

THE INTENDED AND UNINTENDED CONSEQUENCES OF THE CRIMINAL JUSTICE SYSTEM

When prisoners are released, they are expected to rejoin society. However, prisoners and their families face endless obstacles after leaving prison. These barriers, many of them intentional, punish prisoners by limiting or denying them access to social services and by making their transition back to life on the outside far from easy. Legislative action in the areas of Welfare Reform and the War on Drugs has been especially harmful to people who are convicted of drug felonies or who have histories of drug use. Not surprisingly, these policies disproportionately affect poor people of color, with the burden most harshly falling on women of color. Not only do these collateral consequences occur after a person has been released from prison; they impact people's lives during their imprisonment as well. For example, someone who does not receive a death sentence in court may receive one in jail through contracting a disease or not receiving adequate medical care.

LACK OF EMPLOYMENT AND THE DENIAL OF WORK

- ***Because of the negative stigma associated with criminal convictions, a “criminal record” often makes it impossible for ex-prisoners to obtain jobs.*** Since criminal records are easily available to potential employers, landlords, and other community members, former prisoners are frequently discriminated against and denied access to work.¹
- ***Federal and state statutes prohibit employment in certain fields as related to specific convictions.*** A number of laws prohibit ex-prisoners from obtaining licenses for several occupations. In some states, for example, former prisoners are barred from the auto body repair, nursing, and real estate fields even though blocking access to these occupations is unrelated to the nature or severity of the prior conviction.²

LACK OF HOUSING

- ***Upon release, it is difficult for most prisoners to secure housing,*** which is often necessary for reentry into society. Tenants who are convicted of a felony drug charge or who are in a drug treatment program and are currently known to be using illegal drugs can be denied public housing admission.³
- ***The federal “One-Strike” eviction policy can evict entire families if one person engages in illegal conduct.*** “One-Strike” allows public housing agencies or Section 8 landlords to evict a tenant, any guest or “other person under the tenant’s control” who is involved in “drug-related criminal activity” on or off public housing premises.⁴ This basically puts families living in public housing in the position of having to choose between being homeless or barring family members from their homes.⁵

THE CRIMINAL JUSTICE, WELFARE AND CHILD PROTECTION SYSTEMS CONTRIBUTE TO SPLITTING FAMILIES UP INSTEAD OF KEEPING THEM TOGETHER.

- ***In some states, a criminal record is used to deny parental rights.*** Prior convictions may also be used to deny former prisoners from becoming foster or adoptive parents, regardless of whether or not the crime is relevant to parenting abilities.⁶
- ***The Adoption and Safe Families Act of 1997 accelerates the termination of parental rights for parents facing sentences over 1 year.*** If an incarcerated woman’s child has been in foster care for 15 out of the previous 22

months, this act makes it easier to terminate the woman's parental rights. Because the average sentence is 80 months for state and 103 months for federal prisons, the vast majority of women will thus lose their children if incarcerated for long periods of time when the mother is unable to provide a suitable relative to care for the child.⁷

- **Former prisoners trying to reunify their families may face conflicting state-imposed obligations.** For example, the welfare system's work requirements for benefits programs may conflict with child welfare system and parole mandates.⁸ Finding and keeping a job and juggling adequate child care are difficult tasks for any family, but parole requirements make this harder.
- **Long distances between prisons and the communities from which prisoners come cause people to lose touch with their friends and families.** About 51% of state prisoners and 84% of federal prisoners are incarcerated 100-500 miles from their last place of residence.⁹ Women especially,¹⁰ are often incarcerated far from the urban centers in which many of them and their friends and families live,¹¹ partly due to the lower number of women's facilities. Additionally, women targeted by the War on Drugs are often convicted of federal crimes and are sent to prisons out of state. As a result, these women must cope with the social stigma of being in prison, with problems being accepted back into their communities,¹² and with the difficulty of losing touch with family members.

DENIAL OF HIGHER EDUCATION

- **In 1998, the Higher Education Act was amended to deny anyone with a drug conviction from receiving federal financial aid for post-secondary education.** Under this law, any student convicted of an offense under any federal or state law relating to the possession or sale of a controlled substance is not eligible to receive any grant, loan or work assistance.¹³ Those with non-drug offenses are eligible. During the 2001-2002 school year, more than 48,000 students were formally denied aid for some or all of their school year.¹⁴
- **The dismantling of in-prison college education puts former prisoners at a disadvantage in the workplace.** In the 1994 Crime Bill, President Clinton signed into a law a provision that denied prisoners access to federal Pell grants, one of the main vehicles of support for in-prison vocational and higher education training. Such denial of aid results in an already stigmatized population barred from developing relevant skills and training.¹⁵

DENIAL OF PUBLIC BENEFITS AND FOOD STAMPS

- **Former prisoners may be ineligible for Temporary Aid for Needy Families, Social Security, Food Stamps, and other Welfare benefits that may be necessary while they are trying to reestablish themselves in society.** Section 115 of the Welfare Reform Act permanently bans any individual with a felony drug conviction (using or selling drugs) from receiving cash benefits or food stamps. No other offense results in a permanent loss of these benefits.¹⁶ Each state can "opt out" of enforcing this ban or modify its enforcement.
- As of October 2002, 19 states still have the full ban in place, denying people with felony drug convictions benefits for life.¹⁷
- Ten states and the District of Columbia have completely opted out of the ban, and 21 other states¹⁸ have modified the ban either by allowing benefits dependent upon drug treatment, denying people benefits only for sales convictions, or by placing a time limit on the ban.¹⁹

FELON VOTING DISENFRANCHISEMENT

- **Most states in the United States have laws that prohibit felons and ex-felons from voting.**
 - 48 states and the District of Columbia prohibit inmates from voting while incarcerated for a felony offense.²⁰ Only Maine and Vermont allow inmates to vote.²¹

- 35 states prohibit felons from voting while they are on parole and 31 of these states disenfranchise felony probationers as well.²²
- 7 states disenfranchise all ex-offenders who have completed their sentences (Alabama, Florida, Kentucky, Mississippi, Nebraska and Virginia). 7 others deny the right to vote to certain categories of ex-offenders and/or permit application for restoration of rights for specified offenses only after a waiting period (e.g., 5 years in Delaware and Wyoming, and 3 years in Maryland).²³
- ***Because the process of restoring voting rights is so cumbersome and only a few former prisoners are able to do so, the political voice of incarcerated communities is significantly affected.*** Each state may have its own process of restoring voting rights to ex-offenders, but most of these processes are so unmanageable that few are able to benefit from them.²⁴ For example, some former prisoners in Alabama are required to provide a DNA sample to regain their right to vote.²⁵ As a national result of felony disenfranchisement, about 1.4 million African-American men (13% of the African-American adult male population), more than 2 million White Americans (Hispanic and non-Hispanic), and more than half a million women have lost their right to vote. The state of Florida had an estimated 600,000 ex-felons who were unable to vote in the 2000 presidential election.²⁶

IMMIGRATION

- ***Immigrants can be deported for being convicted of basically any crime.*** In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) which expanded the grounds of deportation. More than 50 classes of crime were included in an expanded definition of “aggravated felon,” some of which are neither “aggravated,” nor a “felony” by criminal law standards U.S. citizens, (e.g. shoplifting) but are considered to be so only for immigrants.²⁷ A person is also deportable or inadmissible if he or she is convicted of an offense “relating to a controlled substance.”²⁸
- ***Immigrants with past convictions face double punishment: prison time and deportation.*** If a former prisoner legally leaves the United States and then tries to reenter the country, a prior conviction (for which time has already been served) can trigger deportation proceedings. Deportation becomes a point of no-return, and immigrants can suffer retroactive penalties that did not exist at the time of their offense.²⁹

BECAUSE OF MASS INCARCERATION AND POOR PREVENTIVE MEASURES, PUBLIC HEALTH PROBLEMS ARE EXACERBATED IN THE PRISON SYSTEM.

- ***The health problems that impact prisoners impact everyone.*** Links between corrections and the community are numerous and include prison staff living in the community, family and friends who visit inmates, and prisoners themselves who move back and forth between the community and corrections.³⁰
- ***Each year, 25% of people living with HIV pass through correctional facilities in the United States³¹.*** This high proportion may result from racial discrimination that blocks access to public health care (both outside and inside prisons), especially for young Latino and Black American men.³² The confirmed AIDS case rate among prison inmates is about 0.52%, which is 4 times higher than the rate within the general population (0.13%).³³ Despite this high rate and the many risk factors for contracting HIV present in the prison system, few prisons have implemented comprehensive prevention programs like condom distribution.³⁴
- ***Inmates comprise 0.7% of the United States population, and assume a disproportionately greater load of infectious diseases.³⁵*** In 1997, 0.5% and 1.3% of the general population had Hepatitis B and C respectively. Among prison inmates, 2% carried Hepatitis B and 15% Hepatitis C.³⁶ Additionally, in 1996, 46,000-76,000 inmates had Syphilis, 43,000 had Chlamydia and 18,000 had Gonorrhea.³⁷
- ***Women’s health issues are marginalized.*** Since many prison facilities use the same process of screening for men and women, information about women’s risk profiles or health status (such as previous physical or sexual abuse, mental health issues and HIV infection rates), are not gathered, and appropriate interventions cannot be made. This gap is commonly found among states or facilities with small numbers of female prisoners. Few state and

local jurisdictions provide sufficient substance abuse treatment tailored to women's higher rates of victimization and mental illness.³⁸

STATE-BY-STATE RESOURCES

The Legal Action Center has published a comprehensive state-by-state interactive guide that documents the specific legal barriers each state imposes in the areas of employment, housing, benefits, voting, access to criminal records, parenting, driving, and federal limitations on student loans. See <http://www.lac.org/lac/index.php>.

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- 1 National Legal Aid and Defender Association. No date. "Civil Reentry Barriers." See <<http://www.nlada.org/DMS/Documents/1030397966.97/CIVIL%20REENTRY%20BARRIERS.doc>> (July 23, 2003).
 - 2 Thompson, Anthony. November 14, 2002. "Address to the National Legal Aid and Defender Association Annual Conference."
 - 3 Drug Policy Alliance. 2003. "Barriers to Reentry: Post-Incarceration Consequences of a Felony Drug Conviction." Received at the Critical Resistance Conference, April 6, New Orleans, LA..
 - 4 Ibid.
 - 5 Thompson, Anthony op. cit.,
 - 6 National Legal Aid and Defender Association, op. cit.
 - 7 Taifa, Nkechi. 2002. "Roadblocked Re-Entry: The Prison After Imprisonment" See <<http://www.opensocietypolicycenter.org>> (May 19, 2003).
 - 8 National Legal Aid and Defender Association, op. cit.
 - 9 Wagner, Peter. 2003. *The Prison Index: Taking the Pulse on the Criminal Justice System*. The Prison Policy Initiative. Portland, Oregon: Bridgetown Printing, p. 31.
 - 10 Thompson, Anthony, op. cit.
 - 11 Kurshan, Nancy. No Date. "Women and Imprisonment in the U.S." See <<http://prisonactivist.org/women/women-and-imprisonment.html>> (June 21, 2004).
 - 12 Thompson, Anthony, op. cit.
 - 13 Drug Policy Alliance, op. cit.
 - 14 Ibid.
 - 15 Fine, Michelle, et al. September 2001. "Changing Minds: The Impact of College in Maximum Security Prison." Collaborative Research by the Graduate Center of the City University of New York and Women in Prison at the Bedford Hills Correctional Facility. See <http://www.changingminds.ws/main/_home.html> (July 23, 2003).
 - 16 Allard, Patricia. February 2002. The Sentencing Project. "Life Sentences: Denying Welfare Benefits To Women Convicted Of Drug Offenses."
 - 17 Update of state modifications in October 2002 in Allard, Patricia, "Life Sentences," op. cit.
 - 18 Ibid.
 - 19 Drug Policy Alliance, op. cit.
 - 20 The Sentencing Project. May 2004. "Felony Disenfranchisement Laws in the United States." See <<http://www.sentencingproject.org/pdfs/1046.pdf>> (June 21, 2004).
 - 21 Ibid.

22 Ibid.

23 Ibid.

24 Ibid.

25 Demos: A Network for Ideas and Action. April 2003. "Democracy Denied: The Racial Impact and History of Disenfranchisement Laws in the United States." See <http://www.demos-usa.org/pubs/FD_-_Brief.pdf> (June 21, 2004).

26 The Sentencing Project, May 2004, op. cit.

27 Families for Freedom. 2004. "Immigrant Apartheid? Modern Growth or Deportation." Received at the Fight Against U.S. Apartheid Continues: Immigration Enforcement Legislation Training for Activists and Organizers, March 27, 2004.

28 Drug Policy Alliance, op. cit.

29 Families for Freedom, op. cit.

30 Center for Disease Control and Prevention. August, 2001. "Drug Use, HIV, and the Criminal Justice System." See <http://www.thebody.com/cdc/drug_use.html> (June 21, 2004).

31 Cited in Arriola, Kimberly, MD and Ronald Braithwaite, MD. May 2003. "Male Prisoners and HIV Prevention: A Call for Action Ignored." *American Journal of Public Health* 93(5):759-763.

32 Ibid.

33 Ibid.

34 Hammett, Theodore, PH.D, Patricia Harmon and Laura Marushak. U.S. Department of Justice, Office of Justice Programs, National Institute of Justice. July 1999. "1996-1997 Update: HIV/AIDS, STDs, and TB in Correctional Facilities." See <<http://www.ncjrs.org/pdffiles1/176344.pdf>> (June 21, 2004).

35 Cited in Weinbaum, Cindy et al. Centers for Disease Control and Prevention. Morbidity and Mortality Weekly Report. January 24, 2003. "Prevention and control of infections with hepatitis viruses in correctional settings." See <<http://www.cdc.gov/mmwr/PDF/rr/rr5201.pdf>> (June 21, 2004).

36 Ibid.

37 Centers for Disease Control and Prevention, August, 2001, op cit.

38 Centers for Disease Control and Prevention. August 2001a. "Women, Injection Drug Use, and the Criminal Justice System." See <<http://www.cdc.gov/idu/facts/cj-women.htm>> (June 21, 2004).