision of the Welfare Reform Act*, Center on Juvenile and Criminal Justice, 1998, available at <http://www.cjcj.org/pubs/doublejep/doublejep.html>. Adams *et al.* cite the following articles and reports in their assessment of the implications of PRWORA Sec. 115 on state expenditures: "Convicts Could Lose Public Aid," *The Des Moines Register*, July 25, 1996, p. 3, 8, ("[o]rganizations such as the U.S. Conference of Mayors and National League of Cities publicly and adamantly opposed the federal [drug felony] provision, arguing that the provision would have 'unintended consequences [that] would shift more of the financial burden of society's safety net to state and local governments,'" p. 4; "[w]ithout any support services for ex-drug offenders immediately after their release from prison, we can expect recidivism to skyrocket. That means more taxpayer dollars for law enforcement, the legal system and prisons, more property loss, and more victims," p. 5); Robert Green and Shelley Waters, *The Impact of Welfare Reform on Child Welfare Financing*, Washington, DC: The Urban Institute, 1997, ("Since a large number of families served by child welfare agencies have substance abuse problems, this provision may make it difficult for substance-abusing parents to obtain the financial resources necessary to care for their children. If child welfare agencies are unable to keep substance-abusing families intact, foster care and adoption expenditures will increase," p. 5).

27 Robb Cowie, Deputy Director of State Policy, Legal Action Center, letter to Bruce Tarr, Massachusetts State Senator, June 1, 1998, copy received from Pat Baker, Massachusetts Law Reform Institute, January 7, 2003.

28 Governor's Office Press Release: *Gov. Gary Locke Closes \$2 Billion Budget Deficit; Proposes Innovative, Priority-Driven State Budget*, Office of Governor Gary Locke, December 17, 2002, available at <http://www.governor.wa.gov/press/press-view.asp?pressRelease=1235&newsType=1>.

29 *Facing the Future: The State of Human Services in Washington*, Part 3: "Overcoming Addiction: The Division of Alcohol and Substance Abuse," Washington State Department of Social and Health Services, September 2002, p. 115, available at <http://www.dshs.wa.gov/FacingtheFuture/pdf/p3dasa.pdf>.

30 *Report of the Task Force on Drug Addiction Treatment to the King County Bar Association Board of Trustees*, King County Bar Association Drug Policy Project, May 15, 2001, available at http://www.kcba.org/drug_law/treatment.pdf. ("The Task Force heard testimony confirming the inadequate treatment resources for poor King County residents with opiate addictions from Task Force member Kris Nyrop, director of Street Outreach Services in Seattle (SOS). SOS, a non-profit agency, conducts street outreach to individuals with drug addictions. It operates a drop-in center for street youth, an infant mortality prevention project and a needle exchange program. Arranging for addiction treatment is an important part of its mission. As of the end of March 2001, SOS had 185 individuals on a waiting list for methadone therapy. Ninety-nine had been on the list since 1999. The list had been closed to new applicants since October 2000. Mr. Nyrop reported that the Seattle-King County Health Department had a list of approximately 500 applicants, some of whom had been waiting since 1999. These lists did not reflect the full extent of demand, he noted, because (even when the lists are open to new applicants) many people do not bother to sign up, in light of the wait," p.19).

About the organizations releasing this report

Washington Citizen Action

Washington Citizen Action (WCA) is a social and economic justice organization with over 50,000 individual members statewide. In addition to its dynamic grassroots membership, WCA also includes permanent coalition partners from other community organizations, labor, senior, religious, and people of color organizations. WCA has both a legislative and non-legislative issue agenda that focuses on increasing access to health care and living wage jobs



Northwest Federation of Community Organizations (NWFCO) is a regional federation of four statewide, community-based social and economic justice organizations located in the states of Idaho, Montana, Oregon, and Washington: Idaho Community Action Network (ICAN), Montana People's Action (MPA), Oregon Action (OA), and Washington Citizen Action (WCA). Collectively, these organizations engage in community organizing and coalition building in 14 rural and major metropolitan areas, including the Northwest's largest cities (Seattle and Portland) and the largest cities in Montana and Oregon.

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