

HARMFUL DRUG LAW HITS HOME



How Many College Students in Each State Lost Financial Aid Due to Drug Convictions?



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Introduction

Under a little known provision of the Higher Education Act (HEA), nearly 200,000 would-be college students have been declared ineligible to receive the federal financial aid they need to attend school because they have drug convictions on their records. Newly released data from the U.S. Department of Education (DoE) reveal how many Americans in each state have been affected by the law.

The HEA Aid Elimination Penalty, passed by Congress and signed into law by President Clinton in 1998, requires students who apply for federal aid to reveal past drug convictions. Students filling out the Free Application for Federal Student Aid (FAFSA) are asked if they have “ever been convicted of possessing or selling illegal drugs.”

Since the drug conviction question was first added to the financial aid form during the 2000-2001 school year, 189,065 people have had their applications rejected because of their answers to it. The government has periodically released data on the number of students affected nationally. DoE released the state-by-state data last week, in response to a Freedom of Information Act request filed by the nonprofit organization Students for Sensible Drug Policy (SSDP) and a subsequent lawsuit brought by the student group against the government. See Appendix I for detailed information on the legal battle.

The Effect of the Aid Elimination Penalty on the States

According to the newly released DoE data, the state with the highest percentage of applicants denied financial aid due to drug convictions is Indiana, ironically the home state of Rep. Mark Souder (R-IN), the Aid Elimination Penalty’s author and chief proponent. One out of every 200 aid applicants in Indiana (0.50%) is rejected due to a drug conviction. This is double the national average of 0.25%. Other states ranking above the national average are Oregon (0.36%), California (0.36%), Washington (0.30%), Rhode Island (0.29%), North Carolina (0.28%), Connecticut (0.28%), Arkansas (0.27%), Texas (0.27%), Kentucky (0.26%), Okla-

homa (0.26%), Iowa (0.26%), and Alaska (0.26%). California has the highest overall number of students who have lost their aid. Since the Aid Elimination Penalty was enacted, 31,830 Californians have been declared ineligible under the law. Other states with high numbers of applicants denied aid for drug convictions include Texas (15,025), Florida (9,180), New York (8,962), Indiana (8,903), and Illinois (8,071).

Vermont has the lowest percentage (0.12%) of applicants affected by the Aid Elimination Penalty. Vermont also has the lowest overall number of students affected, with only 204 students losing aid since 2000 because of drug convictions.

See Appendix II for a chart containing data on all states.

How the Law Works

Depending on the nature and number of drug convictions, students can be denied federal financial aid from one year to indefinitely:

<u>Possession of a controlled substance:</u>	<u>Ineligibility Period:</u>
First offense	One year
Second offense	Two years
Third offense	Indefinite
<u>Sale of a controlled substance:</u>	<u>Ineligibility Period:</u>
First offense	Two years
Second offense	Indefinite

When applicants answer “yes” to the drug conviction question or refuse to answer it, they are sent a follow-up worksheet that asks them to reveal more information about the number and type of drug convictions they have, as well as when they occurred. Based on their final answers to the drug conviction question, applicants fall into one of three categories:

- Applicants in category “1” are eligible for financial aid (either because they do not have any drug convictions, the convictions they do have were long enough ago that aid eligibility has since been reinstated, their convictions have been expunged, or their convictions occurred when they were minors).

- Applicants in category “2” are ineligible for financial aid for part of the school year due to their drug convictions.

- Applicants in category “3” are ineligible for financial aid for the entire school year, or longer, due to their drug convictions.

The law originally affected people with prior convictions, but in February 2006 Congress restricted the reach of the penalty so that only people convicted while enrolled in college and receiving aid will be punished by it.

“I’m a single mother and this was my only offense. I want to change my life so that I can make a better future for my daughter.”

*Melanie Cayell, Oregon resident
affected by the Aid Elimination Penalty*

Methodology of This Report

To determine the number of students in each state who have had their aid eligibility suspended because of their answers (or nonanswers) to the drug conviction question, SSDP tallied selected columns of a spreadsheet provided by DoE (see excel file at www.ssdp.org/states/data.xls). The following is a description of the relevant (highlighted) columns:

Response Blank All Trans: The applicant refused to answer the drug conviction question, even when sent the follow-up worksheet.

Response Still ‘3’ on Last Trans: The applicant answered “yes” on the FAFSA and, based on his or her answers on the follow-up worksheet, is ineligible for aid for the entire school year.

Response Chg ‘3’ to ‘2’ Last Trans: The applicant answered “yes” on the FAFSA and, based on his or her answers on the follow-up worksheet, is ineligible for aid for part of the school year.

Response Chg ‘3’ to ‘ ’ Last Trans: The applicant answered “yes” on the FAFSA and failed to complete the follow-up worksheet.

Response of ‘2’ on 01 Trans: The applicant

will be ineligible for aid for part of the school year. Because the paper FAFSA form has only two possible initial answers (“1” or “no” and “3” or “yes”), the only way an applicant can fall into this column is if they fill out the FAFSA online, where they are immediately directed to the follow-up worksheet after answering “yes” to the question.

But There’s More to This Story.

DoE’s numbers do not reveal how many students were deterred from even applying for financial aid because they saw the drug question on the FAFSA and assumed (correctly or incorrectly) that they were ineligible. There is also no way to tell how many applicants falsely answered the question, since the Department of Education has no mechanism for catching students who lie. Thus, an indeterminate number of students are getting financial aid that they aren’t legally eligible for because they refuse to admit their past convictions on the FAFSA.

During the 2000-2001 school year, 260,163 people (2.6% of all applicants) left the drug conviction question blank, but still had their aid applications processed due to DoE confusion and time constraints. In subsequent years, DoE under the Bush administration has refused to process applications without an answer to the drug conviction question.

The Student-Led Movement Against the Aid Elimination Penalty

According to the Aid Elimination Penalty’s author, Rep. Mark Souder (R-IN), Congress added it to the HEA in an effort to “deter students from using

Rep. Mark Souder, on why rich families like his aren’t hurt by his penalty:

“If my son goes to a party and he doesn’t have the courage to say, ‘No, I don’t want to smoke a joint,’ he can say, ‘No, I could lose my student loan.’ It’s not actually a good example, because my son is not on scholarship.”

New York Times,
Thursday, May 3, 2001

**Student Governments Calling for
Repeal of the Aid Elimination
Penalty (partial list):**

American University
Amherst College
Brandeis College
Brown University
College of William and Mary
Columbia University
Dartmouth College
Rutgers University
Florida State University
Georgetown University
George Washington University
Hampshire College
Howard University
James Madison University
Mercyhurst College
Mount Holyoke College
North Carolina State University
Northwestern University
Ohio State University
Ohio University
Pennsylvania State University
Rice University
Smith College
South Carolina State University
Syracuse University
Texas State University
University of Arkansas
University of California at Berkeley
University of California at San Diego
University of Colorado at Boulder
University of Connecticut
University of Illinois at
Urbana-Champaign
University of Iowa
University of Kansas
University of Maine at Orono
University of Maryland at College Park
University of Michigan
University of Minnesota at Twin Cities
University of Missouri at Columbia
University of Montana at Missoula
University of Nevada at Las Vegas
University of North Carolina
at Chapel Hill
University of North Carolina at Wilmington
University of Pennsylvania
University of Rhode Island
University of Texas at Austin
University of Texas at Dallas
University of Wisconsin at Madison
University of Wyoming
University of Vermont
Washington University in St. Louis
Wesleyan University
Western Washington University
Yale University

and selling drugs.”¹ But the law has been roundly criticized by higher education and substance abuse recovery experts, Congress’s own appointed advisors, state legislators, and of course, students themselves.

Students for Sensible Drug Policy (SSDP), a nationwide network of college and high school students concerned about the effects of the War on Drugs, has led the effort to repeal the Aid Elimination Penalty. SSDP activists have influenced more than 120 student governments to pass resolutions calling on Congress to repeal the penalty. SSDP chapters at Yale University, Hampshire College, Western Washington University, and Swarthmore College have persuaded their schools to establish scholarship funds that replace federal aid lost under the penalty with institutional dollars.

SSDP’s national staff has been instrumental in building the Coalition for Higher Education Act Reform (CHEAR), a broad network of higher education, addiction recovery, religious, civil rights, and criminal justice organizations calling for repeal of the Aid Elimination Penalty. More than 250 organizations have already joined the coalition, including the National Association of Student Financial Aid Administrators, the American Council on Education, the United States Student Association, the National Education Association, the American Association of Community Colleges, NAA-DAC - the Association for Addiction Professionals, the Evangelical Lutheran Church in America, the United Methodist Church, and the Presbyterian Church. A full list of organizations calling for full repeal of the penalty can be found at www.RaiseYourVoice.com/supporters.shtml.

Congress Gets Advice, And...

In January 2005, the congressionally-created Advisory Committee on Student Financial Assistance (ACSFA) recommended that Congress remove the drug question from the FAFSA, calling it “irrelevant” to aid eligibility. The committee further stated that the question “add[s] complexity to the form and can deter some students from applying for financial aid. [Removing the question] will not alter need analysis or the delivery of federal and state aid, and will simplify the application process for all applicants.”²

A September 2005 study by the U.S. Government Accountability Office (GAO) was unable to find any evidence that

1 Rep. Mark Souder, “Actions Have Consequences,” *USA Today*, June 13, 2000.

2 Advisory Committee on Student Financial Assistance, *The Student Aid Gauntlet: Making Access to College Simple and Certain*, January 23, 2005, p. 16. Found online at: <http://www.ed.gov/about/bdscomm/list/acsfa/gauntletcorrected.pdf>.

the provision “actually helped to deter drug use.” The report found that college graduates “earn nearly twice as much over a lifetime as those persons who have only a high school diploma.” The study cited a “strong consensus among economists that formal education has a positive impact not only on personal income but also on society.” The GAO further noted that college education leads to “decreases in crime” and “decreased dependence upon certain types of public assistance.”³

The National Institute on Drug Abuse’s annual Monitoring the Future study found that “college students have rates of [drug] use that are below those of their age peers” not enrolled in college. High school graduates not enrolled in college are twice as likely to have used crack cocaine and are three times more likely to have used crystal methamphetamine in the last year as their college student peers.⁴

...Congress Acts (Sort Of)

In response to this mounting criticism, Congress scaled back the scope of the HEA Aid Elimination Penalty in February 2006. The change to the law takes away its “reachback effect,” meaning that only convictions that occur while someone is in college and receiving financial aid will cause that person to lose their aid. Under the reformed law, applicants with convictions from before they were in college will be eligible to receive aid.

It is impossible to tell exactly how many of the nearly 200,000 students affected by the penalty will be helped by the recent reform, but SSDP estimates that only a very small number of non-traditional-aged older students will regain their aid eligibility. Since juvenile convictions don’t cause students to lose their aid, and since most students

3 Government Accountability Office. *Drug Offenders: Various Factors May Limit the Impacts of Federal Laws That Provide for Denial of Selected Benefits*, September 26, 2005. Found online at: <http://www.gao.gov/cgi-bin/getrpt?GAO-05-238>.

Organizations Speaking Out Against the Aid Elimination Penalty (partial list):

Addiction Recovery

NAADAC – The Association for Addiction Professionals
 Faces and Voices of Recovery (FAVOR)
 Join Together

Education

National Education Association
 American Council on Education
 American Federation of Teachers
 National Association of Student Financial Aid Administrators
 American Association of Community Colleges
 American Association of University Professors
 United States Student Association

Civil Rights

National Association for the Advancement of Colored People (NAACP)
 National Organization for Women (NOW)
 American Civil Liberties Union (ACLU)
 National Council of La Raza
 Legal Action Center

Religious

United Methodist Church
 Evangelical Lutheran Church in America
 Presbyterian Church
 United Church of Christ
 Progressive Jewish Alliance

Criminal Justice

American Bar Association
 National Black Police Association
 National Association of Criminal Defense Lawyers

enroll in college at age 18, the majority of incoming freshman do not have any previous convictions that affect their aid eligibility.

Under the scaled back law, students will still have to answer a drug conviction question on the FAFSA. The concerns of ACSFA, GAO, and the more than 250 organizations that have called for full repeal of the HEA Aid Elimination Penalty remain unaddressed.

Law Challenged in Court.

In March 2006, SSDP and the American Civil Liberties Union (ACLU) Drug Law Reform Project filed a federal lawsuit challenging the constitutionality of the remaining Aid Elimination Penalty. The suit claims that the penalty violates the U.S. Con-

4 Johnston, L. D., O’Malley, P. M., Bachman, J. G., & Schulenberg, J. E. (2005). *Monitoring the Future national survey results on drug use, 1975-2004. Volume II: College students and adults ages 19-45*, October 2005. Found online at: http://monitoringthefuture.org/pubs/monographs/vol2_2004.pdf.

stitution's Fifth Amendment double jeopardy clause by punishing people twice for the same offense. The suit also alleges that the penalty violates the Fifth Amendment's equal protection guarantee by irrationally designating a class of people, those with drug convictions, as unworthy of educational aid. SSDP and three individual students are named as plaintiffs in the class-action lawsuit. Secretary of Education Margaret Spellings is the defendant. If the case is successful, DoE will be prevented from enforcing the law and previously affected students will be able to re-apply for financial aid. A copy of the SSDP/ACLU complaint can be found at www.ssdp.org/lawsuit.

Federal Policy Trickles Down, States Fight Back

A majority of states withhold state financial aid to students who admit to having drug convictions on the federal FAFSA form, even though most of those states have not enacted laws that specifically classify such students as ineligible. The trend is the result of the bureaucratic ease of using the existing federal form to determine state eligibility.

A number of states have recently taken action to clear up bureaucratic confusion and ensure that students with drug convictions can still receive state financial aid. In New Mexico, Gov. Bill Richardson's Higher Education Department is creating an alternate form that students with drug convictions can fill out in case they are ineligible for aid under the FAFSA requirements. In November 2004, citizens in Columbia, Missouri passed a ballot initiative that decriminalizes marijuana within city limits and mandates that people arrested for misdemeanor marijuana offenses are sent to municipal, rather than state or federal court. This has the effect of protecting students in Columbia

from losing financial aid since the FAFSA asks only about convictions in state or federal courts. The city council of Lawrence, Kansas enacted similar protections in February 2006 by ensuring that people arrested for marijuana possession within city limits are sent to municipal court. During Rhode Island's 2005 legislative session, lawmakers introduced a bill that would de-

link state financial aid from federal eligibility requirements and would retroactively reimburse students' previously lost federal aid with state dollars. The bill did not get a committee hearing, and died at the conclusion of the session.

A report on how the 50 states determine state financial aid eligibility for students with drug convictions, as well as a detailed description of actions that states are taking to correct this problem, can be found at www.RaiseYourVoice.com/statereport.

"I did the jail time, paid the fine, and served probation, but they just want to make it even harder. I'm taking a full course-load and working full-time, but I was almost forced to rethink my education."

*Nicholas Haderlie,
Wyoming resident hurt by the law.*

"By narrowing access to affordable education, the federal government further diminishes the prospects of young people who are already at risk of becoming lifetime burdens to society. Members of Congress are understandably hesitant to cast votes that might brand them as being "soft on crime." But it doesn't take a genius to see that barring young offenders from college leads to more crime—not less. Student aid was never intended for use as a law enforcement weapon. Any attempt to employ it that way will inevitably yield perverse and unfair results."

*New York Times editorial board,
Wednesday, July 20, 2005*

Appendix I

DoE's Freedom of Information Act Stalling and SSDP's Lawsuit

This report is the result of a Freedom of Information Act (FOIA) inquiry and a subsequent lawsuit filed by Students for Sensible Drug Policy (SSDP) against the U.S. Department of Education (DoE).

SSDP originally submitted a FOIA request with DoE on December 28, 2004. SSDP asked DoE for documents revealing the state-by-state distribution of the nearly 200,000 students who have been denied financial aid because of their answers to the drug conviction question on the Free Application for Federal Student Aid (FAFSA). In the FOIA inquiry SSDP also asked, per statute, that DoE waive all fees associated with fulfilling the request because 1) the information sought is in the public interest and 2) SSDP does not stand to commercially benefit from obtaining the information.

SSDP received a response from Maria-Teresa Cueva, DoE's Freedom of Information Officer, dated January 4, 2005, acknowledging the request and asking that SSDP provide further justification for the fee waiver request. SSDP responded to this request on January 10, 2005.

While DoE separately considered the fee waiver request, Elise Cook, DoE's Federal Student Aid FOIA coordinator, took on the task of responding to SSDP's actual FOIA request. Ms. Cook at first seemed confused as to what information SSDP was seeking. Since SSDP already receives documents from DoE that outline the total number of students denied aid nationally, the group submitted these documents to Ms. Cook as examples of the type of state-by-state documents being sought.

SSDP received an e-mail response from Ms. Cook on Thursday, March 10,

New York Times Editorial
Saturday, February 4, 2006

The high cost of public information

The Bush administration has made a habit of keeping public information from the very public that owns it. A good example can be found at the United States Department of Education. After dragging its feet for months, the agency has asked a tiny nonprofit group to pay a ruinous sum for information on the impact of a law that bars students who have committed drug offenses from receiving federal grants and loans.

The law, which cuts off former offenders from receiving financial help even when the crimes they committed were minor and long ago, has become a subject of intense debate. Congress recently approved changes that should moderate some of the law's most destructive effects. Students for Sensible Drug Policy, a small nonprofit group, asked the Department of Education to provide a simple state-by-state breakdown of the people who have been denied aid under the law so far. But the department demanded more than \$4,000 for this information, an amount the group clearly could not afford. The government argued that the request was not in the public interest and implied that Students for Sensible Drug Policy had some commercial interest in seeking it. These claims are both implausible.

The fee represents an increasingly common tactic that is used by the government to discourage public inquiries. The student group has acquired pro bono representation and filed suit in federal court. Members of Congress could end the battle by requesting the information on the group's behalf. Beyond that, Congress should reinforce the Freedom of Information law—which was meant to prevent this kind of thing in the first place.

2005, attached to which were the very same national documents that had been sent to her. SSDP called her and explained that these documents did not reveal the information being sought. She said she understood the error and pledged to find documents that are actually responsive to the state-by-state FOIA request. Following this promise, Ms. Cook did not respond to repeated inquiries from SSDP over a period of several weeks.

On May 12, 2005 SSDP called Ms. Cueva to tell her about Ms. Cook's lack of communication and to inquire about the status of our FOIA and fee waiver requests. She told the group that Ms. Cook was too "embarrassed" to return any calls. Ms. Cueva also informed SSDP that DoE would work to find documents that would satisfy the FOIA request.

On June 1, 2005, SSDP received a letter from Ms. Cueva stating that finding the responsive documents would take DoE 120 hours of search time, at a cost of \$4,124.19. Despite the correspondence described above, the letter wrongly stated that Ms. Cook previously mailed the information SSDP requested. It also wrongly stated that SSDP had

requested information for only two states, rather than all 50. During a follow-up phone conversation, Ms. Cueva informed SSDP that since DoE was under the impression Ms. Cook already responded to the FOIA request, the original case was closed and the group must submit a new fee waiver request for the \$4,124.19. But when pressed, Ms. Cueva stated that she couldn't think of any instance in which she would grant a fee waiver request for the information being sought. Still, SSDP submitted a new fee waiver request on June 2, 2005, which Ms. Cueva rejected in a letter dated June 8, 2005. On June 15, 2005 SSDP appealed the fee waiver rejection. Along with the appeal letter, SSDP submitted dozens of news articles demonstrating the group's ability to effectively disseminate information about the Aid Elimination Penalty to the public through the news media.

On September 20, 2005, SSDP received a letter from DoE's Michell Clark formally denying the fee waiver appeal. In the letter, Mr. Clark states that SSDP's fee waiver request was rejected because its "campaigns could directly benefit those who would profit from the deregulation or legalization of drugs" and he thus "cannot conclude...that SSDP has no commercial interest in the disclosure sought."

Upon receiving Mr. Clark's rejection letter, SSDP retained legal counsel from the consumer advocacy group Public Citizen and filed a lawsuit against DoE on January 26, 2006. A copy of SSDP's complaint can be found at [www.ssdp.org/SSDP v DOE.pdf](http://www.ssdp.org/SSDP_v_DOE.pdf). On February 4, 2006 the *New York Times* editorialized in favor of SSDP's case. Rather than respond to SSDP's complaint within the 30-day window allotted to the government, DoE chose to settle the case out of court and provide the data free of charge by March 31, 2006. DoE did send some data on that date, but forgot to include numbers from one entire school year (2000-2001), and did not include complete data for the remaining years. After SSDP informed DoE of the error, the government sent the complete data on April 12, 2006, which SSDP used to complete this report.

Copies of the correspondence mentioned in this narrative are available from SSDP upon request.

"Former New Mexico Governor Gary Johnson said the law is part of a misguided policy that emphasizes punishment over treatment. The approach produces more violence and drives addicts to lower-cost, dangerous narcotics like methamphetamines, he said. 'There needs to be an understanding of what is dangerous regarding these drugs, and what is dangerous nine out of 10 times has to do with prohibition,' Johnson said in an interview. A Republican, he is on the board of Students for Sensible Drug Policy, a Washington-based advocacy group and one of the plaintiffs in the ACLU lawsuit."

Bloomberg News Wire, March 22, 2006

Appendix II: State-by-State Data

States shown in red have higher-than-national-average percentages of applicants denied aid because of drug convictions.

State	Applicants Denied Aid for Drugs	Total Applicant Count	Percent of Applicants Denied Aid for Drugs
AK	363	142,089	0.26%
AL	2,389	1,148,578	0.21%
AR	1,858	682,573	0.27%
AZ	2,557	1,229,677	0.21%
CA	31,830	8,794,431	0.36%
CO	2,467	1,162,578	0.21%
CT	2,242	804,589	0.28%
DC	328	141,525	0.23%
DE	410	175,647	0.23%
FL	9,180	4,107,482	0.22%
GA	5,803	2,339,505	0.25%
HI	472	252,959	0.19%
IA	2,367	915,034	0.26%
ID	946	398,409	0.24%
IL	8,071	3,240,331	0.25%
IN	8,903	1,778,982	0.50%
KS	1,581	768,785	0.21%
KY	2,782	1,060,042	0.26%
LA	2,890	1,333,912	0.22%
MA	3,004	1,566,888	0.19%
MD	2,780	1,375,538	0.20%
ME	669	356,394	0.19%
MI	6,722	2,783,668	0.24%
MN	2,503	1,441,991	0.17%
MO	2,819	1,505,033	0.19%
MS	1,969	849,438	0.23%
MT	483	282,819	0.17%

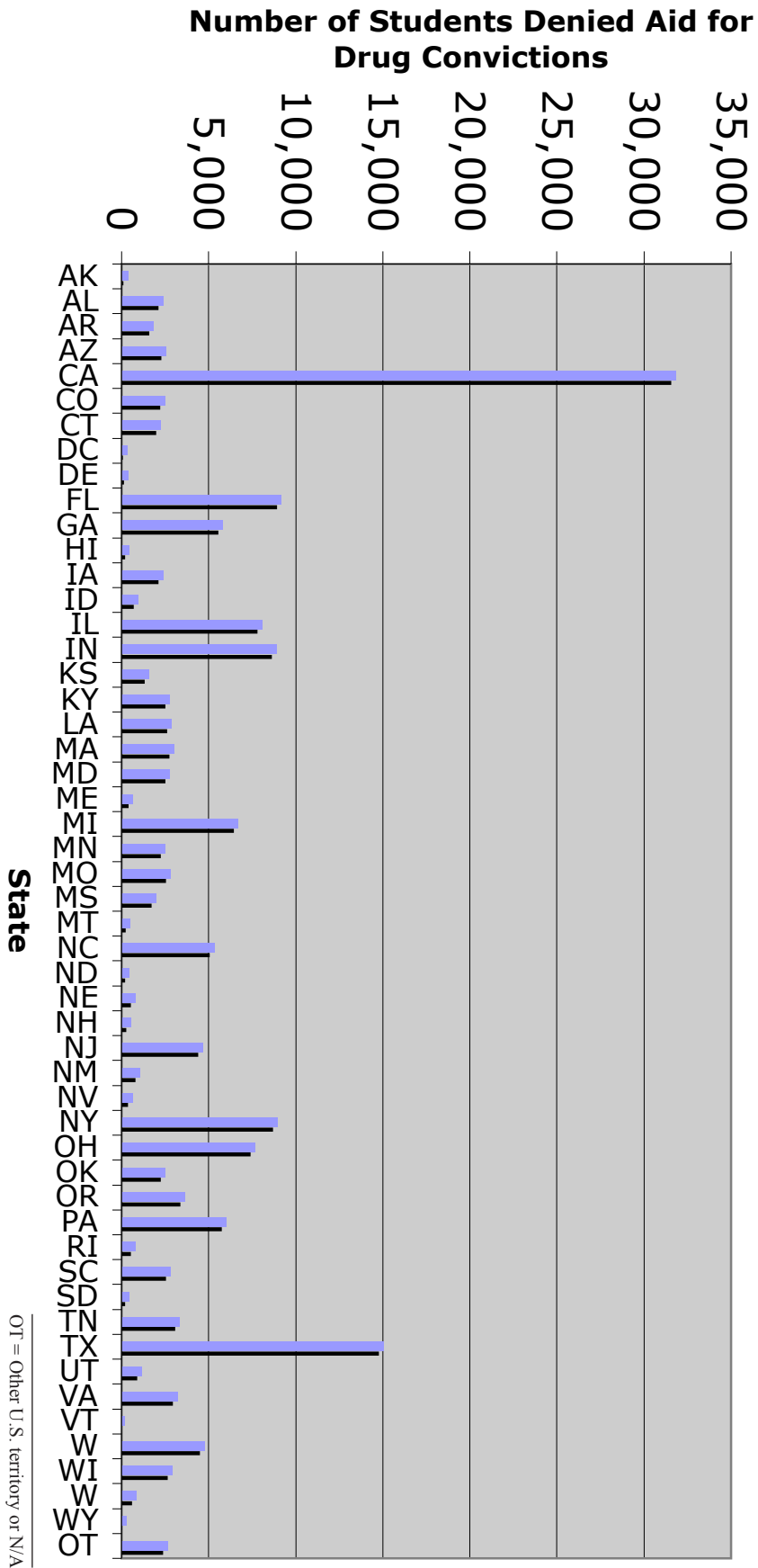
State	Applicants Denied Aid for Drugs	Total Applicant Count	Percent of Applicants Denied Aid for Drugs
NC	5,323	1,887,657	0.28%
ND	453	226,870	0.20%
NE	782	498,273	0.16%
NH	541	322,762	0.17%
NJ	4,650	2,048,015	0.23%
NM	1,046	531,170	0.20%
NV	631	346,518	0.18%
NY	8,962	5,513,797	0.16%
OH	7,664	3,194,880	0.24%
OK	2,508	964,900	0.26%
OR	3,637	997,710	0.36%
PA	6,010	3,230,729	0.19%
RI	807	274,167	0.29%
SC	2,798	1,112,720	0.25%
SD	455	251,021	0.18%
TN	3,342	1,437,014	0.23%
TX	15,026	5,611,435	0.27%
UT	1,151	645,692	0.18%
VA	3,217	1,639,755	0.20%
VT	204	172,625	0.12%
WA	4,762	1,585,720	0.30%
WI	2,897	1,345,345	0.22%
WV	847	488,193	0.17%
WY	307	137,597	0.22%
OTHER*	2,657	1,680,885	0.16%
TOTAL	189,065	76,784,347	0.25%

*Other U.S. territory or N/A

“Lawmakers should encourage people returning to communities from prison or struggling with addiction to move beyond their stumbling blocks, but the [Aid Elimination Penalty] threatens their chances of becoming productive members of society. Graduating more college students means increased tax revenue from greater economic productivity, whereas incarcerating more prisoners means that taxpayers must pay the bill for increased criminal justice spending. [The law] is not a deterrent to drug use; it’s a deterrent to recovery.”

*Ruth Blauer, executive director of the Maine Association of Substance Abuse Programs
in the Lewiston Sun Journal, July 3, 2005*

Students Losing Aid for Drug Convictions by State



Percent of Applicants Denied Aid for Drugs

