

The Lifetime Ban and the Missouri Food Stamp Program

By James Frost, Legal Services of Eastern Missouri, January 2008

In 1996, Congress passed legislation that permanently prohibits individuals convicted of drug-related felonies from receiving Food Stamp benefits. Section 115(d) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 allowed states to “opt out” of this provision¹ and, to date, 36 states and the District of Columbia have exercised their option to “opt out” of the lifetime Food Stamp ban for individuals convicted of drug-related felonies.² Missouri, however, is not one of these states and, consequently, does not allow individuals convicted of drug-related felonies to receive benefits from the Missouri Food Stamp Program. In Missouri, 16,249 individuals are currently subject to the lifetime ban according to state data and another 5,931 individuals currently in prison for drug-related offenses will be subjected to the ban upon their release.³ This paper provides a brief analysis of the “lifetime ban” and its impact upon these individuals as well as upon the State.

“It seemed like a great injustice had been done by Congress in placing this lifetime ban on eligibility for food stamps for those who have been convicted of drug felonies. It only becomes more clear when you realize that someone could have served time for murder, rape, child molestation, bank robbery and be eligible [for food stamps].”

— Mark Leno, California State Assemblyman, April 2005, as reported by <http://www.thestreetspirit.org/April2005/foodban.htm>.

A. The “Lifetime Ban” Arbitrarily Subjects People Who have been Convicted of Drug Felonies to “double jeopardy.”

People convicted of more severe felonies – e.g. murder, rape, kidnapping, or assault – can apply for and receive benefits from the Missouri Food Stamp Program while people convicted of drug-related felonies cannot. This results in “double jeopardy” for individuals convicted of drug-related felonies: they are punished a *second* time – without the benefit of a trial or a jury – after they have *already* served their sentence in prison. No other crime carries this extra penalty. Such a ban is arbitrary because it primarily targets people who have chemical dependency, which is one of the most difficult addictions to combat.⁴ Moreover, as can be seen below, the ban does not act as a deterrent to drug-related offenses and, in fact, *negatively* affects drug ex-convicts struggling to overcome their dependency and return to society, children of drug ex-convicts, and programs that are designed to assist drug ex-convicts overcome their dependency.

B. The “Lifetime Ban” has been shown to be ineffective as a deterrent and to negatively impact drug ex-convicts and their children, as well as the programs that try to assist drug ex-convicts.

Instead of serving as an effective deterrent to drug-related felonies, the lifetime ban contributes to a difficult situation that drug felons face upon being released from prison. It is well known that these individuals have an extremely difficult time finding employment. Consequently, the failure to provide sufficient assistance – including Food Stamps – to former drug felons may cause them to commit additional drug-related felonies to make ends meet.⁵ Increased recidivism, therefore, increases Missouri’s criminal justice costs. Opting out of the ban, however, has the potential to reduce recidivism, reduce costs to the state, and pump additional *federal* dollars into Missouri.⁶

Additionally, one study has found that “a large number of families served by child welfare agencies have substance abuse problems, [the “lifetime ban”] 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.”⁷

Moreover, the lifetime ban negatively affects many substance abuse programs that depend on public assistance for their participants to help cover the nutrition costs for residential treatment.⁸ Missouri policymakers should carefully consider the effectiveness of such a ban as well as the savings and increased federal dollars that potentially could result from opting out of the “lifetime ban.”

*“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.**”*

— Sheila Floyd, a former drug convict, quoted in Washington Citizen Action and The Northwest Federation of Community Organizations, *Freed Today, Hungry Tomorrow: An Assessment of the Drug Felony Disqualification in Washington’s Food Stamp Program*, February 2003 at 11 (hereinafter “Washington Citizen Action Report”) (emphasis added).

C. The “Lifetime Ban” Disproportionately Impacts Certain Populations.

Research shows that African Americans comprise 13 percent of the population that abuse drugs yet they comprise 55 percent of those convicted of drug-related offenses.⁹ Consequently, the Food Stamp lifetime ban disproportionately affects African Americans. In fact, a report quoted an article of the Harvard Law Review analyzing the lifetime food stamp ban:

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

Women are another group that is disproportionately affected by the lifetime ban in states that have chosen not to opt out of the ban for their Food Stamp Programs. In Missouri, 30.4 percent of incarcerated women are in prison for drug offenses while only 18.7 percent of incarcerated men are in prison for drug offenses.¹¹ Clearly, more women than men are currently and will be subject to the lifetime ban.

Given that enforcement is disproportionately focused on African Americans, Hispanics and women, the State should seriously examine the lifetime ban's effectiveness in combating drug use. The State should certainly consider whether such a ban is desirable in light of this disproportionate impact as well as whether there are more successful methods that it could adopt in place of the lifetime ban.

D. The “Lifetime Ban” Is Not Cost-Efficient for these Individuals As Well As For the State.

Denying Food Stamp benefits to people convicted of drug-related felonies is clearly not cost-effective for these individuals because it denies them access to a vital benefit that allows a basic need – food – to be met. The lack of access to food has a wide range of negative consequences for these individuals – hunger, increased medical problems, inability to secure a job – and results in higher social and economic costs to these individuals, as well as the State, through loss of productivity, loss of economic activity and higher medical costs.

Lifting the ban, however, would infuse substantial federal Food Stamp dollars into the state's economy. The Missouri Association for Social Welfare (MASW) recently released a report regarding the positive economic impact that would result from a decision by Missouri to opt out of the lifetime food stamp ban: the State would gain a total of \$14.6 million in new Food Stamp benefits (which are 100 percent federally funded) and additional economic activity in the amount of \$27 million.¹² In addition, there is likely to be substantial savings in incarceration costs that would result from opting out of the lifetime ban.¹³ Thus, there are substantial economic benefits to opting out of the lifetime Food Stamp ban and Missouri policymakers should carefully consider these benefits.

*“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 is also a basic human right. Hunger and insufficient nutrition can lead to immediate and long-term health problems. A lack of proper nutrition weakens the immune system and increases the risk of chronic diseases. In addition, hunger and malnutrition make it difficult to be productive and hold a steady job. **No one deserves to be denied food.**”*

— Washington Citizen Action Report at 6 (emphasis added).

E. Conclusion

As the foregoing discussion demonstrates, the lifetime ban on giving Food Stamp benefits to people convicted of drug-related felonies carries severe consequences as well as the injustice of punishing drug convicts again for the same crime while no other ex-convict faces the same punishment. Opting out of the lifetime ban would eliminate these severe consequences and would deliver savings and additional economic benefits to Missouri. Therefore, policymakers in Missouri should carefully consider whether opting out of the lifetime ban would be in the best interests of Missouri and its poorest citizens.

Endnotes

¹ Adams, Rukaiyah, David Onek and Alissa Riker, *Double Jeopardy: An Assessment of the Felony Drug Provision of the Welfare Reform Act*, Center on Juvenile and Criminal Justice, 1998 (hereinafter “Double Jeopardy Report”)(available at: <http://www.cjcj.org/pubs/doublejep/doublejep.html>). This is sometimes known as the “Gramm Amendment” and was introduced and passed within minutes without the benefit of extensive debate.

² United States Department of Agriculture, Food and Nutrition Service, *Food Stamp Program State Options Report, Sixth Edition*, October 2006, at 21 (available at: http://www.fns.usda.gov/fsp/rules/Memo/Support/State_Options/sixth/options.pdf). Of these 37 states, 15 states and the District of Columbia have completely opted out of the lifetime food stamp ban. *Id.* at 21. For more information on how the majority of states are modifying the ban or opting out of the ban entirely, see St. Louis Area Food bank, *Economic Impact Analysis: Lifetime Food Stamp Ban*, undated (hereinafter “Economic Impact Fact Sheet”); Washington Citizen Action and The Northwest Federation of Community Organizations, *Freed Today, Hungry Tomorrow: An Assessment of the Drug Felony Disqualification in Washington’s Food Stamp Program*, February 2003 (hereinafter “Washington Citizen Action Report”)(available at: http://www.nwfc.org/02-07-03_WA_drug_felony_report.pdf).

³ Missouri Association for Social Welfare, *Lifetime Food Stamp Ban: Economic Impact Study*, January 2008. Missouri Department of Corrections statistics as of January 24, 2008, available at www.doc.mo.gov. There are 16,249 individuals coded in the Family Support Division’s data base as being currently subject to the ban. These include individuals who have either applied for food stamps or TANF or have been reported to the state agency by local law enforcement authorities. In addition, there are 950 individuals who are part of an active Food Stamp case but are not receiving benefits as part of the household due to the lifetime ban, e.g. the household does not get as much Food Stamp benefits as it would have otherwise gotten if the individual was not subjected to the lifetime ban. The number actually subjected to the ban is larger as it includes individuals who have not applied or are not otherwise coded in the State Agency’s FAMIS computer data base.

There are 5931 Missourians in prison for drug offenses. This number does not include probationers or parolees.

⁴ Washington Citizen Action Report at 6 (noting that many individuals convicted of drug-related crimes are also battling chemical dependency).

⁵ National H.I.R.E. Network, *The Lifetime Ban on TANF Cash Assistance and Food stamps for Individuals with Felony Drug Convictions*, undated (available at http://www.hirenetwork.org/pdfs/01lift_ban_on_tanf.pdf) (hereinafter “HIRE Lifetime Ban Report”). See also Washington Citizen Action Report at 9; Double Jeopardy Report at 3; Economic Impact Fact Sheet.

⁶ See Family Life Center, *Policy Brief: Removing the FIP/Food Stamp Disqualification for Ex-Offenders Convicted of Drug Felonies*, undated (available at: http://www.familylifecenter.org/pagetool/reports/FoodStampFIP_PolicyBrief.pdf). In fact, a study found that helping just two parents from re-offending and being sent to prison would result in savings of \$94,976 in incarceration costs

and \$47,488 in foster care costs for Rhode Island. *Id.* Not only would Rhode Island potentially reap substantial savings from opting out of the Food Stamp lifetime ban, it would realize an influx of federal dollars estimated to be about \$57,000 annually and realize additional economic activity valued at \$110,400. *Id.* Similarly, Missouri would most likely reap substantial savings, additional federal dollars and additional economic activity from opting completely out of the ban.

In yet another example, in 2002, Washington Governor Gary Locke proposed plans to speed up implementation of a new sentencing grid and to increase the amount of “good time” that an offender could earn in prison. These plans were estimated to save \$100 million by reducing the number of non-violent offenders in prison by 1,200. Of these 1,200 individuals, 900 were convicted of drug-related offenses. Washington Citizen Action Report at 10. These savings may not have been realized since many of these individuals might have returned to prison due to the lack of support from the state’s food stamp program as a result of the lifetime ban. Washington eventually abandoned its “modified ban” and opted out of the ban entirely.

⁷ Rob Geen and Shelley Waters, *The Impact of Welfare Reform on Child Welfare Financing*, The Urban Institute, November 1997, at 5 (hereinafter “Child Welfare Financing Report”)(available at: http://www.urban.org/UploadedPDF/anf_16.pdf); Double Jeopardy Report at 2; Washington Citizen Action Report at 4.

⁸ Double Jeopardy Report at 3. A survey of fourteen residential treatment programs was conducted by the California Association of Addiction Recovery Resources to determine the extent that these programs rely on public benefit dollars – including Food Stamp dollars – prior to the lifetime ban. The survey indicated that 69 percent of the programs’ food expenses were covered by Food Stamps and that the projected loss to these programs was \$705 per bed per year. *Id.* at 3.

⁹ Redemptorist Social Services Center, *Information Sheet: Lifetime Food Stamp Ban*, undated.

¹⁰ Double Jeopardy Report at 2.

¹¹ Larry Crawford, *A Profile of the Institutional and Supervised Offender Population on June 30, 2007*, Missouri Department of Corrections, released on January 14, 2008, at 13 (available at: <http://www.doc.mo.gov/pdf/Offender%20Profile%20FY07.pdf>). Other states follow this trend. For example, in California, 42 percent of incarcerated women are incarcerated because of a drug felony conviction while just 27 percent of incarcerated men are due to drug felony convictions. Double Jeopardy Report at 3. In fact, according to the National H.I.R.E. Network, women’s incarceration has grown at nearly double the rate for men in the last two decades. HIRE Lifetime Ban Report at 2.

¹² Missouri Association for Social Welfare, *Lifetime Food Stamp Ban: Economic Impact Study*, January 2008. In addition, the State’s Food Stamp administrative costs related to opting out of the lifetime ban are likely to be minimal. *Id.*

¹³ See endnote 6, *supra*.