



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Suite 1, Room 311
410 Federal Street
Dover, Delaware 19901
302-739-3621

The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: December 18, 2017

TO: Ms. Nicole Cunningham, DMMA
Planning & Policy Development Unit

FROM: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

RE: 21 DE Reg. 477 [DSS Proposed Drug Conviction Bar on TANF Eligibility (12/1/17)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services (DSS) proposal to amend its eligibility standards for the Temporary Assistance for Needy Families (TANF) program. The proposed regulation was published as 21 DE Reg. 477 in the December 1, 2017 issue of the Register of Regulations.

As background, the attached H.B. No. 11 was enacted in 2017 with an effective date of July 28, 2017. The legislation repealed a lifetime statutory ban on TANF eligibility for individuals with a felony drug conviction. The synopsis to the bill provides the rationale for the initiative. The SCPD and GACEC had endorsed the legislation and included a supporting Delaware News Journal editorial in their commentary. See attached March 20, 2017 SCPD memorandum.

The proposed regulation implements H.B. No. 11 by striking the DSS regulation which imposed the drug conviction eligibility ban. It is essentially a "housekeeping" measure to conform to the bill. The only identified regulatory feature of interest is the difference between the attached H.B. No. 11 fiscal note (projecting \$33,810 10-month State funds impact in SFY18) and the regulation's fiscal impact of \$312,012 12-month State funds impact in FFY18). The difference is significant and it's possible the \$312,012 figure is inaccurate.

Given the strong support of repeal of the statutory drug conviction ban on TANF eligibility, the SCPD is endorsing the proposed regulation. The SCPD also suggests that DSS review the "fiscal impact" section given its divergence from the fiscal note in H.B. No. 11.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position and recommendation on the proposed regulation.

cc: Mr. Ray Fitzgerald, DSS
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

21reg477 dss drug conviction bar on TANF 12-11-17



SPONSOR: Rep. Bentz & Sen. McDowell & Rep. Heffernan
Reps. Baumbach, J. Johnson, Kowalko, Longhurst, Viola;
Sens. Henry, Townsend, Hansen, Lopez, Poore

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 11

AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE RELATING TO ELIGIBILITY FOR PUBLIC ASSISTANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 5, Title 31 of the Delaware Code by making deletions as shown by strikethrough and
2 insertions as shown by underline as follows:

3 § 524. Eligibility for Temporary Assistance for Needy Families.

4 Pursuant to the option granted the State by 21 U.S.C. § 862a(d)(1), an individual convicted under federal or state
5 law of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the
6 possession, use, or distribution of a controlled substance shall be exempt from the prohibition contained in 21 U.S.C. §
7 862a(a) against eligibility for assistance under 42 U.S.C. 601 et seq. if the individual is otherwise eligible for assistance
8 under the Temporary Assistance for Needy Families (TANF) funded program.

9 Section 2. This Act shall take effect 30 days after its enactment into law.

SYNOPSIS

This Act removes the prohibition against receipt of Temporary Assistance for Needy Families ("TANF" also referred to by the name Aid for Families with Dependent Children or "AFDC") funds by persons convicted of a drug felony, so long as that person is otherwise eligible for TANF assistance.

Even though federal laws such as PRWORA passed during the War on Drugs frequently prohibited access to public assistance for persons with drug felonies, these laws also gave states flexibility in determining eligibility for food aid and cash assistance for families with children when applicants had a criminal conviction. The majority of states have limited the federal bans in whole or in part. In 2011, Delaware opted out of restrictions on food aid, but it has not opted out of or limited federal restrictions on TANF—the cash assistance program that is the principal form of assistance available to most families in poverty to pay for things like electricity bills or school supplies.

Under existing law, individuals convicted of any state or federal drug felony, including possession of marijuana (which can be a felony under federal law), are ineligible for TANF for life. Although the children of a parent convicted of a drug crime can still receive assistance, the family's overall award is significantly reduced, and in practice this affects the well-being of families and children.



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The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: March 20, 2017

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

RE: H.B. 11 (Removal of Bar on TANF Eligibility Based on Drug Conviction)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 11.

As the synopsis indicates, federal laws passed during the War on Drugs frequently barred access to public assistance programs for persons with drug felonies while allowing states to “opt out” of such bans. Most states have adopted limited or full “opt outs”. In 2011, Delaware removed the ban on drug felon eligibility for the Food Supplement Program (formerly “Food Stamps”) through enactment of S.B. No. 12. The SCPD endorsed that legislation. See attached January 25, 2011 SCPD memorandum. At that time the Council noted the common co-occurrence of substance abuse with mental health and other disorders. The Council also observed that limits on access to safety-net programs undermine successful reintegration of persons released from prison into the community. Last year, a Delaware News Journal editorial made the same point in supporting a prior version (H.B. 365) of H.B. No. 11. See attached May 18, 2016 article, “TANF Bill Sensible Step in Prison Reform”. The article reported that 24 states had adopted at least limited “opt outs” of the federal bans on TANF and Food Supplement Program eligibility. The editorial also linked access to such safety-net programs to lower recidivism rates.

The TANF program has been long-recognized as an important resource for persons with disabilities. See National Council on Disability Position Paper, “TANF and Disability-Importance of Supports for Families with Disabilities in Welfare Reform” (March 14, 2003), published at <https://www.ncd.gov/publications/2003/Mar52003>. See also MDRC report, “Assessing and Serving TANF Recipients with Disabilities” (December, 2013), published at

<http://www.mdrc.org/publication/assessing-and-serving-tanf-recipients-disabilities> [noting that 40% of adult TANF clients may have a mental or physical disability]. The legislation would therefore have a disproportionate beneficial effect on persons with disabilities. The Councils may wish to consider sharing a positive analysis of this initiative with policymakers.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations on the proposed legislation.

cc: Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

HB 11 removal of bar on tanf eligibility based on drug conviction 3-20-17



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: January 25, 2011

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: S.B. 12 [Removal of Bar on Food Supplement Program Eligibility Based on Drug Conviction]

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 12 which removes the prohibition against persons convicted of any drug felony from receiving federal food benefit assistance. As background, the current statute (Title 31 Del.C. §605) bars Food Supplement Program (a/k/a Food Stamps) eligibility for persons convicted of drug felonies subject to some exceptions. S.B. 13 would result in the following simplified §605:

Pursuant to the option granted the State by 21 U.S.C. §862a(d)(1), an individual convicted under federal or state law of a felony involving possession, distribution or use of a controlled substance shall be exempt from the prohibition contained in 21 U.S.C. §862a(a) against eligibility for food stamp program benefits for such convictions.

SCPD endorses the proposed legislation which would have the same effect as legislation (S.B. 255) introduced in the last General Assembly. Council has the following observations.

Given the common co-occurrence of substance abuse with mental health and other disorders, the bill would ostensibly enhance flexibility in State "safety net" programs. On a practical level, if a person lacks access to basic sustenance for self and family, the prospect for recidivism may increase. The attached December 17, 2009 article notes that enforcement of the ban seriously undermines successful reintegration of persons released from prison into the community and has a disproportionate effect on women. The House Committee report on the predecessor bill noted the favorable effect on inmate transition efforts:

Committee Findings: The committee found that this law legalizes Delaware's "opt out"

option from the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The committee also found that this bill aligns with the state's prisoner re-entry effort.

Moreover, it is anomalous to bar food benefits from a person convicted of a drug offense when no such bar exists under federal law for persons convicted of other crimes (e.g. murder; rape).

Consistent with the attached May 10, 2010 DHSS memo commenting on the predecessor bill, at least nineteen (19) states have already lifted the lifetime drug felony conviction ban altogether.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: The Honorable Jack A. Markell
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

sb 12 food stamp bar 1-25-11

Susan D. Leath President and Publisher
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OPINION



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delawareonline.com/opinion

EDITORIAL TANF BILL SENSIBLE STEP IN PRISON REFORM

Don't let the headline fool you. A bill to "let drug felons get public assistance" isn't some kind of bleeding-heart effort to coddle criminals. It's actually a sensible, if not small, step for Delaware to help its future.

The federal Temporary Assistance for Needy Families program is the primary government cash-assistance program for low-income families with children, designed to help adults get by as they try to get a stable job.

The monthly benefits depend upon the size of the family: a family with one child receives \$201, while a family of eight can get \$681. A family can receive TANF benefits for no more than 36 months. During that time, an adult in the family must either work or participate in "work-related activities," like searching for a job, for 30 hours a week. Hardliners may decry "cons" living on the "government dime," but lest we forget that Delaware

struggles to transform inmates into productive citizens once they serve their sentences. Our state's recidivism rate is about 50 percent after a year and 77 percent by three years.

A study by the Kaiser Family Foundation found Delaware was one of 11 states to spend more of their general funds on corrections than on higher education in 2013.

Long story short, we are pouring money down the prison hole as thousands of young lives — mostly those of black men — are flushed away, as are the hopes of their kids, who, too often, follow the same path.

Delaware is not the first state to learn this lesson and recognize the need to address it. According to the Legal Action Center, 24 other states have modified — but not entirely eliminated — the federal ban on food stamps and TANF to those convicted of drug felonies.

Still, drug felons leave prison with, in some cases, hundreds of hurdles to overcome.

Consider this from the Alliance for a Just Society: On average, states have 123 mandatory bans and restrictions for would-be workers with felony convictions per state from employment in occupations or industries, from obtaining certain types of occupational licenses, and/or from obtaining certain types of business or property licenses. 10 states have more than 160 of these regulations, including 248 in Texas, 258 in Illinois, and 389 in Louisiana. Only nine states have fewer than 75 regulations.

Massachusetts has 70 such regulations. As of 2013, its three-year rate was 39 percent. In 2011, Louisiana, with its 389 regulations and the highest per-capita incarceration rate in the country, had a five-year recidivism rate of 48 percent.

Remember Delaware's numbers? 50 and 77 percent, respectively. Every convicted drug felon must serve their sentence. It's what happens after that sentence that determines our future as a society.



149th GENERAL ASSEMBLY
FISCAL NOTE

BILL: HOUSE BILL NO. 11
SPONSOR: Representative Bentz
DESCRIPTION: AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE RELATING TO ELIGIBILITY FOR PUBLIC ASSISTANCE.

ASSUMPTIONS:

1. This Act is effective upon its enactment.
2. This Act removes the prohibition against receipt of Temporary Assistance for Needy Families (TANF) funds by persons convicted of a drug felony. TANF is the cash assistance program that is the principal form of assistance available to most families in poverty to pay for things like electricity bills or school supplies.
3. Currently, the children can receive TANF even if an adult is disqualified. Thus, this Act would increase the household payment by \$69.00 if Delaware allowed a drug felon parent to be included in the grant.
4. There are currently 49 drug felon parents participating in TANF. Assuming the grant would increase these families by \$69.00, the monthly additional cost of adding these clients would be \$3,381 a month or \$40,572 annually.
5. Due to client notice requirements and necessary computer system changes there will be a delay in the implementation of this requirement. As a result of these delays, the costs estimates reflect 10 month funding for the first year and the annualization of funding for the second and third years.

Cost:

Fiscal Year 2018: \$33,810 (10 month funding)
Fiscal Year 2019: \$40,572
Fiscal Year 2020: \$40,572

Prepared by Kimberly Reinagel-Nietubicz
Office of the Controller General