

CHAPTER 14

REENTRY—ENSURE SUCCESSFUL REINTEGRATION AFTER INCARCERATION

THE ISSUE

Reentry, the period following incarceration or conviction during which a person (adult or juvenile) reintegrates into the community, is a time of paramount importance to both public safety and the rehabilitative process. Many obstacles stand between the individual with a criminal record and successful reentry. Policies that create barriers to employment, education, civic participation, public benefits, housing, medical care, and substance abuse treatment, to name a few, make it increasingly difficult for the person in reentry to remain crime free and to become a positively contributing member of his or her community.

HISTORY OF THE PROBLEM

Studies conducted by the Bureau of Justice Statistics and other leading researchers conclude that more than two-thirds of the individuals released from prison are rearrested within three years.¹ This year an estimated 700,000 people will leave prison² and another 12 million will leave local jails.³ They return to communities lacking appropriate support services for substance addiction and mental illness, and with limited job prospects and affordable housing options. Most have children who will depend on them for support, but these families are often impoverished. The prospects for successful reintegration are further compromised by the many collateral consequences of criminal convictions—often recently enacted policies—that make reentry after incarceration enormously difficult.

The costs of failed reentry are not only social, but also fiscal. The federal and state governments spend tens of billions of dollars on corrections, the majority on incarceration. Reducing the number of non-violent offenders in prison and jail by half would save taxpayers \$16.9 billion annually.⁴ The need for fiscally responsible criminal justice reform is a nonpartisan issue with support across the political spectrum. Conservatives recently joined together to establish Right on Crime, a research project of the Texas Public Policy Foundation, to put forward a conservatively motivated reform agenda. According to their Statement of Principles:

¹ National Institute of Justice, Recidivism, <http://www.ojp.usdoj.gov/nij/topics/corrections/recidivism/welcome.htm> (last visited Jan. 18, 2011) (citing Allen J. Beck & Bernard E. Shipley, *Recidivism of Prisoners Released in 1983*, Bureau of Justice Statistics Special Report (1989), abstract available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1135>; Patrick A. Langan & David J. Levin, *Recidivism of Prisoners Released in 1994*, Bureau of Justice Statistics Special Report (2002), abstract available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1134>); Richard Freeman, *Can We Close the Revolving Door?: Recidivism vs. Employment of Ex-Offenders in the U.S.* (2003), available at http://www.urban.org/uploadedpdf/410857_freeman.pdf.

² Legal Action Center, *After Prison: Roadblocks to Reentry*, <http://www.lac.org/roadblocks-to-reentry/main.php?view=overview>. (last visited Jan. 18, 2011).

³ AMY L. SOLOMON, ET AL., *LIFE AFTER LOCKUP: IMPROVING REENTRY FROM JAIL TO THE COMMUNITY*, URBAN INST. XV (May 2008), available at http://www.urban.org/UploadedPDF/411660_life_after_lockup.pdf.

⁴ JOHN SCHMITT, KRIS WARNER & SARIKA GUPTA, CENTER FOR ECONOMIC AND POLICY RESEARCH, *THE HIGH BUDGETARY COST OF INCARCERATION*, (June 2010), available at <http://www.cepr.net/documents/publications/incarceration-2010-06.pdf>.

Conservatives correctly insist that government services be evaluated on whether they produce the best possible results at the lowest possible cost, but too often this lens of accountability has not focused as much on public safety policies as other areas of government. As such, corrections spending has expanded to become the second fastest growing area of state budgets—trailing only Medicaid.⁵

Fiscal responsibility, social justice, public safety, or good governance—no matter the motivation, the need to examine and adjust our policies to make our communities safer has never been more urgent or obvious.

Accordingly, this section identifies nine obstacles to reentry and makes federal policy recommendations to promote reintegration and reduce recidivism.⁶ Each issue outlined is vitally important to successful reentry. Without a comprehensive strategy that incorporates employment, education, housing, civic engagement, treatment and health services, as well as welfare assistance, the chances of success diminish and the likelihood of recidivism grows. The federal government plays a critical role here, as it is often federal laws and policies that can either create reentry barriers or eliminate them.

1. The Second Chance Act

Congress demonstrated the federal commitment to improving reentry when it passed the Second Chance Act of 2007, authorizing \$165 million in federal aid to state, local, and tribal governments to support programming to assist people exiting incarceration, including competitive grants to government agencies and nonprofit organizations to provide employment assistance, substance abuse treatment, housing, family services, mentoring, victims support and other services that help reduce recidivism and improve public safety.⁷

The Act was signed into law by President George W. Bush in April 2008 to combat the “high recidivism rate [that] places a huge financial burden on taxpayers . . . deprives our labor force of productive workers, and . . . families of their daughters and sons, and husbands and wives, and moms and dads.”⁸ It is now due for reauthorization. It is imperative that it continues to “live up to its name . . . [to] help ensure that where the prisoner's spirit is willing, the community's resources are available.”⁹

⁵ Right on Crime, *The Conservative Case for Reform*, Statement of Principles, <http://www.rightoncrime.com/the-conservative-case-for-reform/statement-of-principles/> (last visited Jan 18, 2011) (signatories include Newt Gingrich, Grover Norquist, Edwin Meese, III, William J. Bennett, Asa Hutchinson, and other leading conservatives).

⁶ See *generally Juvenile Justice*, SMART ON CRIME (2011) (discussing additional reentry barriers for youth).

⁷ Second Chance Act of 2007, Pub. L. No. 110-199, 122 Stat. 657 (2008); see also Second Chance Act, National Reentry Resource Center, <http://www.nationalreentryresourcecenter.org/about/second-chance-act> (last visited Jan. 18, 2011).

⁸ Press Release, George W. Bush, President of the United States, Statement at Signing of the Second Chance Act of 2007 (Apr. 9, 2008), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2008/04/20080409-2.html>.

⁹ *Id.*

2. Voting Rights

Although the right to vote forms the core of American democracy, one significant group of American citizens is still denied the right to the franchise; 5.3 million Americans are not allowed to vote because of felony convictions.¹⁰ Four million of these people live, work, and raise families in our communities, and many others will eventually return after completing their sentences.¹¹ However, because of past convictions, these people are still denied the right to vote. In addition, among those individuals with criminal records who are in fact eligible to vote, there is considerable confusion about their eligibility or ineligibility to vote since most “restoration processes are so cumbersome that few [individuals with criminal records] are able to take advantage of them.”¹² This confusion results in the de facto disenfranchisement of eligible voters with criminal convictions.¹³

Denying individuals the right to vote even after they have repaid their debts to society perpetuates the insidious discrimination against this population that makes reentry so difficult. Furthermore, voting promotes reentry because it encourages individuals to become engaged in their communities and to engage in socially responsible conduct.¹⁴ In fact, a study by sociologists Christopher Uggen and Jeff Manza found that, among persons with a prior arrest, “27% of non-voters were re-arrested over a three-year period, compared with only 12% of voters.”¹⁵

3. Welfare and Food Stamp Benefits for Individuals with Drug Felony Convictions

The Personal Responsibility and Work Opportunity Reconciliation Act prohibits anyone convicted of a drug-related felony from receiving either federally-funded cash assistance through the Temporary Assistance for Needy Families (TANF) program, or food stamps, unless states opt out of or modify the ban.¹⁶ Under the ban, which only applies to drug felonies, individuals are barred for life from obtaining cash assistance and food stamps even after completing their sentences or

¹⁰ THE SENTENCING PROJECT, FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES (Mar. 2010), *available at* http://www.sentencingproject.org/doc/publications/fd_bs_fdlawsinusMarch2010.pdf.

¹¹ ERIKA WOOD, BRENNAN CENTER FOR JUSTICE, RESTORING THE RIGHT TO VOTE, (May 11, 2009), *available at* http://brennan.3cdn.net/5c8532e8134b233182_z5m6ibv1n.pdf.

¹² FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES, *supra* note 10, at 1.

¹³ ERIKA WOOD & RACHEL BLOOM, AMERICAN CIVIL LIBERTIES UNION AND BRENNAN CENTER FOR JUSTICE, DE FACTO DISENFRANCHISEMENT (Oct. 2008), *available at* http://brennan.3cdn.net/578d11c906d81d548f_1tm6iiqab.pdf.

¹⁴ *Democracy Restoration Act of 2009: Hearing on H.R. 3335 Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary*, 111th Cong. (Mar. 16, 2010) (statement of Carl Wicklund, Executive Director, American Probation and Parole Association), *available at* http://brennan.3cdn.net/047d04ef2d0893df95_t8m6y9g01.pdf; *Democracy Restoration Act of 2009: Hearing on H.R. 3335 Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary*, 111th Cong. (Mar. 16, 2010) (statement of Marc Mauer, Executive Director, The Sentencing Project), *available at* http://www.sentencingproject.org/doc/publications/fd_DRATestimonyMarch2010.pdf.

¹⁵ Statement of Marc Mauer, *supra* note 14, at 3.

¹⁶ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 115, 110 Stat. 2105, 2180-81 (1996).

overcoming their addictions. Currently, 13 states have opted out of the ban entirely, and 11 states completely enforce the ban.¹⁷ All other states have limited or modified the ban in some way.¹⁸

The ban denies necessary cash assistance to individuals seeking to improve their lives without regard to their rehabilitation. It also exacerbates the financial pressures that lead many individuals to commit financially motivated crimes and stress that can trigger relapse into active addiction.¹⁹ Furthermore, the ban negatively impacts the innocent children of individuals who have committed drug crimes. Since many individuals with criminal records are parents with employment and income challenges, the ban has devastating consequences for these children, increasing the likelihood that they, too, will become ensnared in cycles of poverty, drug use, and crime.²⁰ The purpose of welfare reform, of which the ban was a small part, was to create incentives for individuals to move from public support to self-sufficient employment. Unfortunately, this provision has the perverse consequence of making it more difficult for individuals to move from lives of dependence on crime and state supervision to lives of employment and contribution. There is no indication that the drug felony ban acts as a deterrent to crime or drug use, and every indication that it acts as a barrier to rehabilitation and successful reentry.

4. Financial Aid Ban for Students with Drug Convictions

In 1998, the Higher Education Act was amended to prohibit anyone with a drug conviction from receiving federal financial aid for post-secondary education.²¹ By 2005, the drug offense ban was modified to prohibit federal financial aid for only those individuals convicted of a drug offense while receiving financial aid.²² The Free Application for Federal Student Aid (FAFSA), however, continues to ask about an applicant's drug offense history without first explaining that drug convictions obtained while the applicant was not receiving federal student financial aid are irrelevant to student aid eligibility. Anecdotal and analogical evidence suggests the question discourages many qualified applicants from further pursuing federal student aid due to their mistaken belief that a conviction in their past excludes them.

The drug offense ban on federal student aid prevents individuals from obtaining the education they need to access better employment opportunities, even though many of those affected by the ban were actively addicted to drugs when they engaged in the conduct for which they were convicted, and have since entered into or completed treatment for their addictions.

¹⁷ See LEGAL ACTION CENTER, *AFTER PRISON: ROADBLOCKS TO REENTRY 2009 UPDATE* (2009), available at <http://www.lac.org/roadblocks-to-reentry/upload/lacreport/Roadblocks-to-Reentry--2009.pdf>.

¹⁸ *Id.*

¹⁹ See Letter from Nora D. Volkow, M.D., Director, National Institute on Drug Abuse (NIDA), to Friends, Colleagues and Parents (Jan. 2002) ("Researchers have long recognized the strong correlation between stress and substance abuse, particularly in prompting relapse."), available at <http://archives.drugabuse.gov/stressalert/StressAlert.html>.

²⁰ See LEGAL ACTION CENTER, *GETTING TO WORK: HOW TANF CAN SUPPORT EX-OFFENDER PARENTS IN THE TRANSITION TO SELF-SUFFICIENCY* (2001).

²¹ 1998 Amendments to the Higher Education Act of 1965, Pub. L. No. 105-244, § 483(f) (1998).

²² Higher Education Reconciliation Act of 2005, Pub. L. No. 109-171, § 8021(c) (Feb. 8, 2006).

Education is not only the key to a better life; it is also an important component of a crime-free lifestyle for many people.

In addition to its practical function as a credential in the job market, participation in higher education has been shown to lower recidivism by 15% and 13% for people who earn an associate's or bachelor's degree, respectively.²³ Providing individuals with criminal records an opportunity to obtain higher education creates cost savings for state correctional systems. In fact, the Correctional Education Association calculated that states experience a "[return of] at least \$2 for every \$1 spent in terms of saving in cell space on those who do not return to the system."²⁴ By preventing individuals from obtaining the education and training necessary to become more desirable candidates for employment and to advance in their careers, the drug felony ban, rather than acting as a deterrent to crime, serves as a barrier to success and to the empowerment of communities where individuals are unlikely to be able to access educational opportunities without financing from the federal government.

5. Barriers to Housing and Employment

Federal public housing law contains provisions that require or permit local authorities to deny Section 8 and other federally assisted housing to certain individuals. Two classes of applicants are permanently barred from federal public housing eligibility. Any household with a member who either: (i) is subject to a lifetime registration requirement under a state sex offender registration program²⁵ or (ii) has been convicted of methamphetamine production on public housing premises,²⁶ is permanently ineligible for public, Section 8, and other federally assisted housing.

Other provisions in federal law create exclusions from eligibility for public housing for certain individuals, but provide some discretion for these individuals to have their eligibility restored or a limitation on the duration of the exclusion. For example, any tenant who has been evicted from public, federally assisted, or Section 8 housing because of drug-related criminal activity is ineligible for public or federally assisted housing for three years. The housing provider has the discretion to shorten the three year period if the person successfully completes a rehabilitation program approved by the local housing provider, or the circumstances leading to the eviction no longer exist (e.g., the family member responsible for the eviction has died or is imprisoned).²⁷ The three year time period begins to run from the date of the eviction.²⁸

²³ See Center on Crime Communities & Culture, Occasional Paper Series No. 2, *Research Brief: Education as Crime Prevention* (Sept. 1997), available at http://www.prisonpolicy.org/scans/research_brief__2.pdf.

²⁴ STEPHEN STEURER, LINDA SMITH & ALICE TRACY, THE THREE STATE RECIDIVISM STUDY SUMMARY, CORRECTIONAL EDUCATION ASSOCIATION (2001), available at <http://dpscs.md.gov/publicinfo/publications/pdfs/three-state-recidivism-study-summary.pdf>.

²⁵ 42 U.S.C. §13663(a) (2006).

²⁶ 42 U.S.C. §1437n(f) (2006).

²⁷ 42 U.S.C. §13661(a) (2006).

²⁸ *Id.*

In addition, individuals with criminal records “often find that a conviction record is the main stumbling block in obtaining housing, whether in the private sector or in public and Section 8 supported housing.²⁹ Many housing authorities and private landlords use overly restrictive policies, (e.g. excluding all people with convictions or all people with felony convictions) which results in the exclusion of people with conviction records who pose no threat to the public, tenants or property. “Oftentimes the policies are based on a misunderstanding of federal law, or on the landlord placing a premium on ease of administration, believing that it’s easier to ‘just say no’ to all people with conviction records than to perform individualized analyses of their applications.”³⁰

Similarly, while obtaining employment is one of the most important factors for successful reentry, many barriers remain for former prisoners. Unfortunately, individuals with criminal records who are unable to obtain employment are three times more likely to return to prison than those individuals who are able to find work.³¹

6. Addiction and Recidivism

Addiction is a public health issue with public safety implications. Addiction is an incredibly widespread disease. In fact, estimates of the number of Americans who suffer from diagnosable drug or alcohol disorders are as high as 23.2 million people. Of these, only about 10% have received treatment.³² Furthermore, youth attitudes about substance use are beginning to soften, which generally precedes an increase in drug use.³³

Statistics demonstrate the link between addiction and crime, one which accounts for much of the crime in this nation. One in four individuals incarcerated in American prisons and jails is serving time for a drug offense, and the United States incarcerates more people for drugs than any other country. “[O]ffender drug use is involved in more than half of all violent crimes and in 60 to 80 percent of child abuse and neglect cases. It is estimated that 70 percent of the people in state prisons and local jails have abused drugs regularly, compared with approximately nine percent of the general population.”³⁴ Furthermore, in 1991, an astonishing 49% of all individuals incarcerated

²⁹ Legal Action Center, *Advocacy Toolkit: Improving Housing Opportunities for Individuals with Conviction Records*, <http://www.lac.org/toolkits/housing/housing.htm> (last visited Jan. 19, 2011).

³⁰ *Id.*

³¹ M. Eisenberg, *Project RIO: Twelve Month Follow-up; March 1989 Intakes*, TEX. DEPT. OF CRIM. JUSTICE (1990); Jeremy Travis, Amy L. Solomon & Michelle Waul, *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry*, URBAN INST. JUSTICE. POLICY CENTER (June 1, 2001).

³² Nat’l Inst. On Drug Abuse, U.S. Dept. of Health and Human Servs., *Treatment Approaches for Drug Addiction 1* (Sept. 2009), *available at* http://www.nida.nih.gov/PDF/InfoFacts/IF_Treatment_Approaches_2009_to_NIDA_92209.pdf.

³³ NAT’L INST. ON DRUG ABUSE, U.S. DEPT. OF HEALTH AND HUMAN SERVS., *MONITORING THE FUTURE: NATIONAL RESULTS ON ADOLESCENT DRUG USE* (2009), *available at* <http://monitoringthefuture.org/pubs/monographs/overview2009.pdf>.

³⁴ Nora D. Volkow, *Treat the Addict, Cut the Crime Rate*, THE WASHINGTON POST, Aug. 19, 2006, *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/18/AR2006081800799.html>.

in federal or state prisons were under the influence of drugs or alcohol at the time of their crime.³⁵ Often, the only time individuals have the opportunity to access addiction services is through their involvement in the criminal justice system. In fact, in 2007, the criminal justice system was the largest source of referrals to the addiction treatment system.³⁶

Untreated alcohol and drug addiction costs society approximately \$366 billion per year, and the cost of addiction treatment is 15 times less than the cost of incarcerating a person for a drug-related crime. The Washington State Institute for Public Policy estimates that for every dollar spent on community-based drug treatment, society receives a return of \$18.52 in benefits, including reductions in corrections and prosecution costs.³⁷ Fiscally, it makes sense to focus resources on addiction prevention and treatment before untreated addictions create higher costs in the law enforcement and corrections systems. Ensuring that individuals have access to addiction treatment services and reducing or eliminating barriers that prevent individuals from obtaining addiction treatment are ways to improve public health and safety while saving taxpayers money on corrections spending.

Additionally, many individuals face barriers to accessing addiction services after they are released from prison, as a result of state laws revoking or limiting the driver's licenses of some or all drug offenders. In 1992, Congress amended the Federal Highway Apportionment Act to withhold 10% of certain federal highway funds from states that failed to enact and enforce laws that revoke or suspend the driver's license of an individual convicted of any drug offense for at least six months after the time of conviction.³⁸ States may opt out of the law by limiting the revocation or suspension to those individuals whose convictions were for drug crimes related to driving (i.e. driving under the influence of a controlled substance) or to other limited categories, but they can also impose revocations or suspensions that endure for longer than the six months required by the federal law.

In response, 28 states have enacted laws that automatically suspend or revoke licenses for all or some drug offenders. The remaining states have either adopted laws that suspend or revoke a license only for driving-related convictions, or have opted out of the federal law altogether. Many states provide no opportunity for drivers to obtain restricted licenses so they can get to work, school, or treatment. These misguided and overbroad policies harm communities by making it more difficult for residents to obtain and retain a job, to attend school, or to access needed healthcare, including addiction treatment and recovery support services. This is especially true in suburban and rural areas where public transportation is less developed or non-existent.

³⁵ The National Center on Addiction and Substance Abuse at Columbia University, *Behind Bars: Substance Abuse and America's Prison Population*, 34 (Jan. 1998).

³⁶ Substance Abuse and Mental Health Servs. Admin., U.S. Dept. of Health and Human Servs., *Substance Abuse Treatment Admissions Referred by the Criminal Justice System*, THE TEDS REPORT (Aug. 13, 2009), available at <http://oas.samhsa.gov/2k9/211/211Cjadmits2k9.htm>.

³⁷ Elizabeth Drake, et al., *Evidence-based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates*, WASHINGTON STATE INST. FOR PUB. POLICY (2006).

³⁸ 23 U.S.C. §159 (2006).

Furthermore, federal Department of Transportation (DOT) regulations restrict certain individuals receiving drug addiction treatment from obtaining commercial driver's licenses (CDL), even though commercial driving is one of the industries in which individuals with criminal records are often able to find work. Currently, DOT regulations prohibit individuals who are receiving methadone and who are stabilized in treatment from obtaining their CDLs. There is an exception to the prohibition against drug use for individuals taking prescribed drugs who have been informed by a medical professional that their prescription drug use will not negatively impact their ability to drive a commercial motor vehicle.³⁹ However, prescribed methadone use is specifically excluded from the exception.⁴⁰

7. Mental Health and Income Support for Released Prisoners

Access to federal disability and health benefits is a critical component of successful reentry into the community for individuals released from jail or prison. This is particularly important for individuals with mental illnesses who cycle through corrections facilities repeatedly—often the event leading to arrest is linked to both lack of income and unmet need for services, such as mental health and addiction treatment, and supports, such as housing⁴¹ and employment. In a recent study, 16.9 percent of individuals entering jail were found to have a severe mental illness such as schizophrenia or manic depression.⁴² It is reported that the Los Angeles County Jail, the Cook County (Chicago) Jail and Riker's Island (New York City) each hold more people with mental illness on any given day than any psychiatric facility in the United States.⁴³ Nearly a quarter of both state prisoners and jail inmates with a mental health problem, compared to a fifth of those without, had served three or more prior incarcerations.⁴⁴

When an individual enters jail or prison, Supplemental Security Income (SSI) benefits are suspended (after one calendar month),⁴⁵ and Medicaid benefits are often terminated (although federal law does not require states to terminate Medicaid eligibility.) After 12 consecutive months of suspension, SSI benefits terminate, as well.⁴⁶ It can take several months to reinstate benefits after termination, and this lag can be critical for individuals with a serious mental illness in need of treatment services (via Medicaid health coverage) and income support (through SSI) in order to thrive in the community.

³⁹ See 49 C.F.R. 391.41(b)(12) (2009).

⁴⁰ *Id.*

⁴¹ BAZELON CENTER FOR MENTAL HEALTH LAW, FINDING THE KEY TO SUCCESSFUL TRANSITION FROM JAIL OR PRISON TO THE COMMUNITY (Nov. 2009), available at

<http://www.bazelon.org/LinkClick.aspx?fileticket=Bd6LW9BVRhQ%3d&tabid=104>

⁴² See Henry Steadman et al., *Prevalence of Serious Mental Illness Among Jail Inmates*, 60 PSYCHIATRIC SERVICES 761-65 (2009) (accessed on July 21, 2009), available at <http://psychservices.psychiatryonline.org/cgi/reprint/60/6/761>.

⁴³ See E. Fuller Torrey, *Reinventing Mental Health Care*, 9-4 CITY JOURNAL, (Autumn 1999), available at http://www.city-journal.org/html/9_4_a5.html (last visited Jan. 19, 2011).

⁴⁴ DORIS J. JAMES & LAUREN E. GLAZE, BUREAU OF JUST. STAT., SPECIAL REPORT: MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES (2006), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/mhppji.pdf> (last visited Jan. 19, 2011).

⁴⁵ SOCIAL SECURITY ADMINISTRATION, SOCIAL SECURITY: WHAT PRISONERS NEED TO KNOW (May 2010), available at <http://www.ssa.gov/pubs/10133.pdf>.

⁴⁶ *Id.*

RECOMMENDATIONS

1. The Second Chance Act

A. *Federal Role is Essential in Reentry Programming*

Second Chance Act funding makes it possible for states to test old and the develop and test new program models, introduce different approaches to addressing reentry, and disseminate information and research to guide states as they address the complex challenge of prisoner reentry. Without the Second Chance Act, each individual state would be left to devise solutions to its version of a national problem that is of much greater scope and very different from what it was in the past. Without a federal role, states would waste resources reinventing solutions to complex problems, duplicating both mistakes and successes in reentry programming. The Act's reauthorization and full funding is critical to continue and strengthen the ground-breaking work it supports to reduce recidivism and enhance public safety.

B. *Reauthorize and Fully Fund the Second Chance Act*

Legislative

Congress should reauthorize and fully fund the Second Chance Act⁴⁷ to expand access to reentry support services nationwide.

Executive

The Attorney General should oversee and coordinate Second Chance reentry programs with reentry programs in other federal agencies through the Department of Justice's (DOJ) new Inter-agency Reentry Working Group that the Attorney General convened on January 5, 2011.⁴⁸

⁴⁷ Second Chance Act of 2007, *supra* note 7.

⁴⁸ Press Release, Dep't of Just., Att'y Gen. Eric Holder Convenes Inaugural Cabinet-Level Reentry Council: Interagency Meeting Focuses on Reducing Recidivism, Saving Taxpayer Dollars, Making Communities Safer (Jan. 5, 2011) ("The council will address short-term and long-term goals through enhanced communication, coordination and collaboration across federal agencies. The mission of the council is threefold: to make communities safer by reducing recidivism and victimization; to assist those returning from prison and jail in becoming productive, tax paying citizens; and to save taxpayer dollars by lowering the direct and collateral costs of incarceration."), *available at* <http://www.justice.gov/opa/pr/2011/January/11-ag-010.html>.

2. Voting Rights

A. *Former Prisoners are Denied the Right to Vote*

Denying individuals the right to vote even after they have repaid their debts to society perpetuates the insidious discrimination against this population that makes reentry so difficult. Furthermore, voting encourages individuals to become engaged in their communities and to engage in socially responsible conduct, improving chances for successful reentry and reducing recidivism.⁴⁹ Denying the franchise to people who should instead recommit themselves to the social contract is counterproductive to public safety and community well-being.

B. *Extend Federal Voting Rights to People Released from Prison*

Legislative

Congress should pass legislation similar to the Democracy Restoration Act⁵⁰ to restore the rights of individuals released from prison to vote in federal elections. The legislation has a broad and diverse base of public support including leaders in the law enforcement and criminal justice field, clergy and faith-based organizations, voting rights and civil rights groups and criminal justice advocates.⁵¹

Executive

The DOJ should appoint a commission to document the *de facto* disenfranchisement of eligible voters with felony convictions in each of the 50 states. This will provide policymakers with reliable information upon which to base decisions regarding voting rights restoration policies they enact or enforce.

3. Welfare and Food Stamp Benefits for Individuals with Drug Felony Convictions

A. *Individuals with Drug Felony Convictions are Permanently Barred from Benefits*

Individuals convicted with drug felonies are permanently barred from obtaining cash assistance and food stamps, even after completing their sentences or overcoming their addictions. The ban denies necessary cash assistance to individuals seeking to improve their lives, as well as their dependent children. It also exacerbates the financial pressures that lead many individuals to

⁴⁹ Statement of Carl Wicklund, *supra* note 14; Statement of Marc Mauer, *supra* note 14.

⁵⁰ Democracy Restoration Act, H.R. 3335 and S. 1516, 111th Cong. (2009).

⁵¹ For a complete list of individuals and groups that support the Democracy Restoration Act, see, Brennan Center for Justice, Democracy Restoration Act, http://www.brennancenter.org/content/resource/democracy_restoration_act_of_2008/ (last visited Jan. 18, 2011).

commit financially motivated crimes and cause stress that can trigger relapse into active addiction.⁵²

B. *Restore Benefits to Individuals with Drug Felony Convictions*

Legislative

Congress should eliminate the lifetime ban on TANF and food stamp eligibility for people with drug felony convictions by repealing Section 115(a) of the Personal Responsibility and Work Opportunity Act of 1996.⁵³ Two bills were introduced during the 111th Congress to address this issue: the Food Assistance to Improve Reintegration Act,⁵⁴ introduced by Representative Barbara Lee; and a bill to restore eligibility for benefits under Temporary Assistance for Needy Families to people with drug felony convictions,⁵⁵ introduced by Representative Andre Carson.

4. Unintended Impact of Financial Aid Ban for Students with Drug Convictions

A. *Students with Drug Conviction are Barred from Receiving Federal Student Financial Aid*

By preventing individuals in need from obtaining the education and training necessary to become more desirable candidates for employment and to advance in their careers, the drug felony ban, rather than acting as a deterrent to crime, serves as a barrier to success and to the empowerment of communities where individuals are unlikely to be able to access educational opportunities without financing from the federal government.

B. *Repeal the Unintended Drug Ban on Federal Student Aid*

Legislative

Congress should pass legislation to fully repeal the drug offense ban on federal student aid from the Higher Education Act.⁵⁶ The drug offense ban on federal student aid prevents individuals from obtaining the education they need to access better employment opportunities, even though many of those affected by the ban were actively addicted to drugs when they engaged in the conduct for which they were convicted, and have since entered into or completed treatment for their addictions. Congress should repeal that ban in recognition of the critical role education plays in reducing recidivism.

⁵² See Letter from Nora D. Volkow to Friends, Colleagues and Parents, *supra* note 19.

⁵³ Personal Responsibility and Work Opportunity Reconciliation Act, *supra* note 16.

⁵⁴ Food Assistance to Improve Reintegration Act, H.R. 329, 111th Cong. (2009).

⁵⁵ To amend the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to repeal the denial to drug felons of eligibility for benefits under the program of temporary assistance for needy families, H.R. 3053, 111th Cong. (2009).

⁵⁶ Higher Education Act, 20 U.S.C. § 1091(r) (2009).

Executive

The Department of Education should eliminate the question about drug convictions from the FAFSA and implement another mechanism to confirm the eligibility of applicants for financial aid. The FAFSA continues to ask applicants to disclose their drug offense histories without specifying that drug convictions obtained while the applicant was not receiving federal student financial aid are irrelevant to student aid eligibility. This question discourages many qualified applicants from further pursuing federal student aid due to their mistaken belief that a conviction in their past excludes them.

5. Barriers to Housing**A. Former Prisoners Face Unfair Barriers to Housing**

Federal public housing law contains provisions that require or permit local authorities to limit, exclude, or permanently deny Section 8 and other federally assisted housing to certain individuals, including those with criminal records. Further, those with criminal records often find that their record is the main stumbling block to obtaining private sector housing, as many housing authorities and private landlords use overly restrictive policies to exclude people with conviction records who pose no threat to the public, tenants or property.

B. Remove Unfair Barriers to Housing*Legislative*

Congress should amend 42 U.S.C. §1437d(k) by passing legislation similar to the No One Strike Eviction Act,⁵⁷ which would require public housing authorities to provide administrative grievance procedures for one-strike evictions of recipients of publicly assisted housing for criminal activity. It would also provided protections from eviction for family members of individuals engaged in criminal activity. Congress also should amend Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 by passing legislation similar to the Public Safety Ex-Offender Self Sufficiency Act,⁵⁸ which would create a tax credit for investment in low-income housing for individuals with criminal records who participate in supportive programming.

Executive

The Department of Housing and Urban Development (HUD) should encourage public housing authorities and private landlords who take HUD subsidies to adopt policies that, rather than barring applicants who have criminal records, make an individualized assessment of each

⁵⁷ No One Strike Eviction Act, H.R. 69, 111th Cong. (2009).

⁵⁸ Public Safety Ex-Offender Self-Sufficiency Act, H.R. 6205, 109th Cong. (2006).

applicant's suitability for public housing. HUD should also develop guidance for public housing authorities and their staffs about the requirements of federal law with respect to the use of HUD funds to support housing for individuals with criminal records.

6. Expand employment opportunities for people with criminal records

A. *Individuals with Criminal Records Face Barriers to Employment*

A number of federal policies create or authorize the creation of barriers that prevent individuals with criminal records from obtaining employment for which they are qualified and in which they pose no increased risk to public safety. Other policies prevent these same individuals from obtaining the knowledge or skills they need to advance in the labor market. Reducing barriers in employment will improve public safety, reduce correctional spending and other costs associated with mass incarceration, including the maintenance of children of incarcerated and formerly incarcerated individuals, and promote the well-being and productive citizenship of individuals with criminal records.

B. *Remove or Reduce Barriers to Employment*

Legislative

There are a number of steps Congress can take to expand and improve employment opportunities for individuals with criminal records. First, Congress should amend the Higher Education Act⁵⁹ to restore Pell Grant eligibility for in-prison education programs so that individuals can obtain the education that will make them competitive in the employment market after they are released.

Second, Congress should create a federal standard requiring employers to consider the relationship between an applicant's criminal history and the position being sought, the length of time since an offense was committed, the severity of an offense, and any evidence of rehabilitation. Congress should also modify federal profession-specific restrictions on employment to not only include requirements for individualized determinations, but also to include graduated periods of consideration of the criminal records based on the severity of the crime. In no case should consideration of a criminal record be permitted beyond eight years after an individual's reaching the age of majority, conviction, or release from prison, whichever occurs latest.⁶⁰

⁵⁹ In 1994, Congress eliminated Pell Grant eligibility for individuals who are incarcerated because of concerns that allowing individuals to receive the need based grants while in prison was taking money away from law abiding citizens. These concerns existed despite the fact that prison-based higher education accounted for only 0.1% of the Pell Grant budget. Between 1995 and 2005, the number of college degree programs inside state prisons plummeted from about 350 to about 12.

⁶⁰ See Alfred Blumstein & Kiminori Nakamura, "Redemption" in an Era of Widespread Criminal Background Checks, 263 NAT'L INST. JUST. J. 10-17 (June 2009) (discussing research that suggests a convicted individual's risk of

Third, Congress should reduce the unintended and unfair consequences of the widespread availability of Federal Bureau of Investigation (FBI) background checks conducted for employment and retention purposes by passing legislation similar to the proposed Fairness and Accuracy in Employment Background Checks Act,⁶¹ which would have required the FBI to update and verify information in the reports it submits to employers conducting background checks. In performing roughly 6 million background checks per year for employment purposes, the FBI relies on state records, half of which the Attorney General believes are incomplete or inaccurate.⁶² These “rap sheets” often report incorrect information, information about arrests without any information about the dispositions of the cases, and information about non-serious or extremely old convictions that undoubtedly make qualified candidates less able to successfully compete in an already tight job market. Providing inaccurate or incorrect information to employers is not only an injustice to the job applicant, but also a major disservice to the employer in need of qualified workers.

Fourth, Congress should reauthorize the Workforce Investment Act (WIA),⁶³ which provides funding and directives for the delivery of employment services including assessment, training, and placement services. The Act should be reauthorized with provisions for hard-to-serve populations, including those individuals with criminal histories, through the WIA one-stop systems, which provide information about and access to a wide array of job training, education, and employment services at a single neighborhood location. Further, Congress should increase funding for WIA programming aimed at serving hard-to-serve individuals, including those with criminal records.

Finally, Congress should strengthen the Work Opportunity Tax Credit⁶⁴ for individuals with criminal records by (i) increasing the tax credit for hiring individuals with criminal records to match the tax credit available for hiring long-term family assistance recipients, and (ii) extending the tax credit to cover the same amount of wages paid during the second year of employment to encourage employers to retain hard-to-serve individuals. Increasing the amount and duration of the tax credit will encourage employers who might otherwise be wary to hire and retain qualified employees with criminal records who pose no increased risk to their employers, co-workers, or customers. Further, in appropriate circumstances, employers who take advantage of federal-sourced funds or tax incentives designed to induce private businesses to move to or remain in a state or locality should be encouraged, if not required, to hire individuals with criminal records on the same competitive basis that it would hire people without criminal convictions.

Executive

The Department of Labor should increase the amount the federal bonding program indemnifies employers who hire individuals with criminal records or who otherwise qualify for

recidivism after 8 years post-conviction is equal to or lesser than the risk a similarly aged member of the general public will commit a crime), *available at* <http://www.ncjrs.gov/pdffiles1/nij/226872.pdf>.

⁶¹ Fairness and Accuracy in Employment Background Checks Act, H.R. 5300, 111th Cong. (2010).

⁶² See NATIONAL EMPLOYMENT LAW PROJECT, FBI BILL FACT SHEET (June 1, 2010), *available at* <http://www.nelp.org/page/-/SCLP/2010/FBIBillFactSheet.pdf?nocdn=1>.

⁶³ Workforce Investment Act of 1998, Pub. L. No. 105-220, 112 Stat. 936 (1998).

⁶⁴ 26 U.S.C. § 51 (2006).

bonding. The current level ranges from \$5,000 to \$25,000 per bond. The Department could raise all bonds to a uniform \$25,000.⁶⁵

7. Expand Access to Drug and Alcohol Treatment and Recovery

A. *Insufficient Attention to the Link between Addiction and Recidivism*

While addiction is a preventable, treatable disease, untreated addiction is a major cause of crime and recidivism. Often the only time individuals have the opportunity to access addictions services is through their involvement in the criminal justice system. Further, some former prisoners face barriers to obtaining addiction treatment following their release from prison because of state laws restricting the driver's licenses of drug offenders. Ensuring that these individuals have access to addiction treatment services, and reducing or eliminating barriers that prevent individuals from obtaining addiction treatment will improve public health and safety while saving taxpayers money on corrections spending.

B. *Remove Barriers and Disincentives to Addiction Treatment*

Legislative

Congress should increase funding for the Substance Abuse Prevention and Treatment Block Grant,⁶⁶ the formula grant administered by the Substance Abuse and Mental Health Services Administration (SAMHSA). This grant delivers vital federal funding to states, territories, and tribes to support substance abuse and mental health prevention and treatment programs. It is the only federal grant that provides funding to all states for these important services, and its continued robust funding is critical to our citizens' behavioral healthcare, particularly over the next few years while healthcare reform is implemented.

Congress should also amend the Federal Highway Apportionment Act to encourage states to limit driver's license suspensions and revocations to individuals convicted of driving-related drug offenses, rather than to individuals convicted of any drug-related offense. and to allow states with such restricted licenses to receive full federal funding of their highways. This will allow individuals in recovery to attend work, healthcare appointments, and needed addiction treatment or support.

Executive

The President should include a request for increased funding of the Substance Abuse Prevention and Treatment Block in the Administration's fiscal year 2012 budget proposal.

⁶⁵ See Department of Labor, Federal Bonding Program: A US Department of Labor Initiative, <http://www.bonds4jobs.com/> (last visited Jan. 19, 2011).

⁶⁶ 42 U.S.C. § 300x-21 *et seq.*

SAMHSA should engage in outreach and technical assistance efforts to educate drug court professionals and judges, as well as parole and probation professionals, about the effectiveness of medication-assisted treatment. SAMHSA should also publish guidance for drug court professionals and judges about the benefits of medication-assisted treatment.

DOT should amend its regulations that prevent individuals who are taking methadone and stabilized in treatment from obtaining a commercial driver's license, to allow such individuals to qualify for the existing prescription drug exception in the same way as individuals receiving any other type of medication-assisted healthcare.⁶⁷ Such an amendment will both allow former prisoners to find employment, but also remove current disincentives from obtaining and continuing much needed addiction treatment.

Judicial

Drug court judges should receive additional training about the benefits of medication assisted treatment of drug addictions, such as methadone maintenance treatment for opiate addiction. According to the National Association of State Alcohol and Drug Abuse Directors, many drug court judges “completely reject the evidence regarding [Methadone Maintenance Treatment] efficacy and efficiency, viewing opiate addiction as a purely social problem best resolved by imposed abstinence while the offender is in the correctional setting.”⁶⁸

8. Expand Access to Mental Health and Income Support Services

A. *Mental Health and Income Support Services are Unavailable upon Release from Prison*

Access to federal disability and health benefits is a critical component of successful reentry into the community for individuals released from jail or prison. This is particularly important for individuals with mental illnesses who cycle through corrections facilities repeatedly. Often the event leading to arrest is linked to both lack of income and unmet need for services, such as mental health and addiction treatment, and supports, such as housing and employment.⁶⁹ However, many recently released prisoners or inmates find themselves without Supplemental Security Income, Medicaid, and other mental health and income support services they need to survive outside of prison and avoid recidivism.

⁶⁷ See 49 C.F.R. 391.41(b)(12) (2009).

⁶⁸ NAT'L ASS'N OF STATE ALCOHOL AND DRUG ABUSE DIRECTORS, INC., METHADONE MAINTENANCE TREATMENT AND THE CRIMINAL JUSTICE SYSTEM, 11-12 (April 2006), available at http://www.nasadad.org/resource.php?base_id=650. In an open letter to her colleagues, Judge Karen Freeman-Wilson, then Executive Director of the National Drug Court Institute, commented that “the review of our positions regarding the use of pharmacotherapies will require us to examine our own opinions and biases. Early in my career as a drug court judge, I announced that methadone had no place in my court. When my position was challenged, I did [my] homework and learned that the use of drugs to address opiate addiction was often necessary in assisting our clients....” *Id.* at 12 (quoting Karen Freeman-Wilson, *NADCP News: From the Chief Executive's Desk*, Nat'l Ass'n of Drug Court Prof'ls, 6 (2004)).

⁶⁹ BAZELON CENTER FOR MENTAL HEALTH LAW, *supra* note 41.

B. Increase Immediate Access to Much Needed Support Programs*Legislative*

Congress should pass legislation similar to the Recidivism Reduction Act⁷⁰ (RRA) to provide timely restoration of federal disability and health benefits to individuals with a mental illness upon reentry into the community. RRA would reinstate provisional benefits for eligible individuals with a mental illness whose SSI benefits have been suspended for no more than 12 months or terminated for no more than 36 months. Reinstatement would occur on the day of their release from incarceration. The legislation would also provide for immediate reinstatement of Medicaid upon release for individuals enrolled prior to incarceration, and provide up to three case management services to incarcerated individuals to assist in planning for and obtaining post-release services.

Executive

The Centers for Medicare & Medicaid Services (CMS) should provide technical assistance to states to ensure that inmates Medicaid enrollment is not terminated, but rather suspended for the term of their incarceration. CMS should issue a State Medicaid Director Letter to explain and articulate federal law in this area and assist states in implementing suspension, rather than termination of Medicaid benefits.

The President should include a request for increased funding of the mental health and criminal justice collaboration grant⁷¹ in the fiscal year 2012 budget proposal. The mental health and criminal justice collaboration grant, administered by DOJ, provides grants to assist with diversion, treatment, and transition services for youth and adults with mental illness who come into contact with law enforcement.

The President should also include a request for increased funding of the Jail Diversion Program⁷² in the fiscal year 2012 budget proposal. The Jail Diversion Program grant, administered by the Center for Mental Health Services within SAMHSA, assists with diverting individuals with serious mental illness and co-occurring substance use disorders from jail to community-based treatment and support services.

⁷⁰ Recidivism Reduction Act, H.R. 2829, 111th Cong. (2009).

⁷¹ Mentally Ill Offender Treatment and Crime Reduction Act, Pub. L. No. 108-414, 118 Stat. 2327 (2004).

⁷² See Children's Health Act of 2000, Pub. L. No. 106-310, § 3210, 114 Stat. 1101, 1201-03 (2000).

9. Expand and Improve Relief from Collateral Consequences

A. *Collateral Consequences of Remain with Individuals Long after their Release*

Policies that create barriers to employment, education, civic participation, public benefits, housing, medical care, and substance abuse treatment, to name a few, make it increasingly difficult for a person in reentry to remain crime-free and to become a positively contributing member of his or her community. Many of these policies are permanent, impacting individuals long after they have repaid their debts to society and demonstrated their ability to live as law-abiding citizens.

B. *Reduce or Remove Collateral Consequences of Incarceration*

Legislative

Congress should create a program that permits individuals charged with certain federal crimes to avoid a conviction record by successfully completing a period of probation. This could be accomplished either by: (i) expanding the Federal First Offender Act⁷³ in a manner similar to the Federal First Offender Improvement Act,⁷⁴ which would make available pre-judgment probation and eventual expungement for individuals who have not previously been convicted of a felony, or (ii) reinstating the set-aside authority in the Youth Corrections Act⁷⁵, and extending it to all first felony offenders eligible for probation.⁷⁶ In addition, for people with a federal conviction, Congress should enact an expungement or sealing remedy that would be available after a waiting period (e.g., five years for misdemeanors, 10 years for felonies).

Congress should catalogue all collateral sanctions and disqualifications in federal statutes and regulations, and consider whether any of them should be repealed or made subject to waiver. Congress should enact a relief mechanism to enable state and federal offenders to avoid or mitigate federal collateral consequences, similar to the ones that now apply to federal firearms disabilities, federal jury service, and deportation.

Executive

The President should expand the use of and improve the process for receiving executive clemency in the form of Presidential pardons.⁷⁷

⁷³ 18 U.S.C. § 3607

⁷⁴ H.R. 6059, 111th Cong. (2010).

⁷⁵ 18 U.S.C. § 5005 *et seq.* (repealed in 1984).

⁷⁶ “Between 1950 and 1984, federal law provided an additional avenue of relief for offenders between the ages of 18 and 26, who could petition to have their convictions ‘set aside’ after successful completion of probation under the Federal Youth Corrections Act (YCA). While the effect of this set-aside was never settled in the courts, the Sentencing Reform Act repealed the YCA, and nothing replaced it.” Margaret C. Love, *Alternatives to Conviction: Deferred Adjudication as a Way of Avoiding Collateral Consequences* 22-1 FED. SENT’G REP. 6, 8 (Oct. 2009).

⁷⁷ See *Pardon Power and Executive Clemency*, SMART ON CRIME (2011).

APPENDICES

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