

1113 N Street
Anchorage, AK 99501
March 26, 2014

Rep. Pete Higgins, Chairman,
House Health and Social Services Standing Committee
State Capitol Room 424
Juneau AK, 99801
c/o julie.morris@ak.leg.gov

Dear Chairman Higgins and Members of the Health and Social Services Committee,

I have been a resident of Alaska for 30 years. I am an attorney but am presently 'working' only as a housewife, mother, and grandmother and volunteer for some charitable organizations. I write today because I am concerned about two things: hunger in Alaska, and effective public safety.

This weekend, I read for the first time about HB 347. In that bill, Rep. Tarr has proposed that this Legislature pass a law so as to allow persons previously convicted of drug felonies to receive food stamp benefits, contingent on proving they have been rehabilitated to the satisfaction of the Department of Health and Social Services.

For some number of years, Alaska has been turning away federal dollars that would help ex drug offenders when they complete their sentences and return to our communities. Federal food assistance (Food Stamps) requires no state match, and such assistance can make all the difference for ex-felons and former drug users who are abstinent but often impoverished when they complete their sentences. How do we discourage recidivism and encourage abstinence from drugs? By *supporting* ex offenders when they walk out the gates, not denying the assistance they so need.

For reasons given below, I support the idea behind HB 347. Some version of this bill should pass. I will explain later in my letter why an amended version of this bill would be more effective.

Because the Committee may not have yet reviewed background on the Food Stamps Program, the existing lifetime ban on drug felons or on the legal mechanism that provides for a State opt-out, I am providing this information. My letter is organized as follows:

<u>The Existing Ban on Federal Food Assistance for Drug Felons and the State Opt-Out</u>	<u>2</u>
<u>SNAP Overview and Its Importance for Alaskans</u>	<u>2</u>
<u>Background Regarding the Original Federal Exclusion and the States' Opt-Out Provision.....</u>	<u>3</u>
<u>Why States Opt-Out of the Drug Felon Ban.....</u>	<u>5</u>
<u>Why An Opt-Out Makes More Sense Than A Modified Ban.....</u>	<u>6</u>
<u>Proposed Amendments for HB 347.....</u>	<u>7</u>

The Existing Ban on Federal Food Assistance for Drug Felons and the State Opt-Out

The core question presented by this bill is whether the State of Alaska should exercise an ‘opt out’¹ of a particular federal law which otherwise imposes a lifetime ban on federal food assistance to certain persons.²

The particular ban under discussion *permanently* excludes convicted drug felons from any eligibility for federal food assistance. That assistance is provided through the Supplemental Nutrition Assistance Program (SNAP). Every State participates in SNAP. SNAP, a federal program funded through the Farm Bill, provides food assistance to eligible low-income households.³ The federal government pays for 100% of SNAP benefits. While the States have to administer the benefit, the federal government also covers 50% of each State’s costs of doing so.

Most States have opted out of the blanket lifetime federal exclusion of drug felons from eligibility for SNAP. If a State chooses to opt out - thereby allowing convicted drug felons to receive food assistance -- there are no negative repercussions for the state. Indeed, a state legislative ‘opt-out’ increases federal funding to the State because the pool of eligible recipients is thereby increased.

A specific enactment by the Alaska Legislature would be required to either opt out and/or modify the ban on SNAP benefits for this class of Alaskans.

SNAP Overview and Its Importance for Alaskans

SNAP is the nation’s most important anti-hunger program. After unemployment insurance, SNAP is the most responsive federal program providing additional assistance during economic downturns. In December 2012, it helped 47.8 million low-income Americans to afford a nutritionally adequate diet in a typical month.⁴

¹ Section 862a(d) of Title 21, United States Code, specifies the means by which legislators can either opt out or modify the ban. “A State may, by specific reference in a law enacted after August 22, 1996, exempt any or all individuals domiciled in the State from the application of subsection (a) of this section...[or] may limit the period for which subsection (a) of this section shall apply to any or all individuals domiciled in the State.”

² See Section 862a(a)(2) of Title 21, United States Code.

³ SNAP is funded through the Farm Bill. The new Farm Bill was signed into law in February 2014. It reauthorized the Food and Nutrition Act of 2008 (7 U.S.C. 2015) with amendments. The States’ ability to opt out of the ban on the eligibility of drug felons was unaffected by the new bill.

⁴ See Program Information Report, Summary FY2012-2013, Food and Nutrition Service, U.S. Department of Agriculture. Updated 3/28/13.
http://www.fns.usda.gov/sites/default/files/datastatistics/Keydata%20December%202012%20%283-8-2013%29_0.pdf. See also Center of Budget and Policy Priorities, Policy Basics: Introduction to the Supplemental Nutrition Assistance Program (SNAP) , updated 3/28/2013.
<http://www.cbpp.org/cms/index.cfm?fa=view&id=2226>,

The program provides necessary nutritional support in particular to low-wage working families with children, to low-income seniors, and to people with disabilities who have fixed income. Nearly 76% of SNAP households included a child, an elderly person, or a disabled person.⁵ These vulnerable households receive 83% of all SNAP benefits. Notably, unemployed childless adults are limited to three months of SNAP benefits every three years, though this time limit has been temporarily waived in some states because of high unemployment.

SNAP eligibility is limited in any event to households with gross income of no more than 130% of the federal poverty guideline, but the majority of households have income well below the maximum.⁶ 61% of SNAP households have gross income at or below 75% of the poverty guideline.

The amount an eligible household receives each month depends on the household's location, countable assets, countable income and the number of people in the household. Eligible households use electronic debit cards to buy approved food products from authorized stores statewide. SNAP benefits cannot pay for non-food items, nor can recipients use the benefit to pay for restaurant food or ready-to-eat hot foods.

To receive SNAP benefits, most able-bodied people between 16 and 59 years old must register for work, participate in the Employment & Training Program if offered, accept offers of employment, and cannot quit a job.⁷

SNAP is also Alaska's most important anti-hunger program. In Alaska, SNAP is known as the Food Stamp Program. In 2012, the State determined that 11.9% of all Alaska households received some amount of Food Stamps benefits from the federal government. The average monthly SNAP benefit is about \$414 per household.⁸

Background Regarding the Original Federal Exclusion and the States' Opt-Out Provision

In 1996, Congress enacted the Personal Responsibility and Work Opportunity

⁵ http://feedingamerica.org/how-we-fight-hunger/programs-and-services/public-assistance-programs/supplemental-nutrition-assistance-program/snap-myths-realities.aspx#_edn1, citing U.S. Department of Agriculture, Food and Nutrition Service. *Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2011*. Table A.14. November 2012. <http://www.fns.usda.gov/ora/menu/Published/snap/SNAPPartHH.htm>.

⁶ U.S. Department of Agriculture, Food and Nutrition Service. *Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2011*. Table 3.1. November 2012. <http://www.fns.usda.gov/sites/default/files/2011Characteristics.pdf>

⁷ For more information, see *A Quick Guide to SNAP Eligibility and Benefit Rules*. <http://www.cbpp.org/cms/index.cfm?fa=view&id=1269>

⁸ DPA Office Profile SFY 2012, <http://dpaweb.hss.state.ak.us/files/reports/Statewide200xProfile.pdf>.

Reconciliation Act (PRWORA). While the focus of PRWORA was to fundamentally restructure cash public assistance to make it short term and work-conditioned, it also included provisions intended to prevent the use of public benefits for drug use. Section 115 of PRWORA permanently barred convicted drug felons from eligibility for SNAP benefits.⁹

A drug felon, for this purpose, is defined as a person committing a crime after August 22, 1996, for either a federal or a state felony conviction for possession, use or distribution of a controlled substance.

As previously stated, States are permitted to opt out of this lifetime ban and extend benefits to this class of felons.

Alaska is one of only eleven States that have kept the lifetime ban of convicted drug felons in place.¹⁰

Since the provision's enactment in 1996, all other States have acted to either completely eliminate or modify the exclusion. Twenty-one States and the District of Columbia have eliminated the ban entirely.¹¹ Nineteen States have approved a modified ban, sometimes permitting an individual to regain eligibility in time or by completing drug treatment.¹²

⁹ Until February 2014, only two classes of persons were permanently excluded from the receipt of SNAP benefits: convicted drug felons and some of the persons who obtained or tried to obtain SNAP benefits unlawfully. See 7 USC 2015(b)(1)B(iii). The new Farm Bill extends the ban to also include violent felons if they were convicted after its enactment.

¹⁰ The following states have maintained the lifetime ban: Alabama, Alaska, Arizona, Arkansas, Georgia, Mississippi, Missouri, North Dakota, South Carolina, Texas and West Virginia. USDA Supplemental Nutrition Program *State Options Report*, Tenth Edition, August 2012.

¹¹ The following states have opted out and provide benefits to otherwise eligible convicted drug felons: Delaware, DC, Illinois, Iowa, Kansas, Maine, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington and Wyoming. Source: USDA Supplemental Nutrition Assistance Program, *State Options Report*, Tenth Edition, August 2012.

¹² The following states have opted out, modifying the federal exclusion as follows: California (no ban for simple possession); Colorado (ban if SNAP benefits involved in drug felony); Connecticut (no details); Florida (ban only for drug trafficking); Hawaii (eligible if completed or complying with drug treatment); Idaho (eligible if complying with conditions of probation or parole); Indiana (individuals in approved correction programs are eligible for benefits for up to 1 year); Kentucky (eligible if completed or complying with drug treatment); Louisiana (ban limited to 1 year); Maryland (drug testing required for receipt of benefits; custodial parents convicted of manufacturing or selling drugs are ineligible for one year); Michigan (lifetime ban only after 2nd conviction); Minnesota (drug testing required for receipt of benefits; lifetime ban if drug test failed more than once); Montana (regain eligibility if complying with conditions of probation or parole), Nebraska (lifetime ban upon 3 convictions for possession or use or any convictions or other drug related charge), Nevada (regain eligibility if completed or complying with drug treatment, demonstrates good character or is pregnant), North Carolina (ineligible for 6 months; must comply with drug treatment if referred), Tennessee (regain eligibility if completed or complying with drug treatment), Virginia (no lifetime ban for possession for personal use convictions) and Wisconsin (drug testing required for 5 years; ineligible for 1 year for each time drug test is failed). Source: USDA Supplemental Nutrition Assistance Program, *State Options Report*, Tenth Edition, August 2012.

Why States Opt-Out of the Drug Felon Ban

The assumption in 1996 that drug addicts were more likely than others to abuse public assistance, e.g. trading what were food stamp coupons for drugs, is on the wane. That perception is now increasingly viewed as an insufficient justification for a presumptive lifetime exclusion of all convicted drug felons from food assistance. Indeed, since 1996, most States have concluded that the drug felon exclusion from SNAP benefits is counter-productive in several significant ways.

First, the lifetime exclusion of all drug felons from food assistance benefits appears unduly punitive. The lifetime exclusion applies no matter how old the offense, how short the sentence, or how well rehabilitated the ex-offender.

Second, the disqualification works a double penalty as it persists even after an offender has served his or her sentence and completed any probation and/or parole requirements.

Third, the lifetime exclusion of all drug felons – as opposed to other felons - appears unwarranted. The use of electronic debit cards (showing the recipient's photo) have significantly reduced any risk that food benefits might be bartered for the purchase of drugs. And persons who still manage to engage in food-drug trafficking are still subject to a lifetime exclusion from benefits under a separate provision of federal law.

Fourth, ex-offenders who have completed their sentences usually require some form of public assistance in the short term as they reintegrate back into community life, reunite with their families, look for legitimate work, and seek to establish economic stability. Convicted felons have difficulty getting jobs in even good economic times, so public assistance and food stamps may be critical during this transition.

Fifth, the specific exclusion of convicted drug offenders from food assistance upon their release from prison creates a problem, rather than solves one. Many felons exit prison facilities with chronic conditions. The circumstances of convicted drug offenders, having been denied food assistance, are particularly perilous. This population has a high prevalence of HIV and AIDS, due to a history of intravenous drug use. Individuals with such conditions need adequate nutrition to adhere to complex drug regimens and to combat opportunistic infections such as tuberculosis and the development of drug resistant strains of HIV. Furthermore, some former felons may engage in dangerous and sexually risky behaviors such as prostitution *simply* in order to obtain food.¹³ Thus denying food stamps to former drug felons this undermines the general public health.

Sixth, the lifetime ban may hurt victims of domestic violence. There is a growing

¹³ See Yale News, March 25, 2013, reporting on "A Pilot Study Examining Food Insecurity and HIV Risk Behaviors Among Individuals Recently Released From Prison," published in journal *AIDS Education and Prevention*.

recognition and evidence of a connection between drugs, sexual assault and domestic violence. Individuals are often forced into criminal activities by their abusers. Victims of domestic violence and sexual abuse often develop addictions to deal with their pain. Denying public assistance benefits to former drug felons may make it more likely that these individuals may return to situations of sexual exploitation and domestic violence out of financial necessity.

Seventh, the lifetime ban disproportionately affects women and children who are by far the largest proportion of food-assistance recipients. Although the children of felons remain eligible to receive food stamps, the addition of a convicted drug felon to a household operates to decrease the amount of food assistance received by his or her family. The felon will not be “counted” as a member of the household, but his or her income and any assets must be considered. Section 862a(b)(2) of Title 21, United States Code. Thus, the ban undercuts the family, not supports it. Parents denied benefits may be unable to sufficiently feed and house their children on a reduced budget and may lose them to the foster care system, resulting in a increased cost to the State and an immeasurable cost to the children.

Last but certainly not least, financially strapped States have realized there is a direct economic benefit to the opt-out. Food Stamps are fully federally funded, and any additional administrative cost incurred with expanded eligibility is not significant. Moreover, the infusion of more federal dollars into a State provides local vendors and generally a State’s economy with an economic boost. The USDA says that every dollar spent on food stamps results in \$1.79 in economic activity.

Why An Opt-Out Makes More Sense than a Modified Ban

States enacting modified bans have taken different tacks. Some have limited the length of the ban. Some have limited the ban to drug sellers, rather than drug possessors. Some have conditioned food assistance benefits on drug testing requirements. Some have conditioned benefits on compliance with probation and parole conditions. Similarly, HB 347 proposes a modified ban, premising the eligibility for Food Stamp Program benefits on a determination by a state agency that a person is “rehabilitated.”

Most States have simply opted out of the lifetime federal exclusion rather than imposing pre-conditions like those in HB 347. Administratively and financially, this is the easiest route. The simple opt-out avoids new programming requirements and any increase in administrative costs.

The modifications which have been imposed by some States are often duplicative and costly. The vast majority of convicted drug offenders will be released on parole and probation conditions after completing incarceration, and most of their sentences will require treatment and drug monitoring as conditions of probation. Ex drug felons will have to comply with those conditions or go back to jail.

Most crucially, denying benefits to persons who are presently participating in drug treatment and/or drug testing programs may be counter-productive. As stated above, many States have determined that the specific exclusion of convicted drug offenders from food assistance upon their release from prison creates a problem, rather than solves one.

Proposed Amendments for HB 347

Because this Legislature should choose a simple opt-out, rather than a modified one, I propose the following language as an amendment/alternative to HB 347.

A person who is otherwise eligible to receive food assistance under the federal Food Stamp Act of 1977, 7 USC sections 2011-2036 may not be denied assistance because the person has been convicted of a drug-related felony as described in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), Public Law 104-193, section 115, 110 Stat. 2105.¹⁴

However, if this legislature chooses to impose a modified ban, then it could consider the following as an alternative to that currently proposed in HB 347.

A person who is otherwise eligible to receive food assistance under the federal Food Stamp Act of 1977, 7 USC sections 2011-2036 may not be denied assistance because the person has been convicted of a drug-related felony as described in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), Public Law 104-193, section 115, 110 Stat. 2105, **as long as such person has completed a sentence imposed by a court. A person shall also be eligible for said benefits if such person is satisfactorily serving a period of probation or is in the process of completing or serving or has completed mandatory participation in a drug or alcohol treatment program, or if the person has taken action toward rehabilitation, such as, but not limited to, participation in a drug or alcohol treatment program.**¹⁵

This kind of language would allow for the various, alternative ways a drug felon might provide evidence of rehabilitation or sufficient progress in rehabilitation: the completion of a sentence, including probation; ongoing participation in drug treatment and/or drug screening; completion of drug treatment or drug screening requirements; or, maintaining a satisfactory performance while on probation.

I am available to answer any questions. I intend to be online and available to offer testimony at tomorrow's hearing on the bill.

¹⁴ This language was used by the Maine State Legislature. Maine Revised Statutes, Annotated, Title 22, section 3104 (14).

¹⁵ Sources: Connecticut General Statutes Annotated, section 17b-112d. and Colorado Revised Statutes Annotated section 26-2-706(3)

Thank you for your patience, your consideration, and your service to all Alaskans.

Sincerely yours,

Mary C Geddes
907-244-1379
907-272-4972