

Removing Counterproductive Public Assistance Bans for Formerly Incarcerated Nebraskans REDUCING HUNGER, POVERTY, AND RECIDIVISM IN NEBRASKA COMMUNITIES

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INTRODUCTION

Food insecurity and hunger plague a significant and increasing number of households in Nebraska.¹ According to Feeding America, a nonprofit network of food banks across the country, approximately one in every nine Nebraskans is food insecure.^{1,2} Hunger presents even greater problems for youth in the state as one in every six children in Nebraska is food insecure.²

The challenges of food insecurity are especially prevalent and severe in minority communities. According to the United States Department of Agriculture, national averages show that African Americans are 2.4 times more likely to be food insecure than white Americans, and Latino Americans are 2.05 times more likely to be food insecure than white Americans.³ While 1 in 10 Nebraskans on average live below the poverty line, over 20% of African Americans, Native Americans, Asian Americans, and Latino Americans live in poverty in Nebraska.⁴

While hunger and poverty are urgent threats facing Nebraskans today, essential assistance programs including the Supplemental Nutrition Assistance Program (“SNAP,” formerly known as the “Food Stamp Program”) and Temporary Assistance for Needy Families (“TANF,” formerly Aid to Families with Dependent Children) provide life-saving support for Nebraskans struggling to make a living and put food on the table.

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)

SNAP provides nutritional support in the form of education, work programs, and financial allowances. Households eligible for SNAP largely consist of low-income working families, individuals with disabilities, and low-income seniors.⁵ Participating Nebraska households receive benefits through an EBT card—which works similar to a debit card—that can be used at qualifying stores to purchase food. The amount of monthly benefits received is

determined by the household’s size and level of need.⁵ Participation in SNAP is temporary. Most households of individuals without dependent children are subject to a three-month limit on program participation.⁵ Overall, researchers have shown that households participate in SNAP for only “seven to nine months on average.”⁶ Benefits provided by SNAP are paid for entirely by the federal government. Costs of administering SNAP, a duty of state governments, are split equally by the state and the federal government.

SNAP is an effective and efficient program. Economists estimate that every \$1 increase in SNAP benefits allotted generates \$1.70 in economic activity.⁷ According to the Congressional Budget Office, SNAP provides the most economic growth and job creation per dollar spent in relation to a variety of federal policies.⁷ The assistance program is also extremely successful at responding to crises. This has been demonstrated in its effectiveness at reaching households struggling during the recession, the recent SNAP allotment approved for Nebraskans affected by flooding, and the approval of increased EBT funds for hungry children affected by the COVID-19 pandemic.⁷⁻¹¹

Research has demonstrated that receiving SNAP benefits reduces the “likelihood of being food insecure by roughly 30% and reduces the likelihood of being very food insecure by 20%.”¹³

Most importantly, SNAP reduces the number of individuals and children facing hunger and poverty. Participation in SNAP has repeatedly been shown to significantly reduce the prevalence of food insecurity, especially among children.¹²⁻¹⁴ In one study, economists estimated “that receipt of SNAP benefits reduces the likelihood of being food insecure

by roughly 30% and reduces the likelihood of being very food insecure by 20%.¹³ Overall, the research on SNAP effectiveness has overwhelmingly demonstrated that households face significantly lower rates of food insecurity as SNAP allowances increase and as the duration of participation in SNAP grows.¹⁵

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

TANF provides a variety of services to assist “families with children when the parents or other responsible relatives cannot provide for the family’s basic needs.”¹⁶ TANF is administered as a federal block grant to the states and additional funding is received from statutorily-required state spending called “maintenance of effort” (MOE) funding.

TANF funds are used to administer programs that promote goals set out in the 1996 statute including the promotion of the family unit, job preparation, and self-sufficiency of households.^{16,17} While most associate TANF with the cash assistance provided to participants, states also utilize funding to provide a variety of other programs that achieve these goals. In Nebraska, TANF includes programs to assist participants in finding employment and sometimes provide child care, transportation, and other services for participating families.

Support provided through TANF assists some of the country’s most vulnerable households. While the relatively young program presents many opportunities for reform and improvement, participation in TANF can be life-changing for those who benefit from its programs. As researchers at the Center on Budget and Policy Priorities explain, struggling “families need cash income to pay their rent and utilities, purchase personal care items such as laundry detergent, toothpaste, or toilet paper, and pay co-payments for their medication, among other needs. Lack of financial resources to address these basic needs often puts families on a downward spiral, making it even harder to get back on their feet.”¹⁸ Receiving TANF cash assistance greatly mitigates these financial struggles for participants, giving households funds to pay bills and rent, and provide other necessities for their family.

ELIGIBILITY

Research has proven the effectiveness of both SNAP and TANF at improving many facets of wellbeing at the

individual, household, and community levels. However, the impactful assistance provided to families by SNAP and TANF is not available to all Americans affected by poverty. In fact, SNAP and TANF assistance is often denied to a group of Nebraskans that faces some of the most frequent and severe hardships: individuals re-entering society after incarceration.

In the 1990s, Congress and the Clinton Administration passed reforms, largely as part of the Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”), which drastically altered federal public assistance programs. Among these reforms is a provision of the PRWORA often referred to as the Gramm Amendment. The amendment codified as §115 of the PRWORA “permanently denies cash assistance and food stamps to anyone convicted under state or federal law of a felony offense that ‘has as an element the possession, use, or distribution of a controlled substance.’”¹⁹

Acknowledging the harmful implications of the PRWORA’s policy, 49 states have opted out of the ban for SNAP eligibility and 42 states have opted out of the ban for TANF eligibility since 1996.

With the passage of the PRWORA, anyone convicted of a drug-related felony after the legislation’s signing would be banned for life from essential economic relief programs. However, to create flexibility among state welfare policies, part (d) of §115 of the PRWORA allows states to opt out of the ban on eligibility for individuals convicted of drug felonies. Such flexibility has, in practice, allowed states to pass legislation either opting out of the PRWORA ban completely or creating modifications to the ban. Since 1996, almost all states have chosen to entirely opt out of the ban or modify its application to SNAP and TANF applicants in their jurisdiction. This trend in legislation demonstrates a growing consensus that the ban is not productive and harms already vulnerable individuals and families.

Despite this growing trend, Nebraska remains one of only eight states in the nation that maintains the full PRWORA ban on TANF eligibility. Nebraska has also only slightly modified the PRWORA ban on SNAP eligibility, maintaining some of the strictest eligibility

requirements in the country for this class of individuals. Research supports that the continuing restrictions on eligibility for individuals convicted of drug-related felonies exacerbate the profound challenges faced by vulnerable individuals and households affected by the 1996 law. Through aggravating these obstacles, Nebraska's rules on eligibility for SNAP and TANF: create additional barriers to successful re-entry for formerly convicted individuals; impede on successful substance abuse interventions; fuel criminal and risky activities motivated by poverty and food insecurity; and disproportionately harm children, women, and people of color. Thus, REACH suggests that Nebraska should join the majority of the country in mitigating the public health and safety concerns associated with the policy by opting out of §115 of the PRWORA entirely.

ISSUE

The 1996 law that bans certain formerly incarcerated individuals from receiving SNAP and TANF continues to harm vulnerable families and cause unforeseen consequences for the public health and safety of Nebraskans.

RE-ENTRY CHALLENGES EXACERBATED

A large body of research has documented the struggles of an incarcerated individual's re-entry into society. Many of these obstacles, constitute what some scholars call the "collateral consequences" of sentencing, policies that continue to adversely affect formerly convicted persons long after their release from jail or prison. In addition, challenges relating to employment, housing, debt, and relationships are cited as the most significant barriers to re-entry by social workers and the formerly incarcerated themselves.^{20,21} The public assistance ban exacerbates these re-entry challenges for individuals with drug-related felony convictions, a population that is already likely to come from a background of financial hardship to begin with.

Most of all, the PRWORA ban worsens the financial stability of already vulnerable individuals and their families. Most individuals who re-enter society following their sentences are in debt from the aggregation of costs associated with incarceration. These costs include enormous "legal expenses and collect phone calls to family," and are compounded by making a wage of "only pennies an hour" for years while incarcerated.^{20,22,23} Upon release, individuals receive little monetary

support in the form of "gate money." According to the Nebraska Department of Correctional Services re-entry handbook, incarcerated individuals receive a maximum of \$100 in gate money and a bus ticket upon release from a Nebraska correctional facility.²⁴

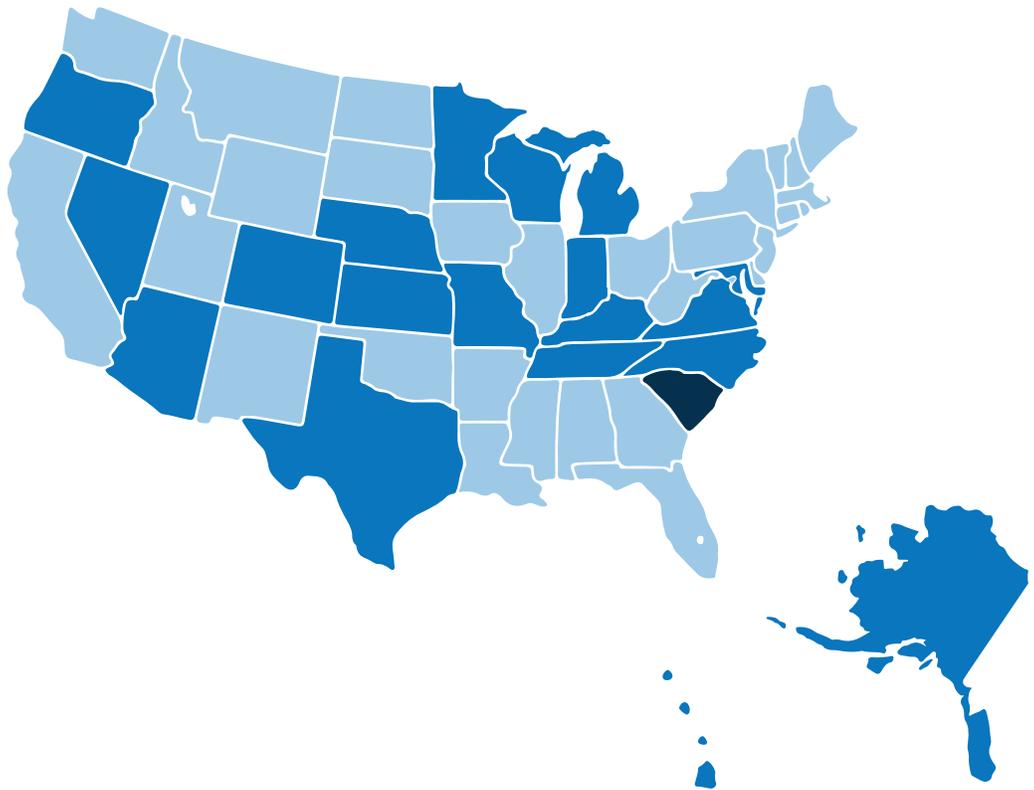
Individuals with felony convictions often re-enter society without the means and support to find affordable housing, pay off existing debt, and support themselves and family members through legitimate means of employment.

These initial challenges set the stage for further financial struggles associated with re-entry, especially those related to finding employment. Researchers have found that finding employment is especially difficult for those re-entering society after incarceration due to company hiring restrictions, stigma, and general lack of training and education.^{21,22,25} According to a 2018 study published by the Prison Policy Initiative, unemployment among formerly incarcerated people is estimated to be around 28%. Formerly incarcerated individuals with felony convictions likely face even higher rates of unemployment due to further stigmatization and the result of policies that specifically affect their ability to obtain occupational licenses and some forms of public employment. Employment challenges are also heightened for people of color as the unemployment rates for formerly incarcerated Black women and men are estimated to be 40% and 34% respectively.²⁵

Moreover, those formerly incarcerated individuals who are lucky enough to find employment generally resort to working low-skill, low-wage jobs. A recent study by economists at Brookings and the Federal Reserve Board found that "among those who do find work, half earn less than \$10,090 a year," while other researchers have shown that previously incarcerated individuals make less than 82% on average of their pre-conviction wage.^{21,26} With these financial circumstances, it is no surprise that many individuals with felony convictions re-enter society without the means and support to find affordable housing, pay off existing debt, and support themselves and family members through legitimate means of employment. Most households with these levels of financial need

SNAP Policy Map

According to state laws current as of May 2020, 49 states and D.C. have chosen to modify or entirely opt out of the PRWORA ban on eligibility for SNAP. Nebraska has modified the ban, but imposes restrictive eligibility requirements, maintaining one of the strictest policies across the United States.

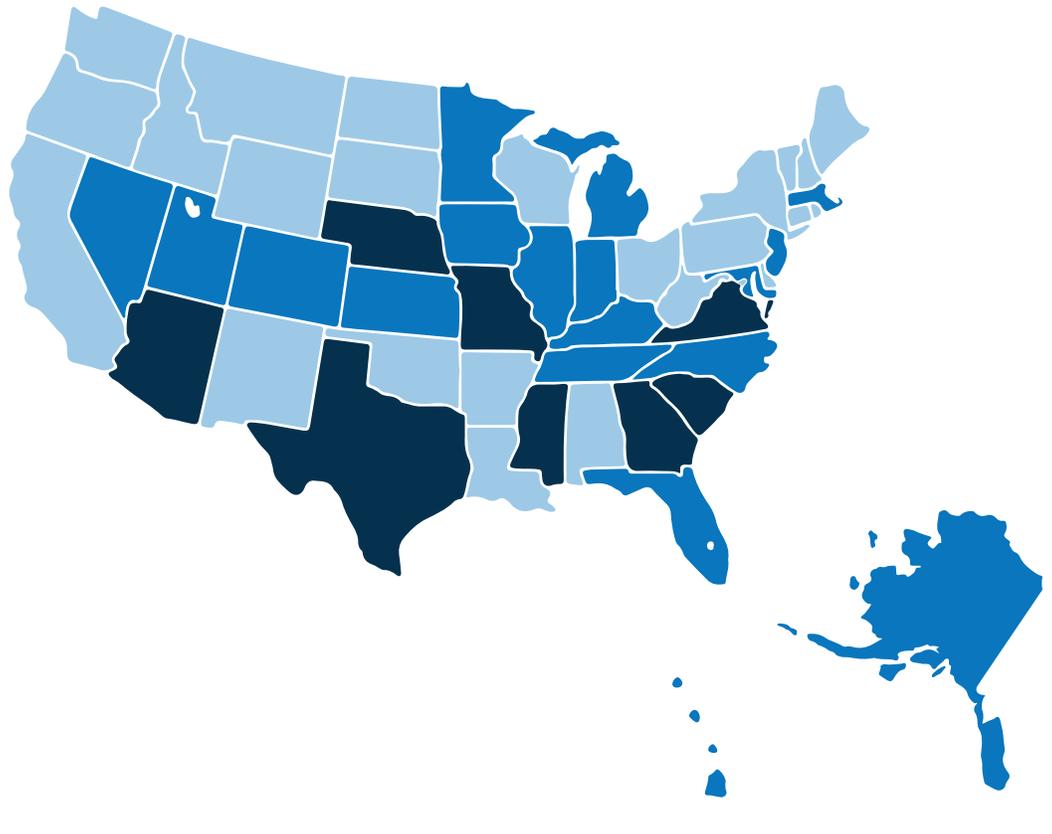


- Full Ban
- Modified Ban
- No Ban

Full Ban	Modified Ban		No Ban		
South Carolina	Alaska	Nebraska	Alabama	Maine	Pennsylvania
	Arizona	Nevada	Arkansas	Massachusetts	Rhode Island
	Colorado	North Carolina	California	Mississippi	South Dakota
	Hawaii	Oregon	Connecticut	Montana	Utah
	Indiana	Tennessee	Delaware	New Hampshire	Vermont
	Kansas	Texas	Florida	New Jersey	Washington
	Kentucky	Virginia	Georgia	New Mexico	Washington D.C.
	Maryland	Wisconsin	Idaho	New York	West Virginia
	Michigan		Illinois	North Dakota	Wyoming
	Minnesota		Iowa	Ohio	
	Missouri		Louisiana	Oklahoma	
Total					
1		19			31

TANF Policy Map

According to state laws current as of May 2020, 42 states and DC have chosen to modify or entirely opt out of the PRWORA ban on eligibility for TANF. Only 8 states currently maintain the full ban. Nebraska is among this small minority of states that maintains the full ban despite a growing consensus of its harmful societal effects.



- Full Ban
- Modified Ban
- No Ban

Full Ban	Modified Ban		No Ban		
Arizona	Alaska	Michigan	Alabama	New York	West Virginia
Georgia	Colorado	Minnesota	Arkansas	North Dakota	Wisconsin
Mississippi	Florida	Nevada	California	Ohio	Wyoming
Missouri	Hawaii	New Jersey	Connecticut	Oklahoma	
Nebraska	Illinois	North Carolina	Delaware	Oregon	
South Carolina	Indiana	Tennessee	Idaho	Pennsylvania	
Texas	Iowa	Utah	Louisiana	Rhode Island	
Virginia	Kansas		Maine	South Dakota	
	Kentucky		Montana	Vermont	
	Maryland		New Hampshire	Washington	
	Massachusetts		New Mexico	Washington D.C.	
Total					
8	18		25		

benefit greatly from public assistance programs, especially large programs like SNAP and TANF that provide assistance to put food on the table, pay bills, and receive necessary occupational training and employment assistance. Individuals re-entering society after incarceration are among the most worthy of such benefits which would assist them in turning their lives around. Reducing the assistance available to affected households through the PRWORA ban exacerbates the already severe challenges faced by such individuals.

SUBSTANCE ABUSE TREATMENT IMPEDED

Studies have shown that 65% of inmates nationwide exhibit symptoms of substance abuse and addiction.²⁷ The PRWORA ban worsens the obstacles to re-entry and harms the public health of Nebraskans by reducing access to essential substance treatment for those affected by the policy.

Substance treatment is expensive, and facilities often utilize a patient's SNAP and TANF benefits to subsidize the costs associated with the program. By withholding public assistance from individuals convicted of drug-related felonies, the current policy limits these individuals' ability to receive life-saving treatment.^{28,29} Nebraska's modified ban on SNAP eligibility for this class of individuals is further problematic as it requires participation in or completion of a treatment program to regain eligibility for SNAP benefits. Without such assistance upon release, however, attending and affording a substance abuse program would be impossible for many re-entering society.

The importance of nutrition to substance abuse recovery is also widely emphasized by experts. As one study concludes, poor nutrition in individuals with substance use disorders "severely impacts their physical and psychological health, which may impede their ability to resist substances of abuse and recover their health."³⁰ By reducing nutritional assistance and compounding issues related to poverty, the PRWORA ban impedes on formerly convicted individuals' ability to recover from substance abuse issues. In this way, the ban on public assistance puts the state's public health and safety at risk.

RECIDIVISM

Research shows that the ban on economic assistance for individuals convicted of drug-related felonies is

likely to increase recidivism, further crowding the state's correctional facilities and harming the public safety of Nebraskans. Decades of social science scholarship has shown that a large portion of criminal activity is carried out due to financial motives. Similarly, researchers have long demonstrated that the employment and economic opportunities available to formerly incarcerated individuals re-entering society greatly affects the frequency of recidivism in a community as such opportunities help mitigate the economic motivators of crime.³¹⁻³³ The PRWORA ban on public assistance eligibility, therefore, risks increased likelihood of recidivism as it reduces the financial and employment assistance individuals re-entering society may access.

One study found that fully opting out of the PRWORA ban reduces the likelihood of recidivism by 10%.³⁴

Multiple researchers have been successful in quantifying the negative consequences the PRWORA has created regarding recidivism. A 2017 American Economic Association ("AEA") article by Harvard's Crystal Yang found that "eligibility for welfare and food stamps at the time of release significantly reduces the risk of returning to prison within one year by up to 10 percent."³⁴ Yang also adds that this decrease in recidivism is greatest when formerly convicted individuals re-enter society with *full* eligibility for both welfare and food assistance. A 2019 AEA article expanded on this research by demonstrating that the ban on access to SNAP significantly increases recidivism among recently released drug traffickers.³⁵ Both studies emphasize the financial motivation underlying most drug-related criminal activity, stating that the "cut in benefits [caused by the PRWORA ban] causes ex-convicts to return to crime to make up for the lost transfer income."³⁵ These results show that current Nebraska laws restricting eligibility for assistance programs are likely to increase recidivism throughout the state.

HARM TO WOMEN, CHILDREN, PEOPLE OF COLOR

The ban on SNAP and TANF eligibility for individuals convicted of drug-related felonies disproportionately harms women, children, and people of color.

Women

According to recent reports, “women’s incarceration has grown at twice the pace of men’s incarceration in recent decades.”³⁶ While men’s imprisonment rates have decreased since 2000, women’s imprisonment rates have continued to increase.³⁶ Women have also been increasingly incarcerated for drug offenses and are much more likely to be incarcerated due to a drug offense than incarcerated men. In fact, “more than 61% of women doing time in federal prison are behind bars for nonviolent drug offenses.”³⁶

Women are also much more likely to be recipients of public assistance, or caregivers of dependent children who receive public assistance, than men. In Nebraska, 2018 TANF caseload data shows that 1,458 adult women were participants in the TANF program that year compared to only 96 men.³⁷ Nationwide, around two-thirds of SNAP participants are women, and 93% of adult recipients of TANF benefits in Nebraska are women.^{37,38} The combined effect of heightened participation in public assistance programs and disparate incarceration trends demonstrates that women are disproportionately affected by the PRWORA eligibility ban.²⁹

Children

Innocent children growing up in already difficult circumstances are further harmed by the PRWORA ban on SNAP and TANF eligibility. Children make up a large portion of participants in TANF and SNAP: 44% of food assistance recipients are under 18 and children, on average, constitute 75% of TANF recipients. Moreover, according to statistics from 2001, individuals released from prison, jail, or who are on parole in that year alone were the parents of 3.7 million dependent children. A large portion of these millions of children affected by parental incarceration will no doubt be harmed by the effect of the PRWORA ban on their household’s TANF and SNAP benefits.

Children are especially affected because the ban does not disqualify the entire household but prompts administrators to calculate the household’s monthly benefit amounts as if that individual is no longer a part of that household. Since TANF and SNAP benefits are determined by household size, this can reduce a household’s monthly benefits by a significant amount. For instance, a single-parent family with one child could see their monthly SNAP

benefits decrease by \$161, and their TANF allotments reduced by \$70 if the parent of the household is deemed ineligible due to a felony drug conviction.

Despite the calculation reducing assistance due to a member’s ineligibility, a household will likely have to nonetheless split these decreased resources among all members of the household. During a 2019 hearing in the unicameral, Lieutenant Governor Mike Foley stated that “Internal [DHHS] data shows that 75 percent of ineligible members” banned from participation in the program due to their felony conviction “are already part of a household receiving SNAP.”³⁹ This data is evidence that the ban results in fewer resources being split among more individuals as a family member returns to the household from incarceration. Children will receive fewer benefits because of this. In this way, the ban puts more innocent children in poverty and at risk of experiencing hunger.

People of Color

Research shows racial minorities experience harsher outcomes during policing, arrest, prosecution, and sentencing, among other stages in the criminal justice process when compared to whites.⁴⁰ These disparities have been seen most clearly in the prosecution of drug-related offenses during the past few decades, an era defined by drug policy reforms. Latinos and African Americans are charged and convicted for drug-related crimes at disproportionately high rates compared to whites “although drug use rates do not differ substantially by race and ethnicity and drug users generally purchase drugs from people of the same race or ethnicity.”⁴⁰⁻⁴³ In Nebraska, this racial disparity is seen clearly in incarceration statistics: a recent report from the Office of the Inspector General of the Nebraska Correctional System states that “Nebraska has the 11th highest racial disparity when comparing incarceration rates of black and white individuals and a black individual is incarcerated at a rate 8.7 times higher than a white individual” in the state.⁴⁴

Because people of color are disproportionately more likely to be convicted of a drug-related felony, they are therefore more likely to be affected by the PRWORA ban as well.²⁹ This is demonstrative of the fact that the ban exacerbates the impact of discriminatory policing and prosecuting of drug-related offenses on communities of color. Moreover, due to heightened re-entry difficulties

for people of color—including worsened employment opportunities and financial difficulties—ineligibility for public assistance is likely to affect people of color more severely than formerly incarcerated white individuals.^{26,45,46} By making re-entry more difficult for people of color, the PRWORA ban threatens to increase recidivism, financial hardship, poverty, and hunger in the households and communities of racial minorities.

POLICY IMPLICATIONS

In order to improve prisoner re-entry, promote substance abuse recovery, reduce recidivism, and counteract discriminatory consequences of the 1996 law, Nebraska should join the majority of states in fully opting out of the PRWORA ban on eligibility for public assistance for individuals convicted of drug-related felony offenses. Research shows that access to SNAP and TANF most successfully supports formerly incarcerated individuals when individuals re-entering society are fully eligible for assistance programs despite their criminal record. Because this option proves to be the most effective in reducing recidivism, substance abuse, and hunger in Nebraska communities, REACH lab suggests that state legislators should pass legislation fully opting out of the ban and removing any additional eligibility requirements for this class of individuals. In doing so, Nebraska would join the 31 states that have fully opted out of the ban for SNAP as well as the 25 that have done so for TANF in recognition of the 1996 policy's negative consequences.

Legislators must amend Nebraska Revised Statute 68-1017.02 to fully opt out of the PRWORA ban on TANF and SNAP eligibility for individuals convicted of drug-related felonies. REACH suggests state legislators completely remove the modified SNAP ban contained in section (4)(b) of the statute. To fully opt out of the ban, legislators would also need to add TANF to the opt out language in section (4)(a) of the statute, which opts out of the PRWORA ban on SNAP eligibility.

Information highlighted in past legislative debates on the topic shows that this change in policy would ease the work of the Nebraska Department of Health and Human Services and would not cause additional fiscal burden on the state or its taxpayers. As Senator Hunt stated in March 2019 regarding expanding SNAP eligibility, "According to the fiscal analysis provided by the Department of Health and Human Services, this

regulation change would result in costs so minimal that the department would be able to absorb them."⁴⁷ Moreover, Senator Howard added that reducing SNAP eligibility requirements, like the state's current requirements based on treatment completion, would streamline the Department's process in determining eligibility. Data from Nebraska's DHHS showed that nearly all of the 658 SNAP cases denied by administrators in 2018 due to felony drug convictions were members of an existing SNAP participating household. Consequently, the removal of the ban is unlikely to create an influx in the caseload of the Department, and would simply increase the amount of benefits allotted to already participating households, 100% of which would be paid for by the federal government.³⁹

Granting full public assistance eligibility for individuals convicted of drug felonies is a necessary step in aiding Nebraska's overflowing correctional system.

Eliminating the eligibility ban is not only a cost-effective, humane, and evidence-based policy to promote the health and safety of Nebraska households. Doing so is an important step toward reducing Nebraska's overflowing prison population. As of November 2019, Nebraska's prison population was 160% of the capacity of state correctional facilities, making it the second most crowded prison system in the country.⁴⁸ Due to this increasingly urgent crisis, Nebraska Corrections Director Scott Frakes has emphasized the importance of re-entry efforts, stating that re-entry works best when individuals have access to the right support and opportunities.⁴⁹ Vital to providing these opportunities for re-entry is increasing access to public assistance for hundreds of Nebraskans released from incarceration each year.

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