

People with criminal records face a daunting array of counterproductive, debilitating legal barriers that make it much more difficult for them to succeed in almost every important aspect of life. The Legal Action Center's groundbreaking report,

**After Prison: Roadblocks to Reentry** (<http://lac.org/roadblocks-to-reentry/>), documents and grades each state on the legal obstacles that people with criminal records face as they seek to become fully productive members of society.

The Report also makes a series of [recommendations](#) for legislative and policy change that point the way for future advocacy that can make a real difference in facilitating reentry for this population.

We hope you find these materials helpful to your work. Additional information is available on the Legal Action Center's web site, <http://www.lac.org>.

Both the state and federal governments should enact legislation that protects public safety by making sure that people with past criminal records are able to re-integrate successfully. The best way to achieve this goal is to adhere to the following four principles:

1. Maximizing the chance that people with criminal records can successfully assume the responsibilities of independent, law-abiding citizens is a critical component of guaranteeing and reinforcing the community's legitimate interest in public safety.
2. An arrest alone should never bar access to rights, necessities, and public benefits. Doing so denies the presumption of innocence – the core value of our legal system – to millions of Americans. Employers, housing authorities, and other decision-makers should not be permitted to consider arrest records.
3. A conviction should never bar access to a citizen's right to vote or to basic necessities such as food, clothing, housing, and education.
4. Eligibility for employment, housing, adoptive and foster parenting, or a driver's license should be based on the community's legitimate interest in public safety and the particulars of an individual's history and circumstances. Blanket bans of entire categories of people, such as everyone convicted of a felony, are neither wise nor fair; they do not take into account such important factors as the nature or circumstances of the conviction and what the person has done since the commission of the offense, including receiving an education, acquiring skills, completing community service, maintaining an employment history, or earning awards or other types of recognition.

### **Prohibit Inquiries About Arrests That Never Led to Conviction.**

#### **UNFAIRNESS OF ALLOWING INQUIRIES INTO ARREST RECORDS & WHAT NEEDS TO BE CHANGED**

Despite the fact that the "presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law," most states do not have legislation that prohibits the use of arrest records in

employment, housing and other decisions. In the absence of state legislation regulating such access, employers may use this information as a bar to employment, and housing authorities and landlords may deny housing. Thus, persons with records of arrests that never led to conviction can be branded with the same debilitating stigma that often harms people with past convictions, though these individuals have not been convicted of a crime.

***PA. CONS. STAT. § 1925(a), (b) (2003). See also Cisco v. United Parcel Services, 476 A.2d 1340, 1343 (Pa. Super. 1984) (construing § 1925(b) to prohibit employer consideration of “any experience with the criminal justice system which falls short of a conviction”).***

The lifetime stigmatization of an arrest record will often hinder individuals from fully participating as active, tax-paying members of society. This roadblock can affect literally millions of people, since as many as (71 million) Americans have arrest records, many of which never resulted in conviction.

States should enact legislation to prohibit employers, housing authorities and anyone else other than law-enforcement agencies from inquiring about or using arrests that never led to conviction.

### **Standards for Hiring People with Criminal Records.**

Employers who do not hire people with a criminal record give various reasons for their policy, including fear of liability or risk, or concern about being sued for “negligent hiring” if an employee commits a new crime, or compliance with mandates imposed by state or federal law. While employers certainly should take into account a person’s criminal history for the sake of determining if the person’s conviction records are job-related, having flat bans against employing qualified people with criminal records limits the employer’s opportunity to attract and retain a large percentage of the workforce who is trained, motivated, and who has access to a number of resources employers could gain benefit from.

Therefore, legislation that encourages employers to make individualized determinations when considering people with criminal histories and that sets standards for consider these individuals, benefits the general public, employers, and people with criminal histories. People with jobs are less likely to commit criminal acts. They are able to resume life as productive members of society, care for themselves and their families, all while contributing to the local economy and tax base.

The majority of states allow employers to refuse to hire anyone with a conviction record – or even an arrest that never led to conviction – because they have absolutely no guidelines or regulations on how an employer must evaluate a criminal history when considering an applicant. Only fourteen states have legal standards governing public employers’ consideration of an applicant’s criminal record that require an individualized assessment of the applicant’s qualifications and ability to do the job.

These states are: Arizona, Colorado, Connecticut, Florida, Hawaii, Kansas, Kentucky, Louisiana, Minnesota, New Mexico, New York, Pennsylvania, Washington, and Wisconsin. To see an overview of the laws of all fourteen states, [click here](#). Only five of those states – Hawaii, Kansas, New York, and Wisconsin – regulate private employers. Even when it comes to granting licenses for a wide range of occupations, only 21 states have standards that require a “direct,” “rational,” or “reasonable” relationship between the license sought and the applicant’s criminal history to justify the agency’s denial of license, while the other 29 states do not.

***Employers in Pennsylvania may only consider a job applicant's felony or misdemeanor convictions if they relate to the applicant's suitability for employment. Occupational licensing agencies may consider any felony, but only job related misdemeanor convictions. The applicant is entitled to a written explanation if he or she is denied employment based upon a criminal history, or licensure based upon a conviction.***

For a complete description of the 50 states' laws concerning employment of people with criminal records, please see the Legal Action Center's report After Prison: Roadblocks to Reentry at <http://lac.org/roadblocks-to-reentry/main.php?view=law&subaction=4>.

### **Certificates of Rehabilitation**

Certificates of rehabilitation benefit job seekers, employers, and the state in a number of ways:

Employers retain their discretion to individually assess every applicant and do not have to forego an opportunity to hire qualified employees because of some federal, state, and local laws and regulations that exclude people with certain criminal records.

Individuals with criminal records who have completed relevant job training and education programs can be eligible for those jobs.

Criminal records remain accessible for law enforcement purposes.

Certificates can offer a presumption of rehabilitation for job applicants--or at a minimum an individual's commitment to rehabilitation--and shift the burden to the employer and licensing agency to demonstrate that the individual is not suitable for the job or license sought.

Certificates can provide clear guidance to occupational licensing agencies or employers when considering an applicant's suitability for a particular license or job.

For example, New York and Illinois have enumerated in their laws the factors employers must consider when evaluating a job applicant with a criminal history.

These factors include:

1. The state's public policy of encouraging the employment of people with criminal records;
2. The specific duties of the job;
3. The bearing, if any, the criminal offense(s) will have on the applicant's fitness to perform such duties;
4. The time elapsed since the conviction;
5. The age of the job applicant at the time of the offense;
6. The seriousness of the offense(s);

7. Any information regarding the applicant's rehabilitation and good conduct; and
8. The safety and welfare of a specific individual or the general public.

#### RECOMMENDED KEY PROVISIONS FOR CERTIFICATE OF REHABILITATION LEGISLATION

The Legal Action Center recommends that all states enact legislation enabling individuals with conviction histories who have demonstrated their rehabilitation and ability to reenter society to obtain certificates that remove automatic barriers and create a presumption of rehabilitation when they seek employment, licensing, benefits, housing and other necessities and privileges.

#### EFFECT OF CERTIFICATE

Require that certificates of rehabilitation be considered by employers along with other factors in weighing the risks and benefits of hiring people with criminal records.

Make clear that the effect of having a certificate is removal of automatic bars and creation of the presumption of rehabilitation for purposes of public and private employment, licensing, benefits, civil rights, housing, or other considerations that require criminal background checks.

Indicate that certificate eradicates any "lack of good moral character" finding that could be based on the fact that an applicant has previously been convicted of one or more criminal offenses.

Require all public and private employers, as well as occupational licensing agencies, to make individualized determinations about a person's specific qualifications, including the relevance of a criminal record.

#### PROCEDURE

Clearly define who is eligible and when. For example, there may be a need to differentiate eligibility criteria based on the seriousness of an individual's record. Some states impose eligibility waiting periods on individuals who are deemed to have "serious" criminal records.

Remember to include considerations for residents who may have federal or out of state convictions in the eligibility description.

If there are required application fees, allow for reduced or no-fee waivers for applicants who are indigent.

Require that applicants receive all reports and decisions in writing.

Provide for a forum to appeal the denial of a certificate, including requiring the agency issuing certificates to provide a written notice of denial to the applicant.

Establish uniform statewide application procedures and policies.

## BURDEN OF PROOF

List the evidence that is necessary for the applicant to demonstrate rehabilitation.

Examples include the following:

- Gainful employment or demonstrating other evidence of means of support.
- Evidence of sobriety, if appropriate.
- Character reference letters.
- Evidence of voluntary community service.
- Attainment of vocational or educational training.

## REPORTING AND TRACKING

Mandate record keeping among the agencies granting certificates, including keeping track of the number of applications, number of denials, and number of certificates of rehabilitation issued by the relevant agency.

Require the state's repository of records to make notations on individual criminal records when certificates are issued and which conviction(s) the certificates cover.

### [Sealing/Expunging Arrest and Conviction Record](#)

According to the U.S. Department of Justice, there are over (71 million) criminal records on file with criminal justice repositories around the United States. That means that a high percentage of the nation's adult population lives a substantial portion of their lives having a criminal record.

Three quarters of the states allow employers and others to ask about and use arrests that never even led to conviction when making decisions. (See [Prohibit Inquiries About Arrests That Never Led to Conviction Toolkit](#).) Furthermore, in the past 20 years the federal government and many states have dramatically increased the number, range, and severity of civil penalties for those with criminal convictions.

In the 1990s, Congress and state legislatures created new restrictions on eligibility for food stamps and public assistance, public housing, student loans, parenting and drivers' licenses, along-side existing bars to employment and voting. The need for legislation that permits the sealing or expunging of arrests that did not lead to conviction and certain criminal records is evident when considering the numerous barriers that exist and the stigma people with criminal records carry long after completing their sentences and changing their lives.

### **Barriers to Employment**

Many existing state and federal laws make it extremely difficult for people with a criminal record to obtain employment.

- Most states allow employers to deny jobs to people who may have been arrested but never convicted of a crime.
- Most states allow employers to deny jobs to or fire anyone with a criminal record, regardless of how long ago or the individual's work history and personal circumstances.
- Some states post criminal history information on the Internet, making it extremely easy for employers to discriminate against people on the basis of old or minor convictions or even inaccurate or incomplete information.

### **Barriers to Housing**

Having a criminal history is a significant barrier to people with criminal records who need to have access to safe, secure and affordable housing just as any other resident in a community. Many people leaving the criminal justice system do not have a home to return to. Additionally, they very often return to communities where persistent poverty and lack of jobs and affordable housing make finding a permanent home difficult. For example:

- Federal laws give local housing agencies much leeway to decide whether to bar individuals with criminal records from public housing premises. Many public housing authorities deny eligibility for federally assisted housing based on an arrest that never led to a conviction.
- People with criminal records who seek private housing are often screened out following a background check that reveals their criminal history.

People with a past criminal record who have access to affordable and stable housing have a better chance for succeeding at becoming productive members of society -- by getting employed and remaining crime free. Coming soon, you will find more information in the Legal Action Center's Housing Toolkit.

### **Barriers to Education**

In 1998, the Higher Education Act was amended by Congress to delay or deny federal financial aid to students on the basis of any drug offense. Nearly 250,000 individuals currently in a state prison were convicted of drug crimes. According to the U.S. Department of Education, over 140,000 students have either been denied financial aid or stopped applying for aid because they thought they were ineligible.

### **Barriers to Public Assistance**

The 1996 federal welfare law prohibits anyone convicted of a drug-related felony from receiving federally funded food stamps and Temporary Assistance for Needy Families (TANF) benefits. Although states have the option of limiting this lifetime ban, most states restrict at least some people with drug felony convictions from being eligible for federally funded public assistance and food stamps

### **WHAT YOU CAN DO**

Advocates should seek passage of legislation to seal/expunge (1) arrests that did not lead to conviction and (2) old or minor conviction records, so employers and other non-law enforcement agencies are unable to obtain those records. Sealing/expunging these records will eliminate some of the roadblocks to life's basic necessities for individuals with criminal records as they seek to rebuild their lives, support their families and become productive members of their communities.

*(Note: The terms "seal," "expunge," "set aside," and "purge" are sometimes used interchangeably, although depending on the state law they can have very different meanings. "Sealing" technically means that access to a criminal record is limited, but the record is usually not erased or destroyed. "Expunging" or "purging" technically means that the record is completely destroyed.)*

### **Sealing/Expunging Records of Old or Minor Convictions**

The Legal Action Center has drafted model legislation for the sealing of conviction records that States can use to draft their own legislation. The key provisions of this legislation are described below.

Legislation to seal/expunge arrests old or conviction should include the following key provisions:

- Determine which types of records will be eligible for sealing or expungement. All convictions could be sealed/expunged or only non-violent offenses and/or first felony offenses, misdemeanors and violations.
- Employers and others should not be allowed to ask about or use those records.
- If asked, the individual should be permitted to deny the existence of the record.
- Specify whether sealing/expungement is automatic or whether the individual must file a motion with the appropriate court.
- Determine whether there will be a waiting period before records can be sealed or expunged. If there will be: (1) define a clear, reasonable period of time; (2) specify what triggers the beginning of the time frame, such as discharge by the court or the completion of all conditions of the sentence; and (3) state whether the length of the waiting period varies according to the seriousness of the crime.
- State whether an individual must demonstrate rehabilitation in order for the record to be sealed/expunged, and if so, what kinds of evidence the applicant must present.
- You may want to allow law enforcement agencies to obtain sealed/expunged conviction records. If any other entities need to be given access to sealed/expunged records, narrowly define the agencies that can do so, the circumstances and purposes.
- Specify the effects of a sealed/expunged conviction record including: (1) state that the records could no longer be used as a disqualification for employment (as noted in bullet two); and (2) state that the individual need not disclose that arrest if asked about prior criminal history when seeking employment, licensing, housing, or any other benefit.

- Include enforcement mechanisms such as criminal and/or civil penalties for wrongfully obtaining or disseminating sealed/expunged records to ensure that information from a sealed record is not improperly disclosed.
- If sealing/expungement is not automatic, specify procedures for application process, including:
  1. Documents that must accompany the application, such as court certificates of disposition, fingerprint card, proof of identity, etc.
  2. If there are required application fees, allow for reduced or no-fee waivers for indigent applicants.
  3. Specify which entity is responsible for the investigation of evidence, recommendations, and determinations (e.g. probation department, judge, parole).
  4. Specify the timeline for the application process. If a hearing is necessary, state time period for scheduling the hearing and the maximum amount of time an applicant must wait before the investigation is completed and a decision rendered.
  5. Require that applicants receive all reports and decisions in writing.
  6. State the process for re-applying if initial application is denied, including how often and after what period of time applicant can re-apply.

## Drivers' Licenses.

### **STATE LAWS**

A detailed description of every state's laws regarding revocation or suspension of drivers' licenses because of drug convictions can be found in the Legal Action Center's report, **After Prison: Roadblocks to Reentry**.

The following is a summary of our findings:

#### **Type of drug offenses that result in license revocation/suspension**

- Four states – Arkansas, Delaware, Louisiana, and New Jersey – suspend licenses for all drug-related offenses whether or not they are related to the ability to drive.
- Twenty-three states suspend or revoke licenses for some drug offenses unrelated to the ability to drive.
- Twenty-three other states suspend or revoke licenses only for driving-related offenses or have opted out of the federal law completely.

#### **Length of revocation/suspension**

- Currently four states – Colorado, Delaware, Massachusetts, and South Carolina – revoke or suspend drivers' licenses for longer than six months for drug convictions unrelated to driving.
- Of the 27 states that automatically suspend or revoke licenses for some or all drug convictions unrelated to driving, 21 limit the revocation or suspension of licenses to six months for a first offense.

### **Availability of restricted licenses**

- Thirty-two states offer restrictive licenses for driving to work, school or treatment; 18 do not.

### **WHAT YOU CAN DO**

If your state goes beyond the minimum requirements of the federal law and suspends or revokes drivers' licenses for drug offenses unrelated to the ability to drive, or for more than six months, or does not provide restricted licenses, you can advocate for one or more of the following reforms:

- **States that have not already done so should formally submit their written opposition to the law to the U.S. Secretary of Transportation.**

This will ensure that states can amend their laws without penalty.

- **States that have not already done so should limit the suspension or revocation of drivers' licenses to only those drug offenses related to an individual's ability to drive safely.**

In twenty-three states, revocation or suspension of a driver's license is only triggered by conviction for driving under the influence of alcohol and/or drugs or drug-related offenses while in physical control of a motor vehicle. The other states should enact similar laws.

- **Provide restricted licenses so people can go to work, school and treatment.**

Limited driving privileges for those whose licenses are suspended or revoked should be available for purposes of employment, education, medical care, and attendance at alcohol or drug treatment programs. Some states, like Missouri, also provide for the opportunity for restricted licenses for any other circumstance the court finds may create an undue hardship. In other states, restricted licenses are tied to mandatory participation in an alcohol or drug information or treatment program or left to the discretion of the department of motor vehicles.

- **Limit the revocation or suspension of licenses to six months for a first offense.**

If states do revoke or suspend drivers' licenses automatically for non-driving drug offenses, the mandatory period of revocation or suspension should be no longer than six months from the time of conviction. That is the standard set by the federal law, and there is no reason to increase it automatically for everyone in this category. Decisions to revoke or suspend a driver's license for a longer period of time should be made on the basis of the specific facts.

## Public Housing.

### **The Unfair Roadblock:**

More than 700,000 people will be released from prison this year. An even greater number will be released from local jails. Individuals returning home will face many challenges. Often, their most immediate need will be securing safe and affordable housing, which for many people is the key to successful integration.

While the lack of affordable housing is frequently a problem for people who lack financial resources, this problem is compounded for people with conviction records. They 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.

Many of the policies that housing authorities or private landlords use to exclude people with conviction records are overly restrictive, effectively denying housing to people 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. These policies should be changed. With greater education and targeted advocacy, these policies can be changed. (See the Legal Action Center's report, [After Prison: Roadblocks to Reentry](#), at [www.lac.org/lac](http://www.lac.org/lac).)

### **How to Remove the Roadblock:**

Public housing authorities and private landlords should adopt policies that, rather than barring any applicants who have criminal records, instead individually assess each applicant based on:

- The seriousness and nature of his or her conviction,
- The relevance of that conviction to the tenancy,
- The length of time that has passed since the conviction, and
- Evidence of rehabilitation.

Neither public agencies nor private landlords should base a decision on an arrest that never led to conviction. People who are black or Latino who are denied housing based on a criminal record that is unrelated to their ability to be a good tenant may be able to bring a claim of racial discrimination under federal and state laws. States should create Certificates of Rehabilitation that public agencies and private landlords must consider when evaluating the application of an individual with a criminal record.

All these approaches are discussed in this kit, which is designed for those of you who work to increase housing opportunities for people with conviction records. Some of you may have great expertise in working with this population, but may know little about housing law and policies.

Others of you may be seasoned housing advocates, but have little experience working with the specific issues surrounding housing for people who have criminal records. You do not need to be, or hire, a lawyer in order to use this kit.

In this kit, which is intended to be a practical guide, you will find background information on housing laws, model housing policies and model legislation, and a number of tools that you can use to help increase housing opportunities for people with criminal records.

You will also find background material that you can use to make a claim of racial discrimination in cases where a landlord's blanket policy of excluding people with arrest or conviction records effectively works to exclude people who are black or Latino. You will also find helpful information on the use of certificates of rehabilitation in the housing context. We hope that the materials we have provided will support the particular type of advocacy suitable to your organization, and perhaps some that will open new avenues of advocacy for you.

### [Opting Out of Federal Ban on Food Stamps and TANF.](#)

#### **THE PROBLEM - WHAT NEEDS TO BE CHANGED**

The federal 1996 Personal Responsibility and Work Opportunity Reconciliation Act dramatically changed the American welfare system. Under this law, anyone convicted of a federal or state felony for conduct occurring after August 22, 1996 involving the possession, use, or distribution of drugs is permanently ineligible to receive food stamps or TANF. Although the law allows states to decide not to adopt the ban, unless and until a state adopts specific legislation opting out from or modifying it, people with drug felony convictions are barred for life from receiving food stamps and cash.

While a number of states have already eliminated or limited the federal ban, many others have not. Those states that have retained the TANF and food stamp ban suffer the ill effects of counterproductive public policies that fail to address effectively the basic sustenance, housing, addiction, and other needs of people with felony drug convictions who are seeking to reintegrate into their communities. Denying food stamps and cash benefits to these individuals makes it much more difficult for them to support themselves as they leave the criminal justice system and reenter society, and much more likely that they will return to criminal activity and drug use instead of attaining sobriety and gainful employment.

States that eliminate or modify the bans on food stamps and TANF for individuals with drug felony convictions will benefit in a number of ways. Many individuals with criminal records have difficulty obtaining work, either because they lack the skills and education to qualify for a job, or because many employers have policies against hiring individuals with prior convictions. Public assistance and food stamps provide them with necessary survival assistance as they look for employment. By helping them lead more stable lives, public assistance and food stamps also can help reduce recidivism.

Public assistance and food stamps also ensure the continued availability of alcohol and drug treatment programs to those who need them in order to successfully reenter society. Alcohol and drug treatment programs, particularly residential programs, have historically relied on funding from a client's public assistance and food stamps to pay for room and board. Without these funds, programs may face decisions

about whether to reduce services, decrease the intensity of services to continue to serve the same size caseload, or close altogether. Programs that provide mental health and other services also can suffer if these funds are not available.

### **SUMMARY OF STATE LAWS**

Because of the important role that food stamps and public assistance play in the lives of individuals with prior criminal convictions, a majority of states have eliminated or modified the lifetime ban on food stamps and TANF for people with drug felony convictions:

- Seventeen states have adopted the federal ban without modification. They permanently deny benefits, even if the underlying crime occurred years before and regardless of an individual's successful job history, participation in drug and alcohol treatment, leading a law-abiding life, abstinence from drug use, or other evidence of rehabilitation.
- Twenty-one states have limited the ban in some way to enable those with drug felony convictions to receiving food stamps and cash assistance if they meet certain conditions, such as participating in alcohol or drug treatment, having a "possession only" conviction, passing a drug test, or waiting a certain period of time.
- Twelve states have eliminated the ban entirely.

A detailed description of each state's laws concerning the application of the federal ban on TANF and food stamp benefits can be found at <http://www.lac.org/lac/main.php?view=law&subaction=5>.

### **Adoption and Foster Care.**

#### **THE PROBLEM/WHAT NEEDS TO BE CHANGED**

The Adoptive and Safe Families Act (ASFA), passed in 1997, requires states to enact legislation incorporating its provisions in order to continue to receive federal funding for child welfare programs. ASFA requires criminal record checks for prospective foster parents or guardians and requires that states bar for life individuals convicted of the following offenses:

- child abuse or neglect
- spousal abuse
- crimes against children, including child pornography
- violent crimes, including rape, sexual assault or homicide (but not other types of physical assault or battery)

ASFA also requires that states bar for five years anyone convicted of the following offense:

- physical assault

- battery
- drug-related felonies

However, the Act allows states to opt out of these requirements and substitute their own rules by passing a state law that does so, or the governor of the state may notify the Secretary of Health and Human Services in writing that the state has elected to be exempt from these requirements.

While many states have opted out of the federal requirement, fifteen states have adopted the federal standard or even expanded the list of crimes for which individuals must be barred from becoming foster and adoptive parents. In these states, individuals with criminal records have been denied the opportunity to become parents, and children have been removed from safe and loving homes without individualized determinations that the removal is truly in their best interest. The “one-size-fits-all” nature of ASFA denies potential parents the right to present evidence that, despite their prior convictions, they are fit and capable caregivers.

### **BENEFITS OF ‘OPTING OUT’ FROM THE FEDERAL GUIDELINES**

Important benefits result from changing state policies to allow individualized determinations about the suitability of an applicant with a criminal record to be an adoptive or foster parent. Allowing individuals who can show sufficient evidence of rehabilitation to be foster and adoptive parents expands the eligible pool of individuals who can provide loving homes for children in need of a nurturing environment. Many of these individuals have a unique understanding of the difficulties faced by these children and can provide them with the support and guidance they need. Indeed, many people with criminal records are already providing excellent care, and it would be very damaging to the children to wrench those care-givers away.

Some states, such as New York, quickly passed laws that barred individuals with certain criminal records from becoming foster or adoptive parents, with little forethought of the consequences. As a result, many children were abruptly removed from homes where they had been provided good care for years. Realizing the shortsightedness of the measures, New York legislators amended the law to allow individuals with criminal histories to prove their ability and fitness to become adoptive or foster parents.

### **Restoring Medicaid Upon Release From Prison.**

#### **The Problem Posed by the Lack of Immediate Access to Medicaid upon Release from Prison or Jail**

More than 630,000 people are released from state and federal prisons every year, a population equal to that of Baltimore or Boston, and hundreds of thousands more are released from local jails. This population includes some of the least healthy people in the country.

According to a 2002 federal study, *The Health Status of Soon-to-be-Released Inmates: A Report to Congress*, tens of thousands of inmates are released into the community every year with undiagnosed or untreated communicable disease, chronic disease, and mental illness. Few have health insurance or can afford necessary medical care.

Without access to services, individuals leaving prisons and jails cannot get the medical care and social services they need to establish stability in the community, which can frequently lead to homelessness and return to criminal activity. Failing to enroll eligible individuals leaving prisons and jails in Medicaid represents a missed opportunity to improve individual and community health and public safety and to reduce the high costs of preventable illnesses.

Failing to restore Medicaid for eligible inmates who were enrolled in Medicaid when they were incarcerated runs afoul of federal law. In a letter written in 2001 reaffirming an earlier ruling by the prior Administration, Tommy Thompson, Secretary of the United States Department of Health and Human Services, stated that incarcerated individuals may not be terminated from Medicaid until a redetermination has been conducted.

In addition, he wrote, "Unless a state determines that an individual is no longer eligible for Medicaid, states must ensure that incarcerated individuals are returned to the Medicaid eligibility rolls immediately upon release, thus allowing individuals to go directly to a Medicaid provider and demonstrate his/her Medicaid eligibility."

### **Why Providing Medicaid upon Release is Beneficial**

There are a number of important benefits that arise from ensuring that individuals have immediate access to Medicaid upon release from confinement. These include:

- Increasing public safety by reducing re-arrest rates, criminal activity, and increased use of drug treatment and other health care services.

A recent study conducted by the Urban Public Health Department at Hunter College, City University of New York, found women released from New York City jail who were enrolled in Medicaid were less likely to be rearrested and less likely to report illegal activities than women without Medicaid coverage. These women were also more likely to participate in residential drug treatment and use other health care services.

Numerous studies have found that treatment is effective at reducing drug use and crime, including the following:

- A 1997 Rand Corporation study found that drug treatment was 15 times more effective at reducing serious crimes committed against people and property by drug offenders than mandatory minimum sentences.
  - The National Treatment Improvement Evaluation Study (NTIES, 1998) found that participants in treatment reduced their drug use by 50 percent, including decreasing their crack use by 50.7 percent and their heroin use by 46.5 percent.
- Bringing states into compliance with federal law which requires that individuals who entered jail or prison with Medicaid must be returned to the Medicaid rolls immediately upon release.

### **WHAT YOU CAN DO**

Advocates interested in working with their localities and states to provide access to Medicaid may find many allies in this effort. Correctional and criminal justice officials frequently support the effort to provide individuals released from jail and prison access to Medicaid because these officials understand the link between lack of access to these services and their returning to criminal activity. Other agencies that provide services to individuals who cycle through jails and prison, such as shelters, also understand that failure to address health and social problems contributes to homelessness and re-arrest.

In advocating for immediate access to Medicaid upon release from prison and jail, advocates may want to make the following practical points:

- In order to comply with federal policy that requires individuals who entered jail or prison with Medicaid to be returned to the Medicaid rolls immediately upon release, states should suspend an individual's benefits while s/he is incarcerated, rather than terminating them.
- Prisons and jails should begin the Medicaid application process for incarcerated individuals before they are released so that they can receive benefits as soon as possible after their release, easing their transition back into the community.
- The Social Security Administration (SSA) has procedures in place to allow for the processing of applications for individuals currently incarcerated who appear likely to meet SSI criteria when they are released. State Medicaid agencies could adopt similar procedures for their programs.

### [Valid State Identification Cards.](#)

#### **The Unfair Roadblock:**

Many people coming out of prison or jail are released without any official state identification other than a prison discharge slip or a department of corrections inmate card, neither of which are sufficient to obtain a job, place to live, public benefits, or necessities in the community. People who are incarcerated are very frequently separated from their "outside" possessions and even their "inside" possession as they are transferred within the system — birth certificates, social security cards, and state identification cards often disappear. The process of obtaining these documents upon release into the community, especially for those individuals who have been incarcerated for many years, can be daunting, and failure to do so quickly can doom their chances of successfully reintegrating into the community.

#### **How to Remove the Roadblock:**

States should ensure that people released from prison are able to obtain proper state identification cards by requiring the state department of motor vehicles to provide identification to an individual with a state department of correction ID card. States should also create inter-agency agreements that ease the process for formerly incarcerated individuals to obtain state-issued identification.

This tool kit provides materials advocates can use to seek passage of a state law that allow individuals leaving prisons and jails to obtain state identification using department of correction-issued documentation, including:

## Description of the Problem

In most states, individuals released from prison are not given any identification that would enable them to obtain a state-issued identification card, i.e. driver's or non-driver's license. Some states provide identification documents upon release but they are often not recognized as a sufficient source of proof of identity for most purposes. Without official state identification, people with criminal records are often unable to find employment, secure housing, or apply for public benefits.

In the United States, it is common practice for employers to require a newly hired employee to provide a copy of a state or federally issued identification. Even if a person without identification is fortunate enough to find work, the lack of a state ID can make it extremely difficult to cash paychecks or open a bank account. These barriers increase the likelihood that individuals with criminal records will fail in their attempts to reenter society and instead return to crime.

Ensuring that people released from prison are able to obtain proper state ID cards will remove some of the barriers to life-sustaining essentials. Research shows that the first few weeks after release are critical to successful reentry and preventing recidivism. Thus, it is crucial to make this transition as smooth as possible. Easing the process of obtaining identification is an inexpensive way for states to help former inmates make a successful transition back into society.

## Summary of State Practices

The Legal Action Center's National H.I.R.E. Network conducted a national survey to better understand what obstacles exist in each state for people newly released from prison to obtain proper identification and to identify models that could be implemented around the country.

We found that:

- Although the Departments of Motor Vehicles (DMVs) in twenty-two states accept some form of Department of Corrections (DOC) documentation as proof of identity, only six of them accept DOC documentation as primary proof of identification.
- In twenty states, there are no inter-agency agreements between the DMV and the DOC, and the DMV does not accept any form of prison documentation as proof of identity.
- In states where DOC-issued IDs are supposed to be accepted as proof of identification by the DMV, it is often not the case in practice. For example, although DOC documentation is officially recognized in New York, the DMV does not list any form of corrections documentation as an acceptable proof of identity.

## Funding Streams.

States and local governments seeking funding and other types of assistance in developing or expanding reentry programs can turn to a number of sources depending on the program focus. This toolkit first lists a

number of issue-specific sources of assistance as well as additional sources of information. Following the list is a description of each funding source.

**Federal Resources:**

Funding through the U.S. Department of Justice:

**SERIOUS AND VIOLENT OFFENDER REENTRY INITIATIVE (SVORI)**

**NATIONAL INSTITUTE OF CORRECTIONS TECHNICAL ASSISTANCE FUNDS**

Funding through the U.S. Department of Education:

**WORKPLACE AND COMMUNITY TRANSITION TRAINING FOR INCARCERATED YOUTH OFFENDERS**

**LIFE SKILLS FOR STATE AND LOCAL PRISONERS**

**VOCATIONAL EDUCATION: BASIC GRANTS TO STATES PROGRAM**

**Funding through Department of Labor:**

**WORK OPPORTUNITY TAX CREDIT (WOTC)**

**WELFARE-TO-WORK TAX CREDIT**

**WORKFORCE INVESTMENT ACT (WIA)**

**READY 4 WORK INITIATIVE**

**ADDITIONAL DOL GRANT PROGRAMS**

Funding through the U.S. Department of Health and Human Services:

**COMPASSION CAPITAL FUND**

**TEMPORARY ASSISTANCE TO NEEDY FAMILIES PROGRAM (TANF)**

**Additional Federal Resources**

**State Resources:**

**STATE VOCATIONAL REHABILITATION SERVICE PROGRAM**

**STATE EQUIVALENT TO WORK OPPORTUNITY TAX CREDIT**

## **ADDITIONAL INFORMATION ON STATE REENTRY ACTIVITIES AND RESOURCES**

### **Funding through the U.S. Department of Justice:**

#### **SERIOUS AND VIOLENT OFFENDER REENTRY INITIATIVE (SVORI)**

<http://www.ojp.usdoj.gov/reentry/learn.html#serious>

The Serious and Violent Offender Reentry Initiative (SVORI) directs funding toward high-risk juveniles and adults returning to the community from the criminal justice system. Although some SVORI funds are utilized for in-prison services, SVORI also funds services and supervision during reentry. Both state and local governments can apply for SVORI funds.

The Department of Justice's Office of Justice Programs developed the SVORI program to assist communities in identifying gaps in their reentry strategies and developing a vision for reentry that seeks to fill those gaps and sustain the overall strategy. Communities are encouraged to use the funding to enhance existing reentry strategies with training and technical assistance that will build community capacity to effectively, safely, and efficiently reintegrate people who are returning from involvement in the criminal justice system.

#### **TECHNICAL ASSISTANCE THROUGH THE NATIONAL INSTITUTE OF CORRECTIONS**

[http://www.nicic.org/WebGateway\\_48.htm](http://www.nicic.org/WebGateway_48.htm)

The DOJ's National Institute of Corrections provides a number of training programs to probation, parole and community corrections officers to help them better assist people in the criminal justice system. The training services often focus on the needs of individuals reentering society after incarceration. For example, technical assistance is provided to corrections staff assisting people with criminal records in gaining employment.

### **ADDITIONAL DOJ GRANT PROGRAMS**

<http://www.ojp.usdoj.gov/fundopps.htm>

New discretionary grant programs.

### **Funding through the U.S. Department of Education:**

#### **WORKPLACE AND COMMUNITY TRANSITION TRAINING FOR INCARCERATED YOUTH OFFENDER**

<http://www.ed.gov/programs/transitiontraining/index.html>

The Workplace and Community Transition Training for Incarcerated Youth Offender program provides grants to designated State Correctional Education Agencies to establish postsecondary education or vocational

training programs for eligible incarcerated youthful offenders. Overseen by the Department of Education's Office of Safe and Drug-free Schools, these grants are intended to assist people with a criminal record who are under 25 years of age and within 5 years of their release.

### **LIFE SKILLS FOR STATE AND LOCAL PRISONERS**

<http://www.ed.gov/offices/OVAE/AdultEd/OCE/demoproj.html>

The Life Skills for State and Local Prisoners program provides financial assistance for establishing and operating programs designed to reduce recidivism through the development and improvement of life skills necessary for reintegration of adult prisoners into society. Also a part of the Office of Drug-free Schools' Character, Civic, Correctional Education initiative, the Life Skills for State and Local Prisoners program is a discretionary grant program that provides funds for job training and life skills training. State and local correctional agencies or state and local correctional education agencies are eligible to apply for these funds.

### **VOCATIONAL EDUCATION: BASIC GRANTS TO STATES PROGRAM**

<http://www.ed.gov/programs/ctesbg/index.html>

The Vocational Education Basic Grants to States program, administered by the Office of Vocational and Adult Education, provides vocational-technical education programs and services to youth and adults. State boards for career and technical education are eligible to apply for these funds. Local educational agencies and postsecondary institutions are also eligible to receive sub-grants under this Basic Grants program. Although there is a limit to the amount grantees can use for youth and adults in state correctional institutions, the funding restrictions do not apply to money to programs for people reentering from the criminal justice system.

### **Funding through Department of Labor:**

#### **WORK OPPORTUNITY TAX CREDIT (WOTC)**

<http://www.users.doleta.gov/wotcdata.asp>

The Work Opportunity Tax Credit (WOTC) is a tax credit that functions as an incentive to employers who hire people with certain criminal records. The credit can provide up to \$2,400 per person per year in tax breaks for a full-time employer. The WOTC can also apply to an individual working part-time or completing summer youth work.

The WOTC is available to employers who employ people from one of eight targeted groups, including "qualified ex-felons." A "qualified ex-felon" is defined as an individual who (1) has a state or federal felony conviction; (2) is a member of an economically disadvantaged family and (3) is hired within one year of release from prison or from date of conviction.

## **WELFARE-TO-WORK TAX CREDIT**

<http://www.uses.doleta.gov/wtw.asp>

The Welfare-to-Work Tax Credit is a federal income tax credit that encourages employers to hire "Long-term TANF Assistance Recipients," including those with criminal records, who begin to work before January 1, 2006. Established by the Taxpayer Relief Act of 1997, this new tax credit can reduce employers' federal tax liability by as much as \$8,500 per new hire.

The program applies to any individual who has been certified by the "designated local agency" as one who a) is a member of a family that: received TANF or AFDC for at least the 18 consecutive months before the date of hire, or b) had his or her TANF/AFDC eligibility expire under Federal or State law after August 5, 1997, for individuals hired within 2 years after their eligibility expired or; c) received TANF/AFDC for any 18-month period, and who is hired within 2 years after the end of the earliest 18-month period.

## **WORKFORCE INVESTMENT ACT (WIA)**

<http://www.doleta.gov/usworkforce/wia/>

The Workforce Investment Act (WIA) provides workforce training and placement services for a variety of clients, including individuals with criminal records. Local WIA one-stops provide core services, intensive services, and training services to eligible adults. All adults, including people with criminal records, are eligible for core services. The WIA Youth Activities program is also available to offer similar services for low-income youth.

## **READY 4 WORK INITIATIVE**

<http://www.dol.gov/cfbci/Ready4Work.htm>

Ready4Work is a three-year, \$22.5 million program to assist faith-based and community programs that provide mentoring and other transition services for men and women returning from prison. The Ready4Work program receives funding through the Departments of Labor and Justice.

## **ADDITIONAL DOL GRANT PROGRAMS**

<http://www.doleta.gov/sga/sga.cfm>

New discretionary grant programs.

Funding through the U.S. Department of Health and Human Services:

## **COMPASSION CAPITAL FUND**

<http://www.acf.hhs.gov/programs/ccf/>

Funds from The Compassion Capital Fund (CCF), overseen by HHS's Administration for Children and Families and the White House Office of Faith-Based Initiatives, are aimed at helping faith-based and community groups build capacity and improve their ability to provide social services to those in need.

The CCF administers two grant programs, the Demonstration Program and the Targeted Capacity-Building Program. The Demonstration Program, which allocates nearly all of the CCF funds, supports intermediary organizations that provide faith-based and community organizations with training, technical assistance, and capacity-building sub-awards.

The Targeted Capacity-Building Program also referred to as the "mini-grant program," directly funds faith-based and community organizations with one-time \$50,000 awards to build their capacity to deliver services to various populations including at-risk youth and the homeless.

### **TEMPORARY ASSISTANCE TO NEEDY FAMILIES PROGRAM (TANF)**

<http://www.acf.hhs.gov/programs/ofa/index.html>

The Temporary Assistance to Needy Families (TANF) Program, which replaced the federal welfare system, provides assistance and work opportunities to needy families by granting states the federal funds and wide flexibility to develop and implement their own welfare programs.

### **ADDITIONAL FEDERAL RESOURCES:**

#### **The Federal Register**

<http://www.gpoaccess.gov/fr/index.html>

Federal funding announcements are made daily in the Federal Register. The online Federal Register also allows individuals to sign-up to receive the Register's electronic index daily.

Grants.gov is a newly formed online database of federal grant opportunities. Through this centralized website of federal government funding sources, an individual can browse through grants in several searchable databases, access grant applications and apply for these grants online.

<http://www.grants.gov>

**JUSTINFO**, published by the National Criminal Justice Reference Service (NCJRS), is a bi-weekly electronic newsletter with links to full-text documents on a variety of topics in the criminal justice field, including funding.

<https://puborder.ncjrs.org/secure/register/register.asp>

**JUVJUST**, an electronic newsletter published by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), announces the arrival of new publications and other newsworthy events, and offers updates on the latest juvenile justice information from OJJDP and the field.

[http://www.puborder.ncjrs.org/listservs/subscribe\\_JuvJust.asp](http://www.puborder.ncjrs.org/listservs/subscribe_JuvJust.asp)

**U.S. Department of Justice**

<http://www.usdoj.gov/>

<http://www.ojp.usdoj.gov/reentry/welcome.html>

<http://www.ojp.usdoj.gov/nij/welcome.html>

**U.S. Department of Labor**

<http://www.dol.gov/>

**U.S. Department of Health and Human Services**

<http://www.hhs.gov/>

**U.S. Department of Housing and Urban Development**

<http://www.hud.gov/>

**U.S. Department of Education**

<http://www.ed.gov/index.jhtml>

**U.S. Department of Agriculture**

<http://www.usda.gov/wps/portal/usdahome>

**U.S. Department of Commerce**

<http://www.commerce.gov/index.html>

**U.S. Department of the Interior**

<http://www.doi.gov/>

## **U.S. Department of Veterans Affairs**

<http://www.va.gov/index.htm>

## **Small Business Administration**

<http://www.sba.gov/>

## **Social Security Administration**

<http://www.ssa.gov/>

## **White House Office of Faith-Based and Community Initiatives**

<http://www.whitehouse.gov/government/fbci/>

### **STATE RESOURCES:**

#### **STATE VOCATIONAL REHABILITATION SERVICE PROGRAM**

<http://www.jan.wvu.edu/SBSES/VOCREHAB.HTM>

<http://www.ed.gov/about/offices/list/osers/rsa/index.html?src=mr>

The State Vocational Rehabilitation Service Program provides grants to state vocational rehabilitation agencies for training and job placement for individuals with disabilities, including people with criminal records.

#### **STATE EQUIVALENT TO WORK OPPORTUNITY TAX CREDIT**

A number of states offer a tax credit to business owners who hire people with criminal records. Similar to the federal Work Opportunity Tax Credit Program, these state tax incentives support the reentry of those who are trying to return to the job market in order to support their families and rejoin their communities.

Five states – California, Iowa, Louisiana, Maryland and Texas – currently provide state income tax credits to employers who hire people with criminal records. Additional information about these states' tax credit programs can be found through the following websites:

#### **California Employment Development Department**

<http://www.edd.ca.gov/wotcind.htm>

#### **Iowa Department of Revenue**

<http://www.state.ia.us/tax/educate/78522.html>

**Louisiana Department of Revenue**

<http://www.rev.state.la.us/>

**Maryland Department of Employment Services**

<http://www.careernet.state.md.us/>

**Texas Comptroller of Public Accounts**

<http://www.window.state.tx.us/>

**ADDITIONAL INFORMATION ON STATE REENTRY ACTIVITIES AND RESOURCES**

<http://www.ojp.usdoj.gov/reentry/sar/welcome.html>

**[Enforce Anti-Discrimination Laws.](#)**

We are grateful to the After Prison Initiative of the Open Society Institute for making it possible for the Legal Action Center to develop these toolkits.

**The Unfair Roadblock:**

More and more employers are conducting criminal background checks on job applicants, which can make it much more difficult for the millions of Americans with criminal records to find employment and become productive, law-abiding members of society.

Most states allow employers to refuse to hire people with criminal records; not only individuals who have been convicted -- even if they have paid their debt to society and demonstrated their ability to work without risk to the public -- but also those who were arrested and never convicted.

Although no one questions the legitimate concerns of employers who do not want to hire someone with a conviction record who clearly demonstrates a threat to public safety or who otherwise has a conviction history directly related to a specific job, policies that encourage employers to adopt broad sweeping exclusions (i.e. not hiring or considering anyone with any type of criminal history) simply locks out and eliminates many qualified, rehabilitated individuals from the job market. (See the Legal Action Center's report at <http://lac.org/roadblocks-to-reentry/>)

**How to Remove the Roadblock:**

States should have laws that prohibit across-the-board employment discrimination against people with criminal records and instead require employers to make individualized hiring decisions by applying specific

standards. The law should incorporate standards that will guide employers to make fair and appropriate employment decisions that will effectively address the needs of qualified individuals with criminal records seeking a fair chance as well as address legitimate employer and public safety concerns. However, it is important to note that employers should not be able to deny employment based on an arrest that did not lead to a conviction.

This tool kit provides materials advocates can use to seek the passage of laws that prohibit blanket policies that deny employment to qualified people with criminal records and establish standards employers should use in making individualized hiring decisions:

### **EMPLOYMENT OF INDIVIDUALS WITH CRIMINAL RECORDS – WHAT NEEDS TO BE CHANGED AND WHY**

The majority of states allow employers – both public and private – and occupational licensing agencies to disqualify applicants with any kind of criminal record, regardless of how serious the criminal history, how long ago it occurred, or without having to consider the applicant’s work history, qualifications, or personal circumstances in relation to the job or license being sought. Most states even allow employers to deny employment to applicants who have been arrested but never actually convicted of a crime or non-criminal offense.

As a result, many of the 700,000 individuals who return from prisons every year and the millions of other Americans with a criminal record find themselves unable to fully integrate back into their communities contribute to their families and local economy and resume life as productive members of society.

Employers who do not hire people with a criminal record give various reasons for their policy, including fear of liability or risk, or concern about being sued for “negligent hiring” if an employee commits a new crime, or compliance with mandates imposed by state or federal law.

While employers certainly should take into account a person’s criminal history for the sake of determining if the person’s conviction records are job-related, having flat bans against employing qualified people with criminal records limits the employer’s opportunity to attract and retain a large percentage of the workforce who is trained, motivated, and who has access to a number of resources employers could gain benefit from. Therefore, legislation that encourages employers to make individualized determinations when considering people with criminal histories and that sets standards for consider these individuals, benefits the general public, employers, and people with criminal histories.

People with jobs are less likely to commit criminal acts. They are able to resume life as productive members of society, care for themselves and their families, all while contributing to the local economy and tax base.

As discussed in more detail below, advocates in states that do not have anti-discrimination legislation should encourage the passage of laws that prohibit employers from refusing to hire applicants simply because they have been arrested or convicted and require employers to individually assess the qualifications of people with criminal records.

*(Important note: Federal courts have ruled that Title VII of the Civil Rights Act of 1964 prohibits employers from imposing blanket bars to employment of people with conviction histories. Coming soon, you will find more information in the Legal Action Center's toolkit Enforce Anti-Discrimination Laws.)*

## **SUMMARY OF STATE LAWS**

The majority of states allow employers to refuse to hire anyone with a conviction record – or even an arrest that never led to conviction – because they have absolutely no guidelines or regulations on how an employer must evaluate a criminal history when considering an applicant.

Only fourteen states have legal standards governing public employers' consideration of an applicant's criminal record that require an individualized assessment of the applicant's qualifications and ability to do the job. These states are: Arizona, Colorado, Connecticut, Florida, Hawaii, Kansas, Kentucky, Louisiana, Minnesota, New Mexico, New York, Pennsylvania, Washington, and Wisconsin. Only five of those states – Hawaii, Kansas, New York, and Wisconsin – regulate private employers.

Even when it comes to granting licenses for a wide range of occupations, only 21 states have standards that require a "direct," "rational," or "reasonable" relationship between the license sought and the applicant's criminal history to justify the agency's denial of license, while the other 29 states do not.

For a complete description of the 50 states' laws concerning employment of people with criminal records, please see the Legal Action Center's report After Prison: Roadblocks to Reentry at <http://lac.org/roadblocks-to-reentry/main.php?view=law&subaction=4>.

## **RESOURCES**

The following organizations and government agencies are working on issues related to prisoner reentry and on initiatives to remove unreasonable roadblocks to reentry:

- American Bar Association, Criminal Justice Section,  
<http://www.abanet.org/crimjust/home.html>
- American Probation and Parole Association,  
<http://www.appa-net.org>
- Association of State Correctional Administrators,  
<http://www.asca.net>
- United States Department of Justice, Bureau of Justice Statistics,

<http://www.ojp.usdoj.gov/bjs>

- Center for Law and Social Policy,

<http://www.clasp.org>

- Council of State Governments/Justice Center,

<http://www.justicecenter.csg.org/>

- Human Rights Watch,

<http://www.hrw.org>

- Justice Policy Institute,

<http://www.justicepolicy.org>

- Legal Action Center,

<http://www.lac.org>

- Law Center for Families (Social Justice Law Project),

<http://www.lcff.org>

- National Conference of State Legislatures, Criminal Justice,

<http://www.ncsl.org/programs/cj/crime.htm>

- National Employment Law Project,

<http://www.nelp.org>

- National Governors Association Prisoner Reentry Policy Academy,

<http://www.nga.org>

- National H.I.R.E. Network,

<http://www.hirenetwork.org>

- National Institute of Corrections,  
<http://www.nicic.org/resources/topics/TransitionFromPrison.aspx>
- Open Society Institute U.S. Justice Fund: The After Prison Initiative,  
[http://www.soros.org/initiatives/justice/focus\\_areas/after\\_prison](http://www.soros.org/initiatives/justice/focus_areas/after_prison)
- Open Society Institute: Baltimore,  
<http://www.soros.org/baltimore>
- Prisoner Reentry Institute,  
<http://www.jjay.cuny.edu/centerinstitues/pri/x.asp>
- Right to Vote: Campaign to End Felony Disfranchisement,  
<http://www.righttovote.org>
- Public Welfare Foundation,  
<http://www.publicwelfare.org/>
- The Sentencing Project,  
<http://www.sentencingproject.org/>
- The Urban Institute,  
<http://www.urban.org/>
- The Urban Institute's Justice Policy Center,  
<http://www.urban.org/justice/index.cfm>
- Vera Institute of Justice,  
<http://www.vera.org>

# Toxic Persons

New research shows precisely how the prison-to-poverty cycle does its damage.

By Sasha Abramsky Posted Friday, Oct. 8, 2010, at 7:34 AM ET

<http://www.slate.com/id/2270328/>

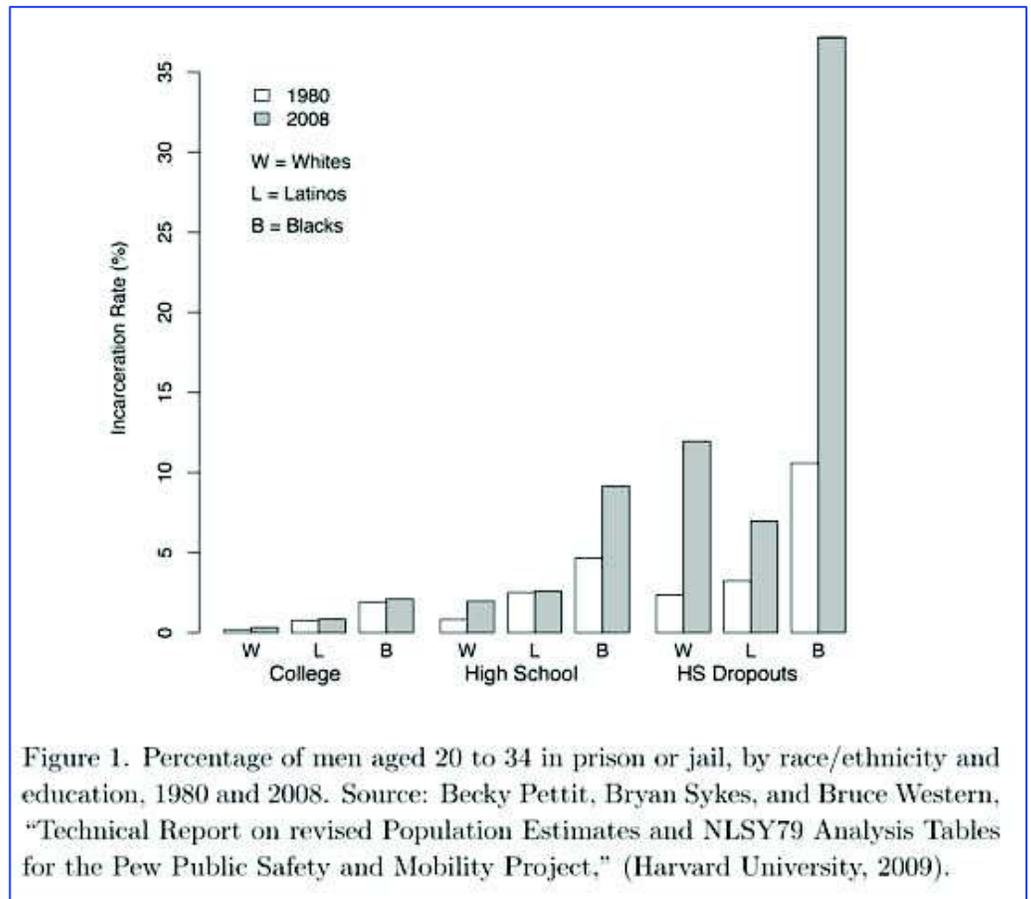
Forty years after the United States began its experimentation with mass incarceration policies, the country is increasingly divided economically. In [new research](#) published in the review *Daedalus*, a group of leading criminologists coordinated by the American Academy of Arts and Sciences (which paid me to consult on this project) argued that much of that growing inequality, which *Slate's* [Timothy Noah has chronicled](#), is linked to the increasingly widespread use of prisons and jails.

It's well-known that the United States imprisons drastically more people than other Western countries. Here are the specifics: We now imprison more people in absolute numbers and per capita than any other country on earth. With 5 percent of the world population, the U.S. hosts upward of 20 percent of its prisoners. This is because the country's incarceration rate has roughly quintupled since the early 1970s. About 2 million Americans currently live behind bars in jails, state prisons, and federal penitentiaries, and many millions more are on parole or probation or have been in the recent past. In 2008, as a part of an "[American Exception](#)" series exploring the U.S. criminal-

justice system, *New York Times* reporter Adam Liptak pointed out that overseas criminologists were "mystified and appalled" by the scale of American incarceration. States like California now spend more on locking people up than on funding higher education.

In devastating detail in *Daedalus*, the sociologists Bruce Western of Harvard and Becky Pettit of the University of Washington have shown how poverty creates prisoners and how prisons in turn fuel poverty, not just for individuals but for entire demographic groups. Crunching the numbers, they concluded that once a person has been incarcerated, the experience limits their earning power and their ability to climb out of poverty even decades after their release. It's a vicious feedback loop that is affecting an ever-greater percentage of the adult population and shredding part of the fabric of 21<sup>st</sup>-century American society.

In 1980, one in 10 black high-school dropouts were incarcerated. By 2008, that number was 37 percent. Western and Pettit calculated that if current incarceration trends hold, fully 68 percent of African-American male high school dropouts

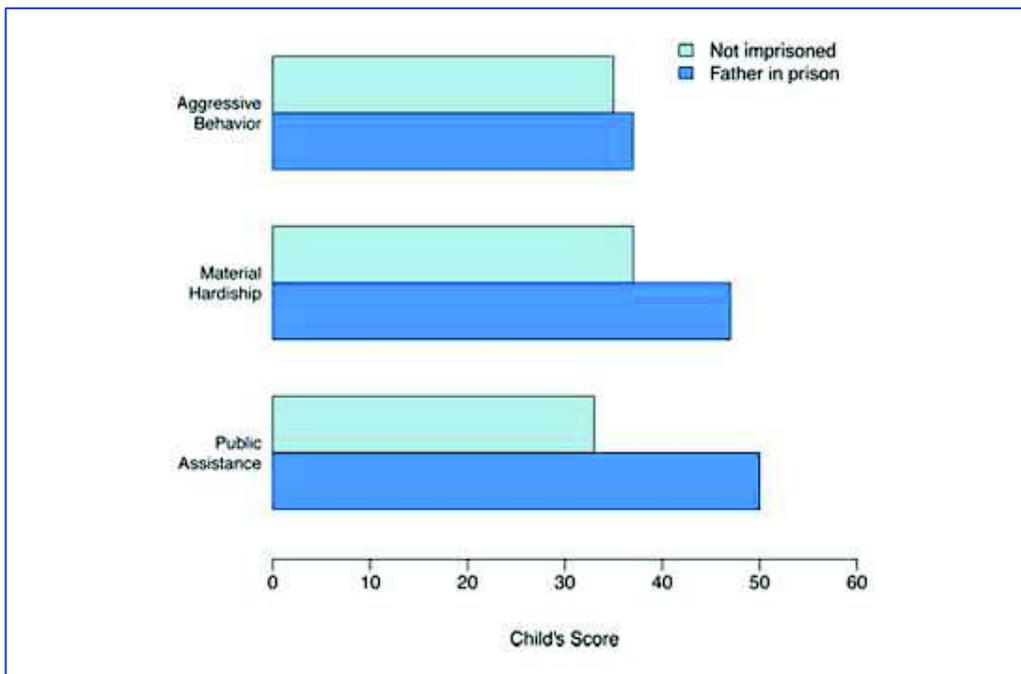


born from 1975 to 1979 (at the start of the upward trend in incarceration rates) will spend time living in prison at some point in their lives, as the chart below shows.

Then, given the staggering scale of black incarceration, the authors looked at the effect on employment data if prisoners were factored into the unemployment numbers generated by the government. Using that more realistic measure of unemployment, they found that fewer than 30 percent of black male high school dropouts are currently employed. Seventy percent are jobless. Those are the sorts of unemployment figures one associates with failed Third World states rather than the largest, wealthiest economy on earth. And they augur ill for long-term social stability.

It gets uglier. When high school dropouts buck the trend by coming out of prison and finding steady work, they overwhelmingly hit a dead end in terms of earnings. Western and Pettit found that after being out of prison for 20 years, less than one-quarter of ex-cons who haven't finished high school were able to rise above the bottom 20 percent of income earners, a far lower percentage than for high-school dropouts who don't go to prison. They conclude that the ex-cons end up passing on their economic handicap, and by extension the propensity of ending up behind bars, to their children and their children's children in turn. As evidence, they cite recent surveys indicating children of prisoners are more likely to live in poverty, to end up on welfare, and to suffer the sorts of serious emotional problems that tend to make holding down jobs more difficult.

University of California at Berkeley professor of law Jonathan Simon writes that these men and women in many ways become the human equivalent of underwater homes bought with subprime mortgages—they are "toxic persons" in the way those homes have been defined as "toxic assets," condemned to failure.



Last year, for the first time since 1972, the total number of people in prison in America declined. That's a good thing. It suggests that legislators, along with the broader voting public, are finally waking up to the huge, and unsustainable, financial costs that states are absorbing by keeping large numbers of low-end offenders locked up. But the reasons for scaling back the prison system ought

not to be framed solely as a cost-cutting measure that's necessary but nasty. As this new research so clearly shows, locking up poor people in historically unprecedented numbers has undermined one of America's most durable, and valuable, traits—social mobility

## VEIWER COMMENTS

**Docdare55-** I've been in Law Enforcement 34 years; there is inequity when convict tries to go straight something that should be addressed. The answer to the rest is stay in school, get an education, stay out of JAIL, and quit blaming the "SYSTEM" for your bad judgment. Today, 10:12:05

**Luke Langford**- Very interesting article. I wish it had more details though on why the US prison population is so much larger proportionally than other western nations. Hard to correct the problem if you don't understand that root cause...Today, 10:09:55

**Robert McLaughlin**- The first place to look for blame for this issue is that district attorney's are allowed to run for non-judicial public office. They offer more prisons and longer prison terms as a solution to societies' problems. The simple fact that we have more prisoners per capita than any dictatorship and that the vast majority of them are of one racial group is all the proof needed. Today, 03:25:18

**Don Brown** -Actually, the first place to look for blame is PEOPLE WHO COMMIT CRIMES. Here's a clue - if you don't commit crimes, your chances of going to prison decrease exponentially....Today, 09:24:07

**Kate McKelvey Lesny** -That is a very simplistic view of the judicial system. God help you if you are in the wrong place at the wrong time. Here's a clue-people go to jail all the time for crimes they didn't commit. I could cite many many examples of innocent people doing decades of prison time, because of the failures of our judicial system. Also, many of the people in prison are non-violent offenders...deadbeat dads, drug addicts, and the like. Most of these people need jobs or rehab programs, not jail. Today, 09:45:47

**Nicolas Robertson**-Thanks to Slate and the Author for stimulating a conversation on an issue that deserves more attention and more debate. The astounding rise in the rate of incarceration is the most profound change in the US in my 60 years, yet it is rarely the subject of discussion, much less political debate. The U.S. has spent enormous public resources on The War on Drugs, including the incarceration of citizens on a scale unmatched by any nominally democratic polity, yet drugs are abundant and cheap ( in the case of cocaine and its products, more abundant and cheaper than they were before War was declared). Isn't this a failed public policy?

Is there any chance that we could make common cause and develop a different response? This discussion thread is actually thoughtful, and relatively free of knee-jerk posturing and name-calling. Hmm, we might be able to use the internet for a thoughtful exchange of ideas. Yesterday, 22:01:13

**William Throop** -I am a Caucasian , and have been to college, graduated with a 3.5 GPA , and have a tough time getting a job even at a 7-11 store after being in prison. Take a look at job applications, all now ask your criminal background. They say on the application that it might not hinder you from getting a job, but when you live in a high unemployment state such as Michigan, the jobs go to those with a clean record, even if the ex-felon is more experienced and educated. Felons are stuck with either lying about their record, and hope they don't check, or tell the truth, and don't have a chance in hell to get the job. Yesterday, 17:57:10

**J. E. C.**- I don't hire felons. The reason being, felons have already demonstrated serious character flaws. Are they reformed? I dunno. Why take the risk? No one owes you a job. If you want one, though, you might not try retail- who will hire a felon to handle money and product? Today, 01:12:40

**Robert McLaughlin**- Go to Huffington Post and blog there. You're much more likely to connect with someone who will assist you. Today, 03:27:53

**GM** -If I were you I would leave the country. Looks like there is no future for you here. Just look at the responses you got. Today, 03:58:55

**Don Brown** -If you are a college graduate, why were you out committing crimes instead of working? While I do sympathize somewhat with your plight - I know from personal experience how much it sucks to be unemployed - the fact is you have no one but yourself to blame for your predicament. Slate, and its readers, blather on and on about social inequality and the so-called War on Drugs and fatherless children and everything under the sun as reasons why so many

people are in prison. Left unsaid is the simple fact that if you don't commit crimes, your chances of going to prison are almost zero.

Don't commit crimes and then whine about how hard you have it. When you choose to commit a crime, by implication you choose what comes with it; i.e., prison if you are caught. Today, 09:35:05

**Cmoulton-** "As this new research so clearly shows, locking up poor people in historically unprecedented numbers has undermined one of America's most durable, and valuable, traits—social mobility." Who says America values social mobility? The war on drugs which is the main force behind the increase in imprisonment is motivated by a need to prevent upward social mobility by poor people putting pressure on positional goods that belong to those who have already achieved a high socioeconomic position. Yesterday, 04:25:00

**Mark Ellison-**That line threw me as well. Today, 05:24:28

**Mike-** Three words: War On Drugs. During a successful school board campaign in the late 1980s, one of my opponents was the county's chief drug warrior. During one debate, as the anti-drug hysteria started fulminating ... when it was my turn, here's what I said (from memory) to this very middle-class suburb.

"Many claim that the war on drugs is a war in inner-city blacks. I don't know that for sure, but I do know there is open drug dealing, after school, in our high school and jr. high parking lots - and everyone seems to know it. Show of hands: who will help me take photos tomorrow for the police?" Not one hand came up! And I was elected (with a large margin). That told me the anti-drug zealots are a small minority, with way too much influence. Well, I already knew that, but then so did everyone else in town. That was over 20 years ago. Yesterday, 04:20:15

**Louis R. Woodhill-**No other nation has an underclass as large as ours (although Britain has been developing one). Incarcerating huge numbers of the underclass is just part of the cost of having a large underclass. The underclass is a product of liberal programs that make it possible for people to live, have kids, and retain custody of those kids without being functioning adults (the basic test of being an adult is that you can pay your own way in life). Children raised in welfare-supported "zero-parent families" become the next generation of criminals and unwed mothers.

To the liberals who consider inmates to be "political prisoners" and want them released, I say, "Sure--and we will send them all to your neighborhood." Face it, liberals. If you want the social worker, counselor, and bureaucrat jobs that the underclass generates (and you do), you have to accept that a high percentage of the underclass will have to be kept in prison to make life bearable for the taxpayers that are forced to pay for all of this. Yesterday, 01:16:57

**Andrew Power-** It doesn't have to be a zero-sum game. You're also arguing that the institutionalised racism of the W.O.D. is acceptable. I'm sure you don't mean either, given the chance to think on it. Yesterday, 06:22:59

**Blake-** Ridiculous and disgusting bit of pretzel logic. 'Trying to help the poor= making them into lazy good-for-nothings'. Gives the self-proud a reason to pat themselves on the back for being such productive citizens. Are you suggesting that the War on Drugs is a 'liberal' program? How do you explain the underclasses of the Third World, or pre-food stamps America? Some other liberal plot to get those fat social work jobs everyone wants so bad? Yesterday, 10:34:27

**Malibu Niki @Louis** - so, you believe that if we eliminate social welfare programs, all mothers and fathers will just magically become responsible parents? And you say we don't have enough people in prison - what do you think will happen to all of those additional people you'd like to incarcerate? Did you even read the article you are commenting on? Honestly, on what planet do you expect this to work on? Yesterday, 19:43:54

**Todd** -Actually, Louis, it's our present socialism-for-the-rich and capitalism-for-the-poor that's creating the underclass.

On everything from wage stagnation, to rising costs of education and health care, to the destruction of the nation's manufacturing base, to tax regulation, to the disastrous fad for deregulation, to anti-unionism, to name just a few obvious culprits, the super-rich and major corporations have had everything their way for the past 4 decades.

How many of the Wall Street criminals who pushed the global economy into a tailspin are being actively investigated or prosecuted? No, the same cadre of Wall Street powerbrokers are still in power, as is evidenced by the continued presence of Geithner, Bernanke, et al. in their positions. The idea of regulation or of government assistance to, say, poverty-stricken children or single-parent families, being the "root of all evil" is entirely risible. Your last paragraph is really the stuff of right-wing fantasy, far removed from any actual understanding of the perpetuation of poverty in America. Yesterday, 21:04:50

**Eric** - I would like to know the percentage of all groups of prisoners who are in prison for drug offenses. It is ridiculous that we have such harsh laws against something that is an addictive behavior rather than an offense involving specific victims. Like capital punishment, there is question as to the fairness about how drug laws are created and enforced concerning minority populations. For example, marijuana was initially prohibited in California and other areas as a means to harass Mexican immigrants who were believed to use it and to then send back to Mexico. Despite any evidence of any substantial harm, it was depicted in the media as a gateway drug and a drug that -along with its users- should not be allowed. Although drug treatment has low success rate, it would be a better alternative to prisons which are known to have inside drug markets run by prisoners and guards. Nothing changes for the convicted drug users and dealers under these conditions. Its a waste of time and its immoral but it provides those who don't understand addiction with a false sense that we have developed an effective approach for dealing with it. 2 days ago, 21:22:31 –

**x x** - I think folks are missing the point. The point of the article is not that people are going to prison for deservedly punishable acts or not. According to the article, we've been sending an ever-increasing number of people to prison and spending an ever-increasing amount of money. So, does prison rehabilitate the person, and transform them into a responsible, tax-paying, law-abiding citizen? Apparently not, since employers are evidently reluctant to bring them back into the ranks of the employed. Ok, then maybe the incarceration discourages others from anti-social behavior. Oh, wait. I guess not, since we keep imprisoning more and more. Maybe it's time we tried something else. 2 days ago, 21:03:17

**Mysterious Gryphon** -Again I ask: why SHOULDN'T one's bad decisions affect the way one is viewed by potential employers? Good ones certainly are a part of one's records, as are lots of other bad ones. Why not illegal acts and convictions?

If anything, this article is in support of prison work projects, where those in prison are required to WORK to earn their keep. A portion of their wages can be saved up to pay back their victims; the rest can be used to pay back the state for their room and board. And in the meantime, the prisoners are developing a track record of being a reliable employee, making business connections, and learning a skill that can translate back into civilian life. It's the perfect plan. 2 days ago, 22:42:08 –

**D C** -Your plan is flawed. Once they are released from prison, they will not find gainful employment, or if they do find employment, the wages will not be living wages. They and their families that depend on them will live in poverty. You make the incorrect assumption that an ex-con may return to the fold of society and have opportunities. This is not true. A prisoner's debt to society is never paid, never forgiven. All that matters is the label: convict. They may as well remain in prison for the rest of their lives.

Your perception is also flawed. Why should anyone not be held accountable for their mistakes, indefinitely? What sins have you committed that you weren't jailed for that you have not confessed to your employers? Your bad decisions should affect your employment prospects forever, as well. It's arrogant hypocrisy to assume that your sins are negligible and ex-cons are not because they have "victims." You don't? Have you paid penance to the people you've wronged? No.

Your assumption about the fairness of the system is wrong. Two men recently stole 10 million dollars from clients in a Wall Street scam. They pocketed the money and used it for themselves. The word applied to them wasn't "theft" but "fraud." The main culprit received 5 years in a minimum security "country club" prison and his accessory received 3 years. Another person, in my locality, stole 5,000 dollars from his employer after getting access to his employer's checkbook. He received a 10 year sentence in a high security prison. The system is corrupt by assumptions it makes about rich people and poor people and their threat level to society. Even now, you think a stockbroker is less able to harm society than the average street corner drug dealer, but this isn't true. Stockbrokers and their ilk are responsible for our current recession, something no drug dealer has the power to do. The system is corrupt because it's rapidly privatizing. It's in someone's best interests to maintain a high prison population, and that someone is not the public. Private individuals make profit off of incarceration. 95% of our prisons are populated by drug or drug related crimes. The answer is a simple one: legalize drugs. We have legal alcohol and the apocalypse hasn't happened yet. Put capitalism to work for us in this instance.  
Yesterday, 00:35:53 –

**Andrew Power** -It's the old 'punishment' over 'rehabilitation' dead end. There's other systems worldwide that have better results. However, Americans are too proud to 'go European', and there's too much money and political kickbacks invested in maintaining the current mess. Yesterday, 06:25:52 –

**KM** -Why does it have to be punishment vs. rehabilitation? How about getting criminals off the streets? That's a good reason in and of itself. You can count me among the people who think the War on Drugs is worse than a waste of time, but I have no sympathy for violent offenders. I don't care if they were born in Boise, Bogota or Brooklyn, they belong behind bars. The longer the better.

Yesterday, 17:19:05 –