

I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÁHAN
2023 (FIRST) Regular Session
VOTING RECORD

Bill No. 20-37 (COR) As amended by the Committee on Health, Land, Justice, and Culture; and further amended on the Floor.	Speaker Antonio R. Unpingco Legislative Session Hall Guam Congress Building June 30, 2023
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NAME	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused
Senator Chris Barnett	✓					
Senator Frank Blas, Jr.	✓					
Senator Joanne Brown	✓					
Senator Christopher M. Dueñas	✓					
Senator Thomas J. Fisher	✓					
Senator Jesse A. Lujan	✓					
Vice Speaker Tina Rose Muña Barnes	✓					
Senator William A. Parkinson	✓					
Senator Sabina Flores Perez	✓					
Senator Roy A. B. Quinata	✓					
Senator Joe S. San Agustin	✓					
Senator Dwayne T. D. San Nicolas	✓					
Senator Amanda L. Shelton	✓					
Senator Telo T. Taitague	✓					
Speaker Therese M. Terlaje	✓					

TOTAL

15

0

Aye

Nay

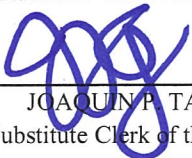
**Not
Voting/
Abstained**

**Out
During
Roll Call**

Absent

Excused

CERTIFIED TRUE AND CORRECT:



 JOAQUIN P. TAITAGUE
 Substitute Clerk of the Legislature

I = Pass

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*

Introduced by:

William A. Parkinson
Therese M. Terlaje
Roy A.B. Quinata
Dwayne T. D. San Nicolas
Chris Barnett
Tina Rose Muña Barnes
Joe S. San Agustin
Amanda L. Shelton

AN ACT TO *AMEND* §§ 2103 AND 2104 OF ARTICLE 1, AND §§ 2701, 2702, 2703, AND 2705 OF ARTICLE 7; AND TO *ADD* A NEW SUBSECTION (d) TO § 2201 OF ARTICLE 2, AND A NEW § 2706 TO ARTICLE 7, ALL OF CHAPTER 2, TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO RESTORING ACCESS TO FEDERAL PUBLIC ASSISTANCE FOR OTHERWISE ELIGIBLE INDIVIDUALS WITH FELONY DRUG CONVICTIONS.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that whereas restrictions or limitations to rights, benefits, and opportunities as a
4 consequence of criminal convictions often serve a legitimate public safety or regulatory
5 function and are directly related to a particular crime, one such collateral sanction that
6 applies to Guam residents without regard to the relationship between the crime and

1 opportunity being restricted is the lifetime ban on public assistance for drug felonies
2 enforced under the federal Personal Responsibility and Work Opportunity
3 Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, Section 115, 110 Stat.
4 2015.

5 Capturing the national zeitgeist of the time, PRWORA was signed into law by
6 then-President Clinton as a consequence of the Congress' welfare reform priorities
7 during the "war on drugs" era. The omnibus measure included Section 115, a floor
8 amendment that duly passed with minimal discussion which proposed a lifetime ban
9 permanently disqualifying otherwise eligible individuals from receiving public benefits
10 provided by the Supplemental Nutrition Assistance Program (SNAP) and the
11 Temporary Assistance for Needy Families Program (TANF) if they have been
12 convicted of a federal or state felony offense involving the possession, use, or
13 distribution of a controlled substance, as defined in Section 102 of the Federal
14 Controlled Substances Act, 21 U.S.C. 802(6), for conduct occurring on or after August
15 22, 1996.

16 Inasmuch as the permanent disqualification from receipt of public assistance
17 under PRWORA was rationalized as a means to deter drug use and reduce incidences
18 of welfare fraud, *I Liheslaturan Guåhan* finds this collateral sanction is both
19 underinclusive because it does not apply to drug users who have been convicted of non-
20 drug related felonies, and overinclusive because it permanently disallows public
21 assistance to people who have never engaged in fraudulent use of government benefits.

22 The American Bar Association's (ABA) *Standards for Criminal Justice*
23 regarding collateral consequences and discretionary disqualifications of convicted
24 persons proscribes automatic sanctions that render persons ineligible to participate in
25 government programs providing necessities of life, including food, clothing, and
26 housing; or those that "without justification, [] frustrate a convicted person's chances
27 of successfully reentering society." Placing a heavy burden of justification on

1 legislatures, the ABA explicitly prohibits jurisdictions from imposing collateral
2 consequences on a person convicted of an offense “unless [] the conduct constituting
3 that particular offense provides so substantial a basis for imposing the sanction that the
4 legislature cannot reasonably contemplate any circumstances in which imposing the
5 sanction would not be justified.” Accordingly, *I Liheslaturan Guåhan* finds that the
6 possession, use, or distribution of a controlled substance constituting a felony drug
7 offense does not justify the categorical imposition of a lifetime ban of public assistance
8 on otherwise eligible individuals based solely on a drug-related felony conviction.

9 It is, therefore, the intent of *I Liheslaturan Guåhan*, under the authority of
10 subsection (d)(1)(A) of 21 U.S.C. § 862a, to lift the federal ban under PRWORA as a
11 collateral sanction against Guam residents by electing to opt out of the provisions of 21
12 U.S.C. §§ 862a(a)(1) and (2) relative to the categorical ineligibility of individuals with
13 felony drug convictions to receive federally funded public assistance.

14 **Section 2.** § 2103 of Article 1, Chapter 2, Title 10, Guam Code Annotated, is
15 hereby *amended* to read as follows:

16 **“§ 2103. Duties Generally.**

17 It shall be the duty of the Director to:

18 (a) administer public assistance and child welfare services in
19 Guam, and in accord therewith to adopt such rules and regulations subject
20 to the approval of the Governor, as may be necessary or desirable;

21 (b) cooperate with the federal government in carrying out the
22 purposes of the Social Security Act in matters pertaining to public welfare,
23 public assistance, and child welfare services;

24 (c) pay medical claims of indigent persons as they are defined
25 in and in accordance with the guidelines and the cost-sharing program
26 developed pursuant to Article 9 of this Chapter; and

1 (d) exercise the opt out provision in Section 115 of the Federal
2 Personal Responsibility and Work Opportunity Reconciliation Act of
3 1996, 21 U.S.C. § 862a(d)(1)(A).”

4 **Section 3.** § 2104 of Article 1, Chapter 2, Title 10, Guam Code Annotated, is
5 hereby *amended* to read as follows:

6 **“§ 2104. Federal Grants.**

7 The Director shall comply with all federal requirements pertaining to
8 methods and standards of administration and shall make such rules and
9 regulations and follow such procedure as may be required for the receipt from
10 the federal government of grants or grants-in-aid for public assistance and such
11 administrative costs as are provided in connection therewith.

12 In accordance with 21 U.S.C. § 862a(d)(1)(A), Guam elects to opt out of
13 the application of the provisions of 21 U.S.C. § 862a to individuals who have
14 been convicted of any felony offense under the Guam Uniform Controlled
15 Substances Act, or any comparable federal or state criminal law, that has as an
16 element the possession, use or distribution of a controlled substance, as defined
17 in Section 102(6) of the Federal Controlled Substances Act, 21 U.S.C. § 802(c),
18 for conduct occurring on or after August 22, 1996.”

19 **Section 4.** A new Subsection (d) is *added* to § 2201 of Article 2, Chapter 2,
20 Title 10, Guam Code Annotated, to read as follows:

21 **“§ 2201. Applications for Public Assistance.**

22 “(d) Pursuant to the authorization provided in the Federal Personal
23 Responsibility and Work Opportunity Reconciliation Act of 1996, 21 U.S.C.
24 § 862a(d)(1)(A), the Director shall exempt applicants domiciled in Guam from
25 the provisions of 21 U.S.C. §§ 862a(a)(1) and (2) to ensure eligibility for public
26 assistance.”

1 **Section 5.** § 2701 of Article 7, Chapter 2, Title 10, Guam Code Annotated, is
2 hereby *amended* to read as follows:

3 “§ 2701. **Definitions.**

4 For the purposes of this Article:

5 (a) *Department* means the Department of Public Health
6 and Social Services;

7 (b) *Food* means any food or food product for human
8 consumption except alcoholic beverages and tobacco and shall
9 include seeds and plants for use in gardens to produce food for the
10 personal consumption for the eligible household;

11 (c) *Food coupons* means any coupon, stamp or type of
12 certificate used under the Federal Food Stamp Act of 1977;

13 (d) *Food stamp program* means a program under the
14 Food Stamp Act of 1977 (since renamed the Supplemental
15 Nutrition Assistance Program (SNAP) by the Federal Food and
16 Nutrition Act of 2008), which provides financial assistance
17 intended to raise levels of nutrition among low-income households;

18 (e) *SNAP benefits* means the value of supplemental
19 nutrition assistance provided to a household by means of an
20 Electronic Benefit Transfer (EBT) under the Food and Nutrition
21 Act of 2008, or other means of provided assistance, as determined
22 by the United States Department of Agriculture (USDA); and

23 (f) *Temporary Assistance for Needy Families (TANF)*
24 means the federally grant funded, time limited program, to assist
25 families with children when the parents or other responsible
26 relatives cannot provide for the family’s basic needs pursuant to
27 Subtitle B, Chapter II of 45 U.S.C.”

1 **Section 6.** § 2702 of Article 7, Chapter 2, Title 10, Guam Code Annotated, is
2 hereby *amended* to read as follows:

3 **“§ 2702. Authorization.**

4 The Department of Public Health and Social Services, through the
5 Division of Social Services, is authorized to implement the food stamp
6 program locally in accordance with the provisions of the Federal Personal
7 Responsibility and Work Opportunity Reconciliation Act of 1996 and the
8 Food and Nutrition Act of 2008:

9 (a) Householders determined by the Department to be
10 eligible for assistance under the food stamp program may obtain
11 SNAP benefits or other means of provided assistance as determined
12 by the USDA;

13 (b) SNAP benefits shall be used to purchase food from
14 retail food stores which have been approved for the participation in
15 the food stamp program.”

16 **Section 7.** § 2703 of Article 7, Chapter 2, Title 10, Guam Code Annotated, is
17 hereby *amended* to read as follows:

18 **“§ 2703. Duties of the Department.**

19 The Department of Public Health and Social Services, through the
20 Division of Social Services, shall:

21 (a) adopt rules and regulations necessary to carry out the
22 food stamp program;

23 (b) cooperate with the federal government and do all
24 things necessary to continue eligibility under the food stamp
25 program;

26 (c) comply with the requirements of the Federal Food and
27 Nutrition Act of 2008; and

1 (d) exempt individuals domiciled in Guam from the
2 application of Section 115 of the Federal Personal Responsibility
3 and Work Opportunity Reconciliation Act of 1996, 21 U.S.C.
4 §§ 862a(a)(1) and (2), by allowing payment of SNAP and TANF
5 benefits to an otherwise eligible individual who has been convicted
6 of a felony offense under federal, state or Guam criminal law which
7 has as an element the possession, use or distribution of a controlled
8 substance, as defined in Section 102(6) of the Federal Controlled
9 Substances Act, 21 U.S.C. § 802(c), if (1) the individual has
10 successfully completed probation, parole, community corrections,
11 a reentry court program, or any other post-conviction monitoring
12 program ordered by a court; or (2) the individual is successfully
13 complying with conditions of probation, parole, or community
14 corrections, the terms of participation in a reentry court program,
15 or the requirements of any other post-conviction monitoring
16 program ordered by a court.”

17 **Section 8.** § 2705 of Article 7, Chapter 2, Title 10, Guam Code Annotated, is
18 hereby *amended* to read as follows:

19 **“§ 2705. Penalties.**

20 A person is guilty:

21 (a) of a felony of the third degree if he knowingly makes
22 a false statement for the purpose of influencing the action of the
23 Department in connection with its responsibilities under the
24 Federal Food and Nutrition Act of 2008, with respect to the
25 certification of households applying for participation in the food
26 stamp program and the issuance under such program of SNAP and
27 TANF benefits to households;

1 (b) of a misdemeanor if he knowingly uses, transfers,
2 acquires, alters, or possesses SNAP and TANF benefits or
3 authorization-to-participate cards in any manner not authorized by
4 the Federal Food and Nutrition Act of 2008 or the federal or local
5 regulations issued pursuant to this Act and the face value of the
6 SNAP benefits or the authorization-to-participate card is One
7 Hundred Dollars (\$100.00) or less;

8 (c) of a felony of the third degree if he knowingly uses,
9 transfers, acquires, alters, or possesses SNAP and TANF benefits
10 or authorization-to-participate cards in any manner not authorized
11 by the Federal Food and Nutrition Act of 2008, or the federal or
12 local regulations issued pursuant to this Act and the face value of
13 the SNAP and TANF benefits or the authorization-to-participate
14 card exceeds One Hundred Dollars (\$100.00);

15 (d) of a felony of the third degree if he knowingly uses,
16 transfers, acquires, alters, or possesses a blank authorization-to-
17 participate card of the Department in any manner not authorized by
18 the Department;

19 (e) of a felony of the third degree if he knowingly
20 counterfeits, forges, or alters any authorization-to-participate card
21 issued by the Department in connection with its responsibilities
22 under the Federal Food and Nutrition Act of 2008; or

23 (f) of a felony of the third degree if he knowingly alters,
24 publishes, or puts into circulation any counterfeited, forged, or
25 altered authorization-to-participate cards.”

26 **Section 9.** A new § 2706 is hereby *added* to Article 7 of Chapter 2, Title 10,
27 Guam Code Annotated, to read as follows:

1 **“§ 2706. Random Drug Testing.**

2 Formerly convicted felons eligible to receive SNAP and or TANF benefits
3 under this Article shall be subject to random drug testing for the duration of their
4 eligibility for SNAP and or TANF benefits. Two (2) consecutive positive drug tests
5 shall automatically disqualify such individual(s) from continuing to receive SNAP
6 and or TANF benefits.”

7 **Section 10. Effective Date.** This Act shall be effective upon enactment.

8 **Section 11. Severability.** If any provision of this Act or its application to any
9 person or circumstance is found to be invalid or inorganic, such invalidity shall not
10 affect other provisions or applications of this Act that can be given effect without
11 the invalid provision or application, and to this end the provisions of this Act are
12 severable.