

TANF and Criminal Convictions
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1. This outline summarizes the law concerning the possible impact of criminal convictions on the receipt of benefits and services funded with a state’s Temporary Assistance for Needy Families (TANF) block grant or funded with state maintenance of effort (MOE) funds.
2. The federal TANF law specifies a limited set of situations in which a criminal conviction can affect eligibility for TANF benefits and services. However, because states have broad discretion in determining eligibility under TANF and no group of individuals has a federal entitlement to TANF benefits, a state is free to develop additional requirements. If, for example, a state wished to do so, the state could provide that other criminal convictions not specified in the TANF statute would result in temporary or ongoing ineligibility. If a state elected to do so, such requirements (depending on the requirements) might raise constitutional issues, or might violate the TANF provision mandating that a state’s TANF plan “shall set forth objective criteria for the delivery of benefits and the determination of eligibility and for fair and equitable treatment.”¹ However, the imposition of such restrictions is not directly barred by the TANF statute.
3. The TANF statute specifies four situations in which criminal convictions may directly or indirectly affect TANF eligibility or benefits:
 - a. A state is barred from providing TANF assistance to individuals convicted of having fraudulently misrepresented their residence in order to receiving multiple benefits in two or more states..
 - b. Unless the state opts out or narrows the scope of the prohibition, the state is barred from providing TANF assistance to an individual convicted of a drug-related felony occurring on or after August 22, 1996.
 - c. A state is barred from using federal TANF funds to provide assistance to fleeing felons or parole or probation violators.
 - d. A state is barred from increasing a family’s TANF benefits to compensate for a reduction in other benefits if the family’s benefits under another means-tested welfare or public assistance program are reduced due to fraud.
4. **Fraudulent misrepresentation of residence to obtain assistance in two or more states**
 - a. A state is barred from using federal TANF funds to provide cash assistance to an individual during the 10-year period that begins on the date the individual is convicted in Federal or State court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from two or more States under TANF-funded programs, Medicaid, the

¹ 42 U.S.C. §602(a)(1)(B)(3).

Food Stamp Act or SSI. This bar ceases to apply for any month after the President grants a pardon with respect to the conduct which was the subject of the conviction.²

5. Drug-related felonies

- a. Unless the state opts out in whole or in part, an individual convicted under Federal or State law of any felony offense which has as an element the possession, use, or distribution of a controlled substance is ineligible for TANF-funded assistance (and also becomes ineligible for Food stamp benefits.)³
- b. The amount of TANF assistance provided to family members of an individual disqualified under this provision must be reduced by the amount which would have otherwise been made available to the individual.
- c. If the state does not opt or restrict the application of this provision, the state must require individuals applying for assistance to state, in writing, whether the individual, or any member of the household of the individual, has been convicted of a drug-related felony.
- d. A state may elect to opt out the felony-drug provision, and may exempt any or all affected individuals, or may limit the period of ineligibility. The state must do so by specific reference in a law enacted after August 21, 1996.
- e. The provision is applicable only to convictions for conduct that occurred after enactment of the 1996 welfare law.
- f. The bar applies to TANF “assistance.” The law explicitly states that certain forms of benefits are not considered within the scope of the drug-felony provision. Under final regulations, these benefits would probably not fall within the definition of TANF assistance in any case,⁴ but nevertheless, the law is explicit in stating that it shall not be construed to deny the following federal benefits:
 - i. Emergency medical services under title XIX of the Social Security Act;
 - ii. Short-term, noncash, in-kind emergency disaster relief;
 - iii. Public health assistance for immunizations;
 - iv. Public health assistance for testing and treatment of communicable diseases if the Secretary of Health and Human Services determines that it is necessary to prevent the spread of such disease.
 - v. Prenatal care.
 - vi. Job training programs.
 - vii. Drug treatment programs.

6. Fugitive felons and probation and parole violators

² 42 USC §608(a)(8).

³ 21 U.S.C. §862a.

⁴ See 45 C.F.R. §260.31, contained in Federal Register of April 12, 1999 (64 Fed. Reg. 17720-19931).

- a. A State is barred from using federal TANF funds to provide assistance to any individual who is–
 - i. fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or is a high misdemeanor in New Jersey; or
 - ii. violating a condition of probation or parole imposed under Federal or State law.
- b. The bar does not apply for any month beginning after the President grants a pardon with respect to the conduct.⁵

7. Release of information to law enforcement agencies

- a. The TANF statute specifies certain conditions under which the state must exchange information with law enforcement agencies. A state might opt to exchange information in additional cases. The protection against disclosure of information in the TANF statute is limited. It says that a state’s TANF plan must outline how the state will “take such reasonable steps as the State deems necessary to restrict the use and disclosure of information about individuals and families receiving assistance under the program attributable to funds provided by the Federal Government.”⁶
- b. The law provides that if a State establishes safeguards against the use or disclosure of information about applicants or recipients of TANF assistance, the safeguards shall not prevent the State agency administering the program from furnishing a Federal, State, or local law enforcement officer, upon the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that–
 - i. the recipient is a fleeing felon or parole or probation violator or that the recipient has information that is necessary for the officer to conduct the official duties of the officer; and
 - ii. the location or apprehension of the recipient is within the official duties of the law enforcement officer.⁷

8. Prohibition against increasing TANF benefits when other benefits are reduced due to fraud

- a. If an individual's benefits under a Federal, State, or local law relating to a means-tested welfare or a public assistance program are reduced because of an act of fraud by the individual under the law or program, the individual may not, for the duration of the reduction, receive an increased benefit under TANF (or under any other means-tested

⁵ 42 U.S.C. §608(a)(9).

⁶ 42 U.S.C. §602(a)(1)(A)(iv).

⁷ 42 U.S.C. §608(a)(9)(B).

welfare or public assistance program for which Federal funds are appropriated) as a result of a decrease in the income of the individual (determined under the applicable program) attributable to such reduction.

- i. For these purposes, the term “means-tested welfare or public assistance program for which Federal funds are appropriated” includes the Food Stamp Program, any program of public or assisted housing under title I of the United States Housing Act of 1937 and any State program funded under TANF.⁸

9. Impact of parental absence during incarceration

- i. During a period of incarceration, the custodial parent may be in prison and therefore not living in the home. To be eligible for TANF assistance, a family must include a child residing with a parent or other relative.⁹ There could be two principal scenarios: during the period of parental absence, the child might be living with the other parent or another relative; or, the child might be residing with a nonrelative.

(1) If the child is residing with the other parent or another relative, the state can continue TANF assistance for the child and members of the child’s eligible family. HHS has indicated that a state can elect to provide assistance to a non-custodial parent as a member of an “eligible family” and it therefore appears that if a state wished to continue assistance for the incarcerated parent (e.g., to prevent eviction of the child) the state could elect to do so by treating the incarcerated parent as a non-custodial parent.¹⁰

(2) If the child is now residing with a nonrelative, it is unclear whether the state could continue TANF assistance on a temporary transitional basis, but the state cannot provide ongoing TANF assistance to a child residing with a nonrelative. Note that under TANF regulations, nonrecurrent short term benefits that do not exceed four months in length are considered “nonassistance” so it does appear that a state could provide cash help for a period not to exceed four months on this basis.¹¹

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⁸ 42 U.S.C. §608(a).

⁹ 64 Fed. Reg. 17823 (April 12, 1999). See also 42 U.S.C. §608(a)(1). The current language of this statutory provision does not explicitly say that the child must be residing with a parent or relative, but based on its legislative history, HHS has interpreted it in this way.

¹⁰ See 64 Fed. Reg. 17823 (April 12, 1999).

¹¹ 45 C.F.R. §260.31(b)(1).