

## **Public Assistance Benefits and Convicted Felony Drug Offenders**

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Upon request, this issue will be before the Committee at its April 2004 meeting. It had been a recommendation of the Governor's and Attorney General's Task Force and is appropriate for consideration under the Senate Joint Resolution No. 11 study.

**Issue:** Blueprint Recommendation 6.4.2: Encourage state legislation to remove sanctions related to public benefits for certain felony drug offenders. Public benefits include both TANF cash assistance and food stamps.

**Status:** Currently the following individuals are ineligible for TANF/FAIM cash assistance under 53-4-231(3)(j), MCA, which is reflected in the Montana State Plan:

"Individuals having committed and been convicted after August 22, 1996, of a felony an element of which is the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802 (6)]."

Income and resources are counted for the person with a felony drug conviction towards the support of family members, but the individual is not counted to determine the amount of TANF cash assistance or food stamps for family members. Other federal benefits that are allowed include emergency medical services, public health assistance, prenatal care, job training, and drug treatment programs. States are allowed, by a specific reference in law, to exempt any or all individuals from the application of this prohibition or to limit the period for the prohibition (Sec. 115(d)(1), Personal Responsibility and Work Opportunity Reconciliation Act of 1996).

In the 2001 legislative session, Senate Bill No. 77 (Ch. 465, L. 2001) had originally contained a provision amending 53-4-231, MCA, that would have allowed persons with felony drug convictions to be eligible for benefits upon satisfactory completion of certain conditions. The bill including that specific provision was approved by the Legislature and sent to the Governor. The bill was returned with Governor's amendments striking that provision and the Legislature passed the bill with the Governor's amendment.

In preparation for the 2001 legislative session, the Department of Public Health and Human Services gathered information from a 6-month period in 2000. According to the Human and Community Services Division that administers the TANF program, in the period between March 1, 2000, and August 31, 2000, there were a total of 266 households affected through a disqualification or denial of cash assistance or food stamps based on a felony drug conviction. Hank Hudson estimated at that time that "the cost to the state in TANF dollars to implement this provision will be around \$300,000 per year. However, the costs of not working with these families, costs in foster care, corrections, health care, etc., could be greater."

The Welfare Information Network reported in December of 2000 that in 2000, 28 states reported denying at least some TANF-funded benefits to convicted drug felons. According to the Montana Department of Corrections website (3/5/2004), the top offense for fiscal year 2003 for females is drug possession, and of the conviction offenses from FY1994-FY2003, three of the top ten were drug convictions, i.e. possession or sale and drug convictions from other states, accounting for 37%.

An April 2003 National Conference of State Legislatures report on "Substance Abuse and TANF" cites recent studies estimating anywhere from 5 percent to 35 percent of TANF clients are suffering from a substance abuse problem that impairs their ability to become employed and to be an effective parent. Not all persons suffering from substance abuse have criminal convictions, but both substance abuse and criminal convictions are barriers to self-sufficiency.

**Options:**

The Committee could recommend legislation making such persons eligible for benefits by opting out of and exempting Montanans from the federal provision or limiting the period of time of ineligibility.

The language that was inserted into 53-4-231, MCA, in the introduced version of Senate Bill No. 77 from 2001 read:

(3) A person who, after August 22, 1996, has been convicted of a felony offense, an element of which involves the possession, use, or distribution of a controlled substance, as defined in 21 U.S.C. 802, is ineligible for public assistance unless the person:

(a) has satisfied all conditions of probation or parole, if any, associated with the felony conviction; and

(b) completes a chemical dependency assessment by a chemical dependency counselor approved by the department and based on the assessment:

(i) there is the absence of any current drug dependency; or

(ii) the person satisfactorily completes a course of treatment and all requirements recommended by the chemical dependency counselor.

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