

COLLATERAL CONSEQUENCES of the WAR ON DRUGS

Higher Education Act

Did you know that thousands of students are being denied a college education just because they have a drug conviction? In 1998, Congress passed an amendment to the Higher Education Act (HEA) of 1965 that denies federal financial aid to individuals with a drug conviction. Those convicted of any other crime, even murder or rape, are still eligible for financial aid, while those convicted of marijuana or other drug charges face a bar to aid that lasts anywhere from one year to life.

The HEA in Fine Print

Students convicted for possession are automatically ineligible for aid for one year from the date of the first offense, two years from the date of the second offense, and indefinitely if convicted three or more times.

Students convicted for sale are automatically ineligible for aid for two years from the date of a first offense and indefinitely if convicted two or more times.

Students may be denied aid even if their convictions occurred before the law was enacted. Students barred from receiving aid can regain eligibility only by completing a federally approved drug rehabilitation program—even if they are not addicted to drugs.

History

The original purpose of the HEA was to open the door to a higher education for students who otherwise could not afford it. The HEA establishes federal loans, grants and work-study programs to make a college education accessible to millions of Americans. In 1998, Congress reviewed the act and passed an amendment that blocks financial aid to students with drug convictions.

How does it work?

Question 35 on the Free Application for Federal Student Aid (FAFSA) asks students to disclose whether they have been convicted of any drug offense. If the student answers “Yes” or even leaves the question blank, the student will be automatically denied aid and in many cases, a college education. Since 2000, 87,637 students have been denied aid under this act.

What’s wrong with this law?

- **The law is unfair.**

If a student is convicted of a drug offense and her family can afford to pay for college, she will be unaffected by the legislation. Meanwhile, individuals who are already marginalized and have a drug conviction are denied federal aid and the chance to go to college.

- **The HEA provision has a racially discriminatory impact.**

Drug enforcement already focuses heavily on minority communities. Recent Department of Justice statistics show that African-Americans make up 12% of the population and 13% of drug offenders but represent 55% of convictions and 70% of incarcerations for drug possession. Latinos comprise 12.5% of the population and use and sell drugs less than whites, yet 46% of people charged with a federal drug offense in 1999 were Latino. Because the majority of people being convicted and incarcerated for drug crimes are people of color, the HEA has a severe impact on minority communities.

- **Blocking access to education is counter-productive.**

The HEA provision does nothing to help disadvantaged students struggling with substance abuse problems, but it does block access to education for those who need it the most.

What can you do?

1. Send a free fax or email to Congress saying you support repeal of the HEA! Visit the ACLU website at www.aclu.org.
2. If you have been denied financial aid because of a drug conviction, let us know. We have a confidential online form that you can find on the ACLU website, www.aclu.org/DrugPolicy/DrugPolicyMain.cfm.
3. If you are currently a college student, lobby your student government to endorse a resolution asking for repeal. Visit Raise Your Voice! at www.raiseyourvoice.com for more details.
4. Consider making a donation to the John W. Perry Scholarship Fund for students who have been denied financial aid due to the HEA provisions. Visit www.raiseyourvoice.com/perryfund for more details.



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Public Housing

Did you know that if you live in public housing and a family member or guest uses drugs, your whole family can be evicted? In 1996, the Department of Housing and Urban Development (HUD) enacted a new “One Strike and You’re Out” policy that has put many people out on the street. “One Strike” guidelines dictate that a single drug crime, on or off the housing premises, can result in the eviction of the entire household.

History

In 1996, President Clinton endorsed “One Strike” as a way of addressing the issue of crime in public housing. HUD then aggressively promoted this new housing policy to public housing authorities (PHAs) and enacted an assessment system to ensure PHA compliance with the new regulations.

How does it work?

There are 3,400 public housing complexes that receive funding from HUD. The “One Strike” guidelines require that if the tenant, another member of the household, a guest, or any other person connected with the tenant is involved with drugs, the entire household can be evicted. A drug eviction makes the tenants ineligible for public housing for three years after the date of eviction. In addition, PHAs must deny admission of public housing to anyone whom they have “reasonable cause to believe” has “a pattern of illegal drug use.” In the first six months after the “One Strike” guidelines were adopted, evictions jumped from 9,835 to 19,405.

What’s wrong with this law?

• This law encroaches on important Constitutional protections.

By evicting innocent tenants for drug activity that occurs without their knowledge or consent, “One Strike” denies the right to due process, guaranteed by the Fifth and Fourteenth Amendments, which prevents one person from being punished solely because of the actions of another.

• This law represents a legal double standard in the War on Drugs.

In the War on Drugs, there are many laws that only apply to the poor. This policy is no exception. Only families living in low-income housing face the prospect of homelessness by federal decree.

• This law worsens social problems that public housing was designed to alleviate.

Many public housing projects encounter drug activity and violent crime. Instead of going after drug sellers and users directly, this law targets innocent families. “One Strike” puts families on the street and increases family instability. Without housing, parents may lose custody of their children. Fear of being evicted or denied housing may also prevent families from taking in relatives with past or current drug problems or who are returning home from prison.

What can you do?

1. Write or call your representatives and let them know you oppose “One Strike and You’re Out.”
2. Spread the word. Inform others about how innocent people can lose their housing because of the War on Drugs.
3. Visit our website at www.aclu.org to learn more about the War on Drugs.

“One Strike” in the U.S. Supreme Court: HUD v. Rucker

In 2002, the U.S. Supreme Court heard arguments in HUD v. Rucker, a case involving four elderly residents facing eviction under the “One Strike” policy for drug crimes they did not commit. Ms. Rucker, one of the tenants, faced eviction because her mentally disabled daughter was arrested for cocaine possession three blocks from their apartment. Two other residents received an eviction notice because their grandchildren were caught smoking marijuana in the complex’s parking lot, and one resident faced eviction because his caregiver was found with cocaine in his apartment.

The Supreme Court voted 8-0 against Rucker. The Court ruled that Congress had intended drug evictions to extend to innocent tenants and that this policy was constitutional. In his majority opinion, Chief Justice Rehnquist held that it is not “absurd” to “sometimes evict a tenant who ha[s] no knowledge of the drug-related activity” or who “[can] not foresee or [can] not control behavior by other occupants of the unit.”



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Felony Disenfranchisement

Did you know that over 4 million Americans are barred from the voting booths because of felony convictions? Almost all states deny convicted felons the right to vote while incarcerated. But in 13 states, ex-felons remain disenfranchised for the rest of their lives. Felony disenfranchisement laws, first enacted as part of Jim Crow, continue to have a disproportionate impact upon African-Americans: 13% of black men, totaling 1.4 million people, are denied the right to vote. In Florida, where the 2000 presidential election was decided by a margin of 537 votes, 436,900 ex-felons who had completed their sentences were legally barred from casting a ballot.

State Laws Up Close

Maine and Vermont have no voting restrictions for convicted felons.

16 states (including IL, MA, MI, OH, OR, PA) prohibit voting only while incarcerated.

4 states (CA, CO, CT, NY) ban voting while in prison and on parole.

15 states (including GA, NJ, RI, TX) ban probationers as well as prisoners and parolees from voting.

13 states do not automatically restore voting rights upon the completion of one's sentence. 8 of these states (AL, FL, IA, KY, MS, NV, VA, WY) permanently disenfranchise all felons. 5 states permanently disenfranchise certain ex-felons, such as those convicted before a certain date (TN, WA), multiple offenders (AZ, MD), or violent offenders (DE).

History

Felony disenfranchisement laws began to play a major political role when the Fifteenth Amendment was ratified in 1870, preventing states from denying the franchise based on race. In order to keep political power in the hands of whites, southern states devised new legal barriers to prevent blacks from voting. Among them were poll taxes, literacy tests, grandfather clauses, and felony disenfranchisement laws. By 1940, only 3% of southern blacks were registered to vote. Since the passage of the Voting Rights Act of 1965, felony disenfranchisement laws are the only discriminatory voting laws to have survived from the Jim Crow era.

How does it work?

Because every state has different voting laws, felony disenfranchisement laws vary widely across the nation. Only Maine and Vermont have no voting restrictions for convicted felons. The majority of states bar convicted felons from voting only while serving their sentences. Depending on the state, probation and parole terms must also be completed in addition to any prison time before voting rights can be restored. Several states permanently bar all felons from ever voting again.

What is wrong with this law?

- **The ability to vote is essential for a healthy democracy.**

Today, 1 in 50 adults, or 4.2 million Americans, cannot vote in our country. Prohibiting such a large number of people from voting seriously compromises the strength of our democracy.

- **Permanent disenfranchisement violates our fundamental notions of justice.**

1.4 million men and women who have completed their sentences are barred from the voting booths for the rest of their lives. People who have paid their debt to society deserve to have their voting rights reinstated. Voting is an important aspect of citizenship, and withholding this right makes ex-felons second-class citizens.

- **These laws have a racially discriminatory impact.**

In 7 of the 8 states that mandate permanent disenfranchisement, at least 25% of the black male population cannot vote. In Alabama and Florida, this figure is over 30%. If the current pattern in incarceration levels continues, 40% of the black male population in some states will be unable to vote.

What can you do?

1. Spread the word and register to vote! If you have been convicted of a felony and have finished serving your time, you may be eligible to vote. Find out about the laws in your state and take action.
2. Get involved with the ACLU's "Get Your Vote Back" campaign. Contact the ACLU affiliate in your state to receive important felony re-enfranchisement information.
3. Learn more about these laws by visiting the ACLU's website at www.aclu.org.



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Welfare Reform Act

Did you know that a drug conviction can result in a lifetime ban on receiving welfare? The Welfare Reform Act permanently denies welfare benefits such as cash assistance and food stamps to any person convicted of a state or federal felony drug offense. No other offense, including murder or rape, results in a loss of benefits. Currently, 19 states impose the ban in full, and 31 states (including IL, NM, NY, NC, and SC) and the District of Columbia have eliminated or modified the ban.

History

In 1996, Congress passed the Welfare Reform Act. Section 115 of the Act, introduced and ratified in just two minutes with bipartisan support, made felony drug offenders ineligible for welfare benefits. Congressional records show that the purpose of the drug provision was to further the goals of the War on Drugs.

How does it work?

State legislatures may choose to modify or eliminate the ban. Modifications can include limiting ineligibility to certain offenses, allowing people in dire need of assistance to remain on welfare, making the denial of services temporary, allowing offenders to receive partial benefits, or requiring drug treatment programs.

What is wrong with this law?

• The ban targets the poor.

Only those who need welfare to survive are affected by the provision. These people and their families are punished for the rest of their lives for a prior drug conviction.

• The ban punishes innocent children.

Children are often the indirect beneficiaries of welfare. When welfare services are cut off, they are at a much greater risk of neglect or more serious harm. Studies have shown that the ban, which in many states is blind to the needs of dependents, will lead to higher incidences of family dissolution and further increase child welfare caseloads. The growing number of deprived children will also place a great burden on the criminal justice and health care systems.

• The ban disproportionately affects minorities.

The enforcement of drug laws is badly skewed towards the prosecution of minorities. Considering that African-Americans and Latinos represent the vast majority of people in the criminal justice system for drug convictions, the ban disproportionately targets minority communities.

• The loss of benefits makes it more difficult for people to improve their lives.

The loss of welfare benefits endangers the needs of low-income people, including housing, food, job training, education, and drug treatment, key ingredients in helping poor families lift themselves out of poverty. The ban essentially endangers the lives of poor individuals and their families, while doing nothing to deter or prevent future drug use.

What can you do?

1. Write your representatives in Congress and urge them to hold hearings to consider the immediate repeal of the lifetime welfare ban.
2. Write your state representatives and tell them to fully opt out of the ban if they have not already done so. For states requiring drug treatment for welfare assistance, tell your representatives that additional programs such as job training or GED programs should be provided as an alternative to maintain welfare benefits.

Impact of the Welfare Ban on Women and Children*

Over 92,000 women are currently affected by the lifetime welfare ban.

The ban places over 135,000 children at risk of coming in contact with child welfare services and the criminal justice system due to the prospect of reduced family income support.

More than 44,000 white women, nearly 35,000 African-American women, and almost 10,000 Latinas are affected by the ban.

In 7 states which implement the ban in part or in full, African-American women and Latinas represent the majority of women subject to the ban.

* Source—"Life Sentences: Denying Welfare Benefits to Women Convicted of Drug Offenses" by the Sentencing Project, February 2002.



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