
Fighting EBT Fraud

Penalties for Unlawful Dealing & Possession of SNAP Benefits & EBT Cards
New Mexico Human Services Department



HUMAN
SERVICES
DEPARTMENT

Background

The Supplemental Nutritional Assistance Program (SNAP), formerly known as food stamps, is administered by the Human Services Department (HSD). SNAP benefits are intended to help low-income individuals purchase the food they need to stay healthy. The federal government sets the criteria for who qualifies for SNAP and the benefit amount.

New Mexico has a large percentage of the population currently on SNAP. At the close of SFY13, more than 442,013 New Mexicans, or roughly 22% of the overall population ranking fourth in the nation, received SNAP benefits. Total expenditures amounted to more than \$678.8 million dollars, passed to the State by the federal government. Benefits are loaded onto



an Electronic Benefits Card (EBT), similar to a debit card. Temporary Assistance For Needy Families (TANF) Cash Assistance Benefits are also loaded onto this EBT card each month.

SNAP and EBT Fraud

The United States Department of Agriculture (USDA), which oversees SNAP and EBT from the federal level, reports that EBT trafficking is

up nationwide. There has been a 260% increase in the actual dollar value from \$330 million in 2008 to \$858 million in 2011.

During SFY13, the HSD Office of Inspector General (OIG) receive 144 referrals for potential EBT trafficking. Due to the large potential of EBT trafficking, the OIG has established an EBT Trafficking Unit located in the Investigations Bureau. One investigator monitors vendors, recipient transactions, and excessive replacement cards. They also have a new tool in order to help them track the potential sale of benefits on social media sites such as Facebook, as well as on websites like Craigslist.

At this time, there is no real incentive for recipients to cooperate with an investigation because the current highest penalty that exists is a one year disqualification for a head of household. The lack of restitution or potential outcome puts EBT trafficking towards the bottom of investigations with this lack of incentive for cooperation.

New Mexico's Solution – HB 229 (Youngblood)

In order to combat this fraud, HSD is proposing an easy to understand solution. By inserting into 30-16-7 the words, “any twelve consecutive months”, those who are selling EBT cards or those who are buying EBT cards will be charged with a fourth degree felony for trafficking. This will give incentive to each party to cooperate with investigators on these cases, as well as likely reducing potential fraud in the system, returning more dollars that can be used to benefit New Mexico's low-income residents.

This solution cannot be considered extreme when compared to laws regarding public assistance fraud in numerous states as well as the federal government. They all reduce the threshold for a felony conviction to amounts much lower than the \$500 that New Mexico currently abides by.

According to 7 U.S.C. § 2024 : US Code - Section 2024: Violations and Enforcement, subsection c the threshold for a felony conviction is \$400 lower than what is currently in New Mexico state law.

“Whoever presents, or causes to be presented, benefits for payment or redemption of the value of \$100 or more...shall be guilty of a felony...”

Texas and Arizona have lowered their thresholds for a felony to \$200 and \$100 respectively. Many other states have followed suit. Texas has seen a significant drop in the level of EBT trafficking taking place – due in part to the reduction of their felony threshold.

Instead of lowering the threshold for a felony in New Mexico, the solution HSD proposes to better combat public assistance fraud runs along the same lines as Nevada's laws.

In NRS 207.30, Nevada law allows the aggregation of offenses in such a way as to provide the option of charging a repeat offender with a felony if possible.

5. The value of all coupons misappropriated in separate acts of fraud involving coupons must be combined for the purposes of imposing punishment for the offense charged if:

a) The separate acts were committed within 6 months before the offense;

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- b) None of the individual acts is punishable as a felony; and
 - c) The cumulative value of all the coupons misappropriated is sufficient to make the offense punishable as a felony.