

## **The Impact of the Federal Food Stamp Ban in Georgia**

In 1996, as part of President Clinton's campaign promise to "end welfare as we know it," Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PWORA). Codified within the Act is a federal lifetime ban on receipt of benefits through the federal Supplemental Nutritional Assistance Program (SNAP), commonly referred to as the food stamp program, for those with felony drug convictions. SNAP benefits are the nation's most important anti-hunger program, which in 2014 alone helped 46 million low-income Americans afford a nutritionally adequate diet.<sup>i</sup> The program does not operate as a reward for low-income families, but rather as a mechanism to help prevent hunger and malnutrition. The ban imposed by PWORA generates a lifetime of punishment for those with felony drug convictions, as it blocks access to housing, employment, and the obtaining of certain professional licenses. To prevent the imposition of this lifetime ban, states can enact "opt out" provisions and exempt residents from the lifetime ban completely, or enact a less punitive version of the ban to allow eligibility once certain conditions have been met (i.e., benefits can be available after a certain amount of time has passed since conviction or substance abuse treatment is being sought or has been completed).<sup>ii</sup> This ban does not apply to any other felony conviction, including theft, welfare fraud or serious violent crimes. The lifetime ban preventing those with drug related convictions from accessing benefits also applies to the Temporary Assistance for Needy Families (TANF) program.

Currently, all but seven states, including Georgia, have either opted out or modified the lifetime ban on food stamp benefits. Unfortunately the state continues to deny otherwise eligible citizens vital food assistance by upholding the lifetime ban on benefits. Since Georgia has become a leader on criminal justice reform in the South, there is interest in considering an opt out or modification of the archaic and ineffective ban. The focus of this piece is to provide information about the impact of the federal lifetime ban on food stamps for Georgians with drug convictions, survey the application of the ban in other states, and to bolster the recommendation made by the Georgia Council on Criminal Justice Reform: that Georgia should eliminate the ban.

## **How the Food Stamp Program Works**

The Food Stamp Program is a federally funded program that provides monthly benefits to low-income households to help pay for the cost of food.<sup>iii</sup> Benefits can be used to purchase food for consumption as well as seeds to grow food. Depending on the eligibility requirements like employment status, age, and health of recipients, most applicants receive benefits in cycles of three to six months. In Georgia, recipients are rescreened and reconfirmed for benefits for eligibility every six months. Qualifying households can apply for benefits at any time, and the program considers households to include “one person living alone, a family, or several, unrelated individuals who live together and routinely purchase and prepare meals together.”<sup>iv</sup> All beneficiaries of SNAP are required to work (usually less than 30 hours per week) and be adults between 18 and 59 years old (not receiving unemployment insurance or SSI benefits).<sup>v</sup> To receive benefits, individuals must also participate in one (or a combination) of these activities as a condition of their eligibility: secondary education, job search, community service, on-the-job training, and or employment.

To apply for benefits in Georgia, the head of household, a household member, or authorized person who represents a household must complete an application either online, in person, or via mailed applications requested from the Department of Family and Children Services (DFCS) office. After the completion of the application, an interview is conducted by a DFCS staff member via telephone, a scheduled home visit, or an office visit. Upon completion of the interview and processing of the application, benefits should be available within 30 days.

Currently, the national average of monthly benefit received by a single person household is \$133. An average household with more than one qualifying individual receives around \$270. Benefits are calculated by assessing a household’s gross income, minus any deductions allotted for by the state, which yields a net income that must fall below 130 percent of the federal poverty line.<sup>vi</sup> For a household of three, in the federal fiscal year 2015, the poverty line of income is \$1,650 a month.<sup>vii</sup> Thus, 130 percent of the poverty level for a three-person family is \$2,144 a month, or about \$25,700 a year.

Benefits are available in the form of an electronic benefit transfer card (EBT), and all cards are issued to recipients along with a personal identification number (PIN). Cards can be used at authorized retailers. The advent of the EBT card, as opposed to traditional food stamps, has eliminated most opportunities for fraud, as an electronic trail is present to track abuses through the system.<sup>viii</sup> A 2012 USDA study reported a 96.19% payment accuracy rate, with the number of food stamps being exchanged for cash at a rate of less than 1%, marking the highest level of integrity the program had seen yet.<sup>ix</sup> In Georgia, from July 2013 through March 2014, the Benefits Recovery Unit of the Office of Inspector General received 6,125 referrals for investigation of fraud from the Food Stamps Program, of which only 1,834 were found to be established claims.<sup>x</sup> Out of the 840,815 households receiving benefits in 2014, Georgia is below the national average on fraud claims with a rate of 0.22%.<sup>xi</sup>

As mentioned above, benefits can be used to purchase food or seeds that grow food such as breads and cereals, fruits and vegetables, meats, fish and poultry, and dairy products.<sup>xii</sup> Benefits cannot be used to purchase any nonfood items, soaps, paper products, or household supplies.<sup>xiii</sup> The Food and Nutrition Act of 2008 precludes the use of benefits to purchase alcoholic beverages, tobacco products, hot foods or hot food products ready for immediate consumption.<sup>xiv</sup>

### **What is the Federal Ban?**

Part of the Personal Responsibility and Work Opportunity Reconciliation Act signed into law is segment 21 U.S.C. § 862(a) –titled the “[d]enial of assistance and benefits for certain drug-related convictions.”<sup>xv</sup> This section operates as the federal ban on access to benefits for those convicted of drug felonies.

Any individual convicted (under Federal or State law) or any offense which is classified as a felony by the law of the jurisdiction involved and which has an element the possession, use, or distribution of a controlled substance ... shall not be eligible for ... benefits under the food stamp program (as defined in section 3(d) of the Food Stamp Act of 1977) ... or any State program carried out under the Food Stamp Act of 1977 [7 U.S.C.A. § 2011 et seq.]

This section and amendment of the Personal Responsibility and Work Opportunity Reconciliation Act , introduced by Senator Phil Gramm (R-Tex.),<sup>xvi</sup> was only debated for two minutes – one minute for Republicans and one minute for Democrats – before it was ratified with bipartisan support.<sup>xvii</sup> Senator Gramm stated: “[I]f we are serious about our drug laws, we ought not to give people welfare benefits who are violating the nation’s drug laws.”<sup>xviii</sup>

This amendment has imposed two decades of “invisible punishment,” consequences that have taken effect outside of the traditional sentencing framework. <sup>xix</sup> The ban has operated as a complete bar to benefits, as it highlights use, possession and trafficking, effectively creating collateral consequences imposed by a government agency. Courts are not required to notify a defendant that additional, civil sanctions may arise from their drug conviction, leaving individuals unaware of the penalties to come.<sup>xx</sup>

In Georgia, approximately 555 otherwise eligible individuals per moth are being denied access to food stamps because of a drug felony.<sup>xxi</sup> This number translates to about 6,665 people per year, not including those individuals who have been discouraged from even attempting to apply for benefits.<sup>xxii</sup> About 1,850 children are included in these denied benefits each year. Of these individuals denied benefits, many are not users, but rather resort to the sale of drugs to be able to provide income for their families.

### **Disparate Impact**

Data released by The Sentencing Project in the article *A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits* reveals the disparate effects the food stamp ban on different populations – particularly on women, children, and African Americans.<sup>xxiii</sup>

The majority of food stamp recipients are women, who are twice as likely as men to receive benefits at some point in their lives.<sup>xxiv</sup> The sharp rise of women in prison has exacerbated this disparate effect. Women have become more likely to be convicted of a felony or sentenced to prison than in previous eras.<sup>xxv</sup> “In 2011, 25.1% of women in state prison were incarcerated for drug offenses, compared to the 16.2% of men.”<sup>xxvi</sup> The loss of benefits for a mother with a drug conviction dangerously impacts her ability to gain or

maintain custody of her children. Not being able to provide food and other vital necessities may increase the likelihood that children are removed from the home.<sup>xxvii</sup>

Disparate effects on children are more indirect, but substantial, due to the technical requirements that are upheld through the ban. Households that are eligible to receive benefits under SNAP are reduced in the amount of aid they receive when one member of the household is ineligible due to a drug conviction. In a household of four, with two parents and two children, if one parent has a felony drug conviction, the amount of aid will be decline for the entire household. This reduction affects children directly; as their parents work toward gaining a level of stability and care to provide for them, their food supply and aid is cut short because of the federal ban.<sup>xxviii</sup>

In the same vein, the “war on drugs” has disparately impacted communities of color, specifically the African American population. Data has consistently shown over time that drug use among whites, African Americans and other minority groups is comparable, with no one group using more than the other.<sup>xxix</sup> However, in 2011, African Americans made up 40.7% of the prison population for drug crimes in state prisons, while other minority groups made up half the same percentage.<sup>xxx</sup> These rates are the after effects of the “war on drugs” and the disparate effects are seen amongst families in need of assistance through SNAP benefits.

### **Economic and Practical Effects**

The benefits offered through the Food Stamp Program are completely federally funded. State governments share the administrative costs with the federal government, which usually yields each entity contributing around 50% of administrative necessities.<sup>xxxi</sup> Administrative costs include such activities as: application processing or eligibility determination, issuance of benefits; development and maintenance of information systems; monitoring of program quality and fraud control; program planning, management and evaluation.<sup>xxxii</sup> In terms of the lifetime ban on benefits, state governments who have not opted out of the ban, like Georgia, are charged with the task and budget to administer the screening process and preventing those with drug convictions from gaining benefits. This process is burdensome on state budgets and, because benefits are funded federally, excluding those with drug convictions does not reduce the number of individual

participating in the program. Opting out of the ban allows those individuals the resources to “bring more nutrition assistance dollars into the state that would be spent in local grocery stores and other community businesses benefits to local economies.”<sup>xxxiii</sup>

Adhering to the ban prolongs the period of time between recovery and economic stability for those with criminal convictions. Having a criminal history with a felony conviction lowers employment opportunities due to the stigma and legal barriers to employment.<sup>xxxiv</sup> “After their release [individuals with criminal history] are out of work about half the time and earn an average of \$9,000 per year. As a result, [SNAP benefits] are critical income supports during transition from prison to community living.”<sup>xxxv</sup> Providing these individuals with assistance also lowers recidivism rates, as those individuals with drug related convictions are less likely to turn to the same activities in an effort to support themselves or those around them.<sup>xxxvi</sup> Also, for those individuals seeking treatment at a facility, gaining benefits through SNAP would increase their chances of staying in treatment, as those programs often require individuals to pay room and board. Having benefits allows for the individual to focus on staying in treatment and reduces the risk of them leaving treatment due to cost of living in addition to food.<sup>xxxvii</sup>

Additionally, the federal ban has not operated as a deterrent to drug use, as many individuals who fall within the category of being convicted of a drug related felony are not drug users themselves. The Bureau of Justice Statistics released data in 2006 illustrating that more than half of the 377,860 drug convictions were unrelated to the individual using and more related to selling drugs as a way to support themselves or others. Further, 44% of those found to be possessing drugs were possessing the drugs with an intent to deliver or sell. A study of women with drug convictions or pending felony drug charges found “women interviewed were not aware prior to [their] involvement with the criminal justice system that a felony drug conviction could result in loss of SNAP ... benefits.” Further, if the threat of criminal prosecution and imprisonment is not sufficient to operate as a deterrent, denial of SNAP benefits isn’t going to produce much of a deterrent effect, further coloring Georgia’s reason for not opting out of the ban.

Data compiled by the Georgia Budget and Policy Institute indicates that due to the imposition of the ban, Georgia is missing out on \$10.4 million in federal SNAP benefits each year. The average benefit of \$130 per single household, multiplied by an average 12

months of benefit, and 6,665 qualifying denied individuals, yields over 10 million dollars in missed funds for the state. Each \$1 received through SNAP in a weak economy generates an additional \$1.70 in added economic activity, which adds up to \$17.7 million of missed revenue for Georgia. Removing the lifetime ban and permitting access to those denied benefits does not generate any extra administrative costs, as these cases, while able to generate substantial revenue for the state, make up less than 1% of Georgia's SNAP cases. The lifetime ban has had detrimental and disparate effects for almost twenty years. Recent data augments that effect by demonstrating the economic impact.

### **Which States Have Opted Out or Modified the Ban?<sup>xxxviii</sup>**

Currently, the majority of states have either opted out of the ban entirely or modified the punitive effects of the ban by implementing conditions on applicants before receipt of benefits. Some states which condition eligibility on the individual's enrollment or successful completion of a drug-related treatment program, sentence or probation include: Alabama, Colorado, Connecticut, Hawaii, Illinois, Iowa, Kentucky, Maryland, New Jersey, Nevada, North Carolina, South Carolina, Tennessee, and Washington. Currently, Georgia, along with West Virginia and Mississippi, continue to hold up the lifetime federal ban on benefits in its entirety. Below is a list of states in the southeast that have modified the ban on benefits.

Alabama: Individuals convicted of drug-related felony offenses are eligible upon completion of their sentence or when they have satisfactorily completed serving their probation sentence.

North Carolina: Individuals convicted of drug-related felony offenses may be eligible for both benefits six months after release (or six months after date of conviction if not incarcerated) if the individuals do not have any subsequent felony offenses and are enrolled in or have successfully completed required substance abuse treatment.

South Carolina: Individuals with drug-related convictions may be eligible for cash assistance and food stamps if they submit to random drug tests and/or participate in an alcohol or drug treatment program.

Tennessee: Individuals convicted of drug-felony offenses are eligible for food stamps and public assistance if they participate in or complete a substance abuse treatment.

Kentucky: Individuals are eligible for food stamps and K-TAP upon certification of completion of a drug treatment program.

Louisiana: Individuals are eligible for benefits one year after serving their sentence.

Virginia: Individuals are subject to random drug screening, but are eligible for benefits following the completion of their sentence and a substance abuse program.

There are also a handful of southeastern states that have modified the ban to limit eligibility to individuals convicted of possession and not of drug sales or trafficking, which is reflective of the minimal correlation between drug use and possession. States which exclude from food stamp and or public assistance eligibility individuals convicted of drug sale or trafficking include Arkansas, Florida, Illinois, and Rhode Island. The Arkansas, Florida and Rhode Island statutes make such individuals ineligible for both cash assistance and food stamps.

Arkansas: Individuals found guilty, or who have pleaded guilty or nolo contendere to, felony-drug offenses with an element of distribution or manufacture are ineligible for benefits.

Florida: Individuals convicted of drug trafficking are denied benefits.

### **Future Considerations for Georgia**

Recent recommendations of the Georgia Prison Reentry Initiative – Employment Committee have shifted the focus in Georgia: Georgians are now actively considering joining the majority of states in opting out completely of the lifetime ban that prevents qualifying Georgians from accessing vital nutrition assistance. Below is sample language that supports a statutory opt out provision.

An applicant who is otherwise eligible to receive food assistance under the federal Food Stamp Act of 1977, 7 U.S.C. §§2011-2037, may not be denied assistance because the person has been convicted of a drug-related felony as described in the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, §115, 110 Stat. 2105, 21 U.S.C. §862a(a).

Allowing Georgia to once again be a leader in the South for criminal justice reform by completely opting out of the lifetime ban would bring millions of dollars of federal revenue to the state, while simultaneously liberating those who desperately need to “move

on” with their lives post-conviction. It also ensures that we are attempting to scale back the collateral consequences we impose upon members of our society who have paid their debts, completed their sentences, and shown the initiative to contribute to our communities.

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<sup>i</sup> Policy Basics: Introduction to Supplemental Nutrition Assistance Program, Center on Budget and Policy Priorities, 1, (updated January 8, 2015), <http://www.cbpp.org/research/policy-basics-introduction-to-the-supplemental-nutrition-assistance-program-snap>.

<sup>ii</sup> 21 U.S.C.A. § 862(a)(d) (2010) provides that “[a] state may, by specified reference in a law enacted after August 22, 1996, exempt any or all individuals domiciled in the State from the application of subsection (a) of this section.” A state may also limit the period for which subsection (a) shall apply to any or all individuals domiciled in the State.

<sup>iii</sup> Supplemental Nutrition Assistance Program – SNAP (Food Stamps), DHS: Department of Family and Children Services, 2, (Revised April 2014), <http://dfcs.dhs.georgia.gov/food-stamps>.

<sup>iv</sup> Id.

<sup>v</sup> Policy Basics: Introduction to Supplemental Nutrition Assistance Program, Center on Budget and Policy Priorities, 1, (updated January 8, 2015), <http://www.cbpp.org/research/policy-basics-introduction-to-the-supplemental-nutrition-assistance-program-snap>.

<sup>vi</sup> Id.

<sup>vii</sup> Id.

<sup>viii</sup> SNAP: Frequently Asked Questions, SNAP To Health!, <http://www.snaptohealth.org/snap/snap-frequently-asked-questions/#fraud>.

<sup>ix</sup> Id.

<sup>x</sup> Attacking Fraud, Department of Human Services, <http://dhs.georgia.gov/attacking-fraud>.

<sup>xi</sup> Supplemental Nutrition Assistance Program (Food Stamps), 2, (July 1, 2015), <http://dhs.georgia.gov/sites/dhs.georgia.gov/files/DFCS.%20Food%20Stamps%201.15.pdf>.

<sup>xii</sup> SNAP: Eligible Food Items, United States Department of Agriculture Food and Nutrition Service, (July 1, 2015), <http://www.fns.usda.gov/snap/eligible-food-items>.

<sup>xiii</sup> Id.

<sup>xiv</sup> 7 U.S.C.A. § 2012 (West).

<sup>xv</sup> 21 U.S.C. § 862(a).

<sup>xvi</sup> Lyndsey K. Eadler, Purging the Drug Conviction Ban on Food Stamps in California, 14 *Scholar* 117, 128 (2011).

<sup>xvii</sup> Id.

<sup>xviii</sup> Id.

<sup>xix</sup> Lyndsey K. Eadler, Purging the Drug Conviction Ban on Food Stamps in California, 14 *Scholar* 117, 131 (2011).

<sup>xx</sup> Id.

<sup>xxi</sup> SNAP (Food Stamp) Benefits Analysis – Lifetime Ban for Drug Felons, Georgia Budget and Policy Institute, 1 (June 25, 2015).

<sup>xxii</sup> Id.

<sup>xxiii</sup> Marc Mauer and Virginia McCalmort, A Lifetime of Punishment – The Impact of Felony Drug Ban on Welfare Benefits, 4 (July 1, 2015),

[http://www.sentencingproject.org/detail/publication.cfm?publication\\_id=523](http://www.sentencingproject.org/detail/publication.cfm?publication_id=523).

<sup>xxiv</sup> Id.

<sup>xxv</sup> Id.

<sup>xxvi</sup> Id.

<sup>xxvii</sup> Eadler, L.K. (2011). Purging the drug conviction ban on food stamps in California. *The Scholar: St. Mary's Law Review on Minority Issues*, 14, 117-164.

<sup>xxviii</sup> Id.

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<sup>xxix</sup> See, e.g. U.S. Department of Health & Human Services Substance Abuse & Mental Health Services Admin. Results from *2011 National Survey on Drug Use and Health Survey of National Findings* (Sept. 2012), at fig. 2.11. [www.samhsa.gov/data/NSDUH/2k11Results/NSDUHresults2011.htm](http://www.samhsa.gov/data/NSDUH/2k11Results/NSDUHresults2011.htm).

<sup>xxx</sup> Id.

<sup>xxxi</sup> SNAP/Food Stamps, Food Research & Action Center, (July 1, 2015), <http://frac.org/federal-foodnutrition-programs/snapfood-stamps/>.

<sup>xxxii</sup> Julia Issacs, The Cost of Benefit Delivery in the Food Stamp Program: Lessons from a Cross Program Analysis, 7, (March 2008), [http://www.brookings.edu/~media/research/files/reports/2008/3/food-stamp-isaacs/03\\_food\\_stamp\\_isaacs.pdf](http://www.brookings.edu/~media/research/files/reports/2008/3/food-stamp-isaacs/03_food_stamp_isaacs.pdf)

<sup>xxxiii</sup> Why are Lifetime Drug Felon Bans Harmful to Children and Families Receiving SNAP/TANF?, Drug Felon Ban, 1, (July 1, 2015), <http://okpolicy.org/search-results?cx=003345318689376051588%3Aaqijklddwek&cof=FORID%3A9&ie=UTF-8&q=SNAP&sbutton=GO>.

<sup>xxxiv</sup> Id.

<sup>xxxv</sup> Id.

<sup>xxxvi</sup> Id.

<sup>xxxvii</sup> Id.

<sup>xxxviii</sup> <http://www.lac.org/toolkits/TANF/TANF.htm>