



FOOD SECURITY Issue Brief

Effect of the Denial of SNAP Benefits on Convicted Drug Felons

Introduction

Federal law bans convicted drug felons from receiving Supplemental Nutrition Assistance Program (SNAP) benefits.¹ SNAP benefits, formerly known as food stamps, provide low-income individuals with financial assistance to pay for food.² The SNAP program is fully funded by the federal government but states administer the program and share in the administrative costs.³

The ban on SNAP benefits for drug felons was part of the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and does not apply to individuals convicted of any other type of felony.⁴ Codified as 21 U.S.C. § 862a, the statute contains a provision that allows states to opt out or modify the ban without any reduction in funding.⁵ In order to opt out or modify the ban, a state must enact positive legislation.⁶ The vast majority of states have taken action, resulting in a diverse array of SNAP eligibility standards related to drug felony convictions.⁷

The SNAP program was designed to address the public health concerns caused by food insecurity and poor nutrition. The program provides low-income⁸ individuals with a stipend to purchase food at certain retailers.⁹ The money from SNAP is deposited monthly on an Electronic Benefits Transfer (EBT) card, which can be used at participating food retailers just like other forms of payment.¹⁰ Recipients may use SNAP benefits to purchase any grocery item or food planting seeds, but not hot food, alcohol, cigarettes, or household items.¹¹ In 2019, the program provided \$55.6 million worth of nutritional assistance to 35.7 million people.¹²

The denial of SNAP benefits to people with drug convictions promotes food insecurity and may negatively affect the health of the ex-offender, their family, and their community. The first part of this brief discusses the public health consequences of rescinding nutritional assistance from people with drug convictions. Given the public health implications of the felony ban, the second part of the brief surveys how states have reacted to the ban, by either leaving it in place, removing it, or modifying it.

Impact on Public Health

The ban creates three specific challenges that negatively impact public health. It promotes food insecurity and malnutrition for ex-offenders and their families; poses a barrier to reintegration into the community; and has a disparate impact on African Americans and women.



Food Insecurity and Malnutrition

The SNAP ban limits low-income ex-offenders' access to adequate nutrition. SNAP helps prevent food insecurity and malnutrition in low-income households by raising food expenditures and improving nutrient availability.¹³ The United States Department of Agriculture (USDA) defines food security as “access by all people at all times to enough food for an active, healthy life.”¹⁴ Without SNAP benefits, otherwise eligible ex-offenders are more likely to be food insecure.

Food insecurity decreases the quality of dietary intake and increases stress.¹⁵ It negatively impacts dietary intake because those who are food insecure often turn to less expensive, energy dense foods of poor nutritional quality.¹⁶ Consuming cheaper foods filled with refined grains, added sugars, and trans fats deprives them of vital nutrients.¹⁷ As a result, food insecure adults are 21% more likely to have hypertension and approximately 50% more likely to have diabetes.¹⁸ Food insecurity also correlates with being overweight and obese.¹⁹ Researchers found that food insecure adults are more likely to possess the “thrifty food gene” which increases body fat during “feast” periods to protect against “famine” periods.²⁰

Food insecurity also has psychological effects that increase long-term stress.²¹ Long-term stress increases cortisol in the blood, which in turn increases blood glucose and suppresses the immune system, digestive system, reproductive system, and growth processes.²² Overexposure to cortisol and other stress-related hormones contributes to a number of health conditions including heart disease, depression, and weight gain.²³

Because SNAP benefits are distributed by household, the ban on food assistance also affects the families of ex-offenders. Benefits are calculated based on the number of people in the household; a household of four receives benefits calculated for four people.²⁴ However, when one of the individuals in the household has a felony drug conviction, the program does not consider that person when benefits are distributed.²⁵ In that situation, a family of four would receive benefits allotted for three people. Rather than excluding the banned individual from family meals, low-income households adjust their food intake to account for the reduced amount of food.²⁶ To compound the problem, if the ex-offender contributes income to the household, that income decreases the allotment of SNAP benefits that goes to the household.²⁷

Reintegration and Recidivism

Withholding SNAP benefits from drug felons has a negative effect on communities because it is a barrier to reintegration. Since the beginning of the 1980s, there has been a 790% increase in the federal prison population.²⁸ Drug offenders constituted the largest portion of inmates entering federal prison during that time.²⁹ These and other ex-offenders will face many challenges as they reintegrate into society, including civil sanctions.³⁰

The federal ban on SNAP benefits for drug felons is one of the many civil consequences of criminal convictions that can hinder an ex-offender's ability to reenter the community.³¹ SNAP benefits provide a safety net while ex-offenders reintegrate into the community and search for employment. A felony conviction negatively affects an individual's employment prospects and economic stability.³² Unemployment is strongly associated with food insecurity.³³ Households with an unemployed adult are 12-15 percent more likely to be food insecure.³⁴

Ex-offenders that find employment are likely to experience slow wage growth compared to those without criminal records because the accessible jobs have low wage trajectories.³⁵ Low-income households are more likely to be food insecure.³⁶ Food insecure employees are more likely to experience problems in the workplace because poor nutrition and existing health concerns combine to reduce a worker's productivity.³⁷

Disparate Impact

Social justice issues exacerbate these public health challenges. Due to compounding factors, African Americans are more likely to experience the negative health consequences associated with the ban. As a general matter, Black households are more likely to be food insecure.³⁸ Black households experience food insecurity at a rate of 21.1 percent, white



households experience food insecurity at a rate of 8.1 percent, and the national average for food insecurity is 11.1 percent.³⁹ African Americans are 3.6 times more likely to receive SNAP benefits than White Americans.⁴⁰

In addition, although studies have shown that actual drug usage is roughly the same, African Americans are convicted of drug offenses at much higher rates than White Americans.⁴¹ African Americans are 10 times as likely to go to prison for a drug conviction.⁴²

The law also disproportionately affects women. Women are more likely to commit drug crimes than men.⁴³ Recent data indicates that 24.8 percent of women in state prison were incarcerated for a drug offense, compared to 14 percent of men.⁴⁴ Similarly, 56.8 percent of women in federal prison were convicted of a drug offense compared to 46.6 percent of men.⁴⁵ As a result, female ex-offenders who are reentering the community are more likely than male ex-offenders to be denied SNAP benefits.

This is compounded by the fact that women are more likely to be single parents.⁴⁶ Single women with children are more likely than single fathers and married parents to rely on SNAP benefits.⁴⁷ About 27.8 percent of households headed by a single woman are food insecure, almost 17 percentage points higher than the national average of 11.1%.⁴⁸ Many of the women convicted of drug felonies are mothers.⁴⁹ These women are statistically more likely to need SNAP benefits and will be unable to receive them because of their drug conviction. While the statute provides that the mother's ineligibility to receive SNAP benefits should not affect the child's ability to receive food assistance,⁵⁰ as discussed above, the loss of food assistance affects the entire household.⁵¹ For children, food insecurity often results not only in poor health outcomes but also delayed cognitive and behavioral development.⁵²

Clearly, the Federal Ban is not the sole cause of nutritional deficits for African Americans or any other population. Food insecurity is caused by several interrelated factors. Nonetheless, when drug conviction rates are higher for one subgroup, overall access to SNAP benefits for that group decreases. Given the higher than average drug conviction rates for African Americans, there is a disproportionate impact on the food insecurity of African American men, women, and children. As noted below, states have reacted to these risks in a variety of ways.

State Laws Reacting to the Federal Ban

The opt-out provision grants states complete control to shape SNAP eligibility requirements for convicted drug felons. As a result, a diverse array of laws and regulations have emerged. Currently, only South Carolina has left the full ban in place, 22 states and D.C. have completely opted out of the ban, and 27 states have modified the ban so that qualifying drug felons are still eligible to receive SNAP benefits. With the public health implications of the felony ban in mind, the varying approaches to modifying the ban were surveyed.

The [survey of state policies](#) revealed six common modifications to the SNAP felony ban. The three most common requirements found in the survey are drug treatment, drug testing, and parole compliance. Currently, 15 states require drug treatment and only nine require drug testing, although it is likely that drug testing may be required as a part of the "successful completion" of drug treatment. Another 16 states require those convicted of drug offenses to generally comply with parole conditions.

Three additional variables were seen less frequently. Five states disqualify an individual permanently after multiple separate convictions. Some states make a distinction between possession and distribution crimes; four states deny benefits to an individual convicted of a distribution felony, but not to an otherwise eligible "possession felon." Four states have created a specific ineligibility period linked either to the date of conviction or release from incarceration. Most states set the ineligibility period by statute, with ineligibility periods ranging from six months to one year. Arizona, however, leaves the decision of an ineligibility period and its length to the court.⁵³

In addition to the six most common requirements, some states have adopted novel modifications to the federal ban. For example, Kentucky⁵⁴ and Nevada⁵⁵ have created an exception for otherwise eligible pregnant women. This variable has obvious public health benefits, particularly given the impact of the ban on women and families.

Arguably, the 49 states and the District of Columbia that have chosen to opt out or modify the federal ban recognize the importance of preserving access to SNAP benefits for the convicted individual and members of their household. Conversely, the federal SNAP ban makes increased food insecurity a collateral consequence of a drug felony.

SUPPORTERS



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¹ 21 U.S.C. § 862a.

² *Supplemental Nutrition Assistance Program*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap>.

³ U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV., *Building a Healthy America: A Profile of the Supplemental Nutrition Assistance Program*, 2 (2012), <http://www.fns.usda.gov/sites/default/files/BuildingHealthyAmerica.pdf>.

⁴ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, §115, 110 Stat 2105, 2180 (1996).

⁵ 21 U.S.C. § 862a.

⁶ *Id.*

⁷ *See infra*, part III.

⁸ To qualify for assistance, an individual must fall below 130 percent of the federal poverty line based on gross monthly income and below 100 percent of the federal poverty line based on net monthly income, with some exceptions for households that include the elderly or disabled. *Supplemental Nutrition Assistance Program: Eligibility*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/eligibility>.

⁹ *Supplemental Nutrition Assistance Program: Eligibility*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/eligibility>.

¹⁰ *Building a Healthy America: A Profile of the Supplemental Nutrition Assistance Program*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV., 2 (2012), <http://www.fns.usda.gov/sites/default/files/BuildingHealthyAmerica.pdf>

¹¹ *Supplemental Nutrition Assistance Program: Eligible Food Items*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/eligible-food-items>.

¹² *Supplemental Nutrition Assistance Program Participation and Costs*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV., <https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAPsummary-3.pdf>.

¹³ *Building a Healthy America: A Profile of the Supplemental Nutrition Assistance Program*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV., 2 (2012), <http://www.fns.usda.gov/sites/default/files/BuildingHealthyAmerica.pdf>.

¹⁴ *Food Security in the U.S.*, U.S. DEP'T OF AGRIC. ECONOMIC RESEARCH SERV., <http://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us.aspx>.

- 15 Hilary Seligman et al., *Food Insecurity is Associated with Chronic Disease Among Low-Income NHANES Participants*, 140 J. OF NUTRITION 304, 306 Feb. 2010. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2806885/>.
- 16 *Id.*
- 17 *Id.*
- 18 *Id.*
- 19 Stephen M. Beaulieu, *Current and Prospective Scope of Hunger and Food Security in America: A Review of Current Research 3-5* (2014), http://www.rti.org/pubs/full_hunger_report_final_07-24-14.pdf.
- 20 Hilary Seligman et al., *Food Insecurity is Associated with Chronic Disease Among Low-Income NHANES Participants*, 140 J. OF NUTRITION 304, 306 Feb. 2010. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2806885/>
- 21 *Id.*
- 22 *Stress Management*, MAYO CLINIC, <http://www.mayoclinic.org/healthy-lifestyle/stress-management/in-depth/stress/art-20046037>.
- 23 *Id.*
- 24 SNAP Eligibility, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV., <https://www.fns.usda.gov/snap/recipient/eligibility>
- 25 21 U.S.C. § 862a(b).
- 26 Lyndsey K. Eadler, *Purging the Drug Conviction Ban on Food Stamps in California*, 14 SCHOLAR 117, 148 (2011).
- 27 *Id.*
- 28 NATHAN JAMES, THE FEDERAL PRISON POPULATION BUILDUP 50 (2014), <http://www.fas.org/sgp/crs/misc/R42937.pdf>
- 29 *Id.* at 4
- 30 Nora V. Demleitner, *"Collateral Damage": No Re-Entry for Drug Offenders*, 47 VILL. L. REV. 1027 (2002) (explaining the collateral consequences that follow a drug conviction).
- 31 MARC MAUER, A LIFETIME OF PUNISHMENT: THE IMPACT OF THE FELONY DRUG BAN ON WELFARE BENEFITS 5 (2013), http://sentencingproject.org/doc/publications/cc_A%20Lifetime%20of%20Punishment.pdf
- 32 Bruce Western, *The Impact of Incarceration on Wage Mobility and Inequality*, 67 AM. SOC. REV. 526, 526 (2002), http://scholar.harvard.edu/files/brucewestern/files/western_asr.pdf (According to one study, ex-inmates earn 7% less than men who have not been incarcerated).
- 33 Mark Nord et al., *Prevalence of U.S. Food Insecurity is Related to Changes in Unemployment, Inflation, & the Price of Food*, U.S. DEP'T OF AGRIC 13 (2014), https://www.ers.usda.gov/webdocs/publications/45213/48167_err167.pdf?v=0.
- 34 *Id.* at 15.
- 35 Bruce Western, *The Impact of Incarceration on Wage Mobility and Inequality*, 67 AM. SOC. REV. 526, 527–528 (2002), http://scholar.harvard.edu/files/brucewestern/files/western_asr.pdf (According to one study, ex-inmates earn 7% less than men who have not been incarcerated).
- 36 Mark Nord et al., *Prevalence of U.S. Food Insecurity is Related to Changes in Unemployment, Inflation, & the Price of Food*, U.S. DEP'T OF AGRIC. 15 (2014), http://www.ers.usda.gov/media/1489980/err167_summary.pdf; <http://www.ers.usda.gov/media/1489984/err167.pdf>
- 37 Stephen M. Beaulieu, *Current and Prospective Scope of Hunger and Food Security in America: A Review of Current Research 3-6* (2014), available at http://www.rti.org/pubs/full_hunger_report_final_07-24-14.pdf.
- 38 Coleman-Jensen et al., U.S. Department of Agriculture, Economic Research Service, *Household Food Security in the United States in 2018*, ERR-270 (2019), 14-15, <https://www.ers.usda.gov/webdocs/publications/94849/err-270.pdf?v=963.1>.
- 39 *Id.*
- 40 Arthur Delany and Alissa Scheller, *Who Gets Food Stamps? White People, Mostly*, HUFFINGTON POST (Feb. 28, 2015), http://www.huffingtonpost.com/2015/02/28/food-stamp-demographics_n_6771938.html; White Americans use more SNAP benefits overall; White Americans receive 40% of benefits and African Americans receive 26% of benefits. However, comparatively, African Americans access SNAP benefits at a higher rate because White Americans make up 77% of the U.S. population and African Americans account for 13%. *State and Country Quick Facts*, THE UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/PST045218> .
- 41 *Decades of Disparity*, HUMAN RIGHTS WATCH, <https://www.hrw.org/report/2009/03/02/decades-disparity/drug-arrests-and-race-united-states> .
- 42 *Criminal Justice Fact Sheet*, NAACP, <http://www.naacp.org/pages/criminal-justice-fact-sheet>.
- 43 Jennifer Bronson and E. Ann Carson, *Prisoners in 2017*, U.S. DEP'T OF JUSTICE, 21-24 (April 2019), <https://www.bjs.gov/content/pub/pdf/p17.pdf>.

⁴⁴ *Id.* at 21.

⁴⁵ *Id.* at 23.

⁴⁶ Jonathan Vespa et al., *America's Families and Living Arrangements: 2012*, U.S. CENSUS BUREAU 13 (Aug. 2013), <https://www.census.gov/prod/2013pubs/p20-570.pdf>.

⁴⁷ Jessica A. Bean, *Reliance on Supplemental Nutrition Assistance Program Continued To Rise Post-Recession*, CARSEY INSTITUTE 2 (2011), <http://scholars.unh.edu/cgi/viewcontent.cgi?article=1151&context=carsey>.

⁴⁸ Coleman-Jensen et al., U.S. Department of Agriculture, Economic Research Service, *Household Food Security in the United States in 2018*, ERR-270 (2019), 14, <https://www.ers.usda.gov/webdocs/publications/94849/err-270.pdf?v=963.1>.

⁴⁹ Lauren E. Glaze and Laura M. Maruschak, *Bureau of Justice Statistics Special Report: Parents in Prison and their Minor Children*, U.S. DEP'T OF JUSTICE (March 30, 2010), <http://www.bjs.gov/content/pub/pdf/pptmc.pdf> (55% of female drug offender in federal prison and 63% of female drug offenders in state prison report having minor children).

⁵⁰ 21 U.S.C. § 862a(b).

⁵¹ Lyndsey K. Eadler, *Purging the Drug Conviction Ban on Food Stamps in California*, 14 SCHOLAR 117, 148 (2011).

⁵² Stephen M. Beaulieu, *Current and Prospective Scope of Hunger and Food Security in America: A Review of Current Research* 3-1 (2014), http://www.rti.org/pubs/full_hunger_report_final_07-24-14.pdf.

⁵³ Ariz. Rev. Stat. Ann. § 13-3418.

⁵⁴ Ky. Rev. Stat. Ann. § 205.2005, 921 Ky. Admin. Regs. 3:025.

⁵⁵ Nevada requires a certification by a doctor that the health of the mother and the unborn child depend on receiving SNAP benefits. Nev. Rev. Stat. Ann. § 422A.345