

Alaska Criminal Justice Commission



March 9, 2015

Hon. Lesil McGuire
State Capitol Room 121
Juneau AK, 99801

Dear Senator McGuire:

The Alaska Criminal Justice Commission has asked me to write you in your capacity as Chair of the Senate Judiciary Committee.

As you know, SB 64, now codified at AS 44.19.645, mandates that the Commission "evaluate sentencing laws and criminal justice practices to determine if they provide for protection of the public, community condemnation of the offender, the rights of victims of crimes, the rights of the accused and the person convicted, restitution from the offender, and the principle of reformation." The commission "shall make recommendations for improving" those laws and practices and may recommend either legislative or administrative changes.

Consistent with those directions, the Commission RECOMMENDS that the Legislature enact an 'opt-out,' as permitted by Congress, from Section 862a(a)(2) of Title 21, United States Code. Section 862a(a)(2) permanently excludes any person convicted of a drug felony after August 1996 from eligibility for federal food assistance, also known as Food Stamps or SNAP. Section 842a(d) specifies the means by which state legislatures can either opt out or modify the ban.

Language for the enactment is respectfully suggested below.¹ In another footnote, I explain why the Commission recommends a simple or unqualified opt-out.²

Alaska is one of only ten states that have maintained a lifetime ban for any person convicted after August 1996 of any state or federal drug felony, including possession. Most States have concluded that the exclusion from Food Stamp eligibility is counter-productive in several significant ways.

¹ The following language, taken from Maine Revised Statutes, Annotated, Title 22, section 3104 (14), may suffice: A person who is otherwise eligible to receive federal food assistance [under the Food Stamp Act of 1977, 7 USC sections 2011-2036, and which was reauthorized by the Farm Bill in February 2014] may not be denied that 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.

² Many states have modified bans, conditioning eligibility on the satisfaction of certain conditions. The Commission does not recommend this approach. Many of these predicates seem quite duplicative of probation and parole conditions. Some appear to deny eligibility for persons who are still participating in drug treatment programs, an approach we do not endorse. Other conditions appear unduly burdensome for state agencies or courts to administer, or for individuals to understand and satisfy.

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- First, the lifetime exclusion of all drug felons from food assistance benefits is 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 – is unwarranted today. The issuance of electronic cards with the recipient's photo have significantly reduced any perceived risk that food benefits be bartered. And those persons who still manage to engage in food-drug trafficking are subject to a lifetime exclusion under a different law.
 - Fourth, the specific exclusion of convicted drug offenders from food assistance upon their release from prison does not solve a problem, but rather exacerbates one. Many ex-offenders reentering their communities are destitute and require some short-term public assistance as they seek stable housing, legitimate work, and try to reunite with their families.
 - Fifth, the lifetime ban may hurt victims of domestic violence. There is a growing recognition and evidence of a connection between drugs, sexual assault and domestic violence. Denying food assistance to former drug felons may make it more likely that these individuals may return to situations of sexual exploitation and domestic violence.
 - Sixth, the ban undercuts family reunification, not supports it. If the parent was convicted of a drug offense, her presence in the home effectively reduces the household's overall benefit as any income will be counted. See Section 862a(b)(2) of Title 21, United States Code.

After due consideration of this matter, the Commission concluded that maintaining a lifetime ban on eligibility for Food Stamps was unduly punitive, unwarranted for this specific group of offenders, and counter-productive in terms of offender reformation.

Finally, in this economic climate, it must be noted that this proposal would bring in additional federal dollars and involve little state expenditure. Food Stamp benefits are fully (100%) federally funded. While States do cover 50% of the cost of administering the benefit, the USDA says that every federal dollar spent on food assistance creates a \$1.79 boost in economic activity, in mostly local markets.

Please let me know if I can be of assistance in providing you with any additional information concerning this recommendation or other matters before the Commission.

Sincerely yours,

Alexander O. Bryner, Chair
Alaska Criminal Justice Commission

cc: Senator John Coghill
Vice-Chair, Senate Judiciary Committee

Alaska Criminal Justice Commission



March 9, 2015

Hon. Gabrielle LeDoux
Chair, House Judiciary Committee
State Capitol Room 118
Juneau AK, 99801

Dear Representative LeDoux,

The Alaska Criminal Justice Commission has asked me to write you in your capacity as Chair of the House Judiciary Committee. I serve as Chair for the Commission.

As you know, SB 64, now codified at AS 44.19.645, mandates that the Commission "evaluate sentencing laws and criminal justice practices to determine if they provide for protection of the public, community condemnation of the offender, the rights of victims of crimes, the rights of the accused and the person convicted, restitution from the offender, and the principle of reformation." The commission "shall make recommendations for improving" those laws and practices and may recommend either legislative or administrative changes.

Consistent with those directions, the Commission RECOMMENDS that the Legislature enact an 'opt-out,' as permitted by Congress, from Section 862a(a)(2) of Title 21, United States Code. Section 862a(a)(2) permanently excludes any person convicted of a drug felony after August 1996 from eligibility for federal food assistance, also known as Food Stamps or SNAP. Section 842a(d) specifies the means by which state legislatures can either opt out or modify the ban.

Language for the enactment is respectfully suggested below.¹ In another footnote,² I explain why the Commission recommends a simple or unqualified opt-out.

Alaska is one of only ten states that have maintained a lifetime ban for any person convicted after August 1996 of any state or federal drug felony, including possession. Most States have concluded that the exclusion from Food Stamp eligibility is counter-productive in several significant ways.

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Please let me know if I can be of assistance in providing you with any additional information concerning this recommendation or other criminal justice topics.

Sincerely yours,

Alexander O. Bryner, Chair
Alaska Criminal Justice Commission

cc: Representative Wes Keller
Vice-Chair, House Judiciary Committee