



PERPETUAL PUNISHMENT:

The Consequences of Adult Convictions for Youth

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INTRODUCTION

Nearly seven million people are currently under the supervision of the criminal justice system through incarceration, parole, or probation; this includes roughly 97,000 youth who are held in juvenile facilities¹ and 7,000 persons younger than 18 held as inmates in adult jails.² In 2005, prisons and jails added more than 1,000 inmates each week, putting behind bars almost 2.2 million people, or one in every 136 U.S. residents. Alarming, the number of youth incarcerated within the adult population of 2.2 million is increasing. A recent brief authored by the National Council on Crime and Delinquency (NCCD) showed a significant increase over the past decade of youth entering the adult criminal justice system, specifically adult jails. Today, one in 10 youth incarcerated in the U.S. are admitted to an adult prison or jail.

The substantial number of men, women, and youth behind bars and under community supervision has been driven in large part by the increasing use of incarceration as the solution to deter drug-related behavior and crime, both those crimes directly involving the sale or distribution of drugs and those that are a direct or indirect result of alcohol and drug use and addiction. Consider the following statistics: 84% of state prison inmates were involved with alcohol or illicit drugs at the time of their offense, 45% reported that they were under the influence when they committed their crime, and 21% indicated that they committed their offense for money to buy drugs.³

Similar to the adult criminal justice system, the number of juveniles with substance abuse problems involved in the criminal and juvenile justice systems has increased dramatically in recent years. According to the National Institute on Drug Abuse, from 1986 to 1996, drug-related juvenile incarcerations increased nearly threefold. In 2002, about 60% of detained boys and nearly half of the girls tested positive for drug use. The number of juvenile court cases involving drug offenses more than doubled between 1993 and 1998, and 116,781 adolescents under the age of 18 were arrested for drug violations in 2002. One study found that about one-half of both male and female juvenile detainees met criteria for a substance use disorder.⁴

To underscore the substantial reach of this nation's current criminal justice policies, consider the following: it is estimated that more than 65 million people have a criminal history on file with state government, which means that about 30% of the nation's adult population lives a substantial portion of their life with a criminal record. Due to the sheer number of individuals with drug-related convictions, and the fact that such convictions often carry a unique brand of punishment that is not attributed to any other category of crime, including the loss of employment opportunities, a driver's license, and access to public benefits and education, there are millions of people across the country who will never be free of their conviction history and therefore will have an extremely difficult time living life in the community, branded permanently as drug felons.

Given the laws and policies that create these barriers, and the willingness of federal, state, and local lawmakers to

implement and expand upon them, it is surprising that public opinion polling diverges so greatly from such an unforgiving approach to criminal justice policy. According to a recent poll conducted by Zogby International, by almost eight to one, the U.S. voting public is in favor of rehabilitative services for prisoners (87%) versus a punishment-only system (11%). Of those polled, 70% favored services both during incarceration and after release from prison.⁵ Additionally, an overwhelming majority (82%) of likely voters felt that a lack of job training was a very significant barrier to released prisoners avoiding subsequent crime. They also thought that medical care (86%), the availability of public housing (84%), and student loans (83%) were important. By huge margins, those polled felt that job training, drug treatment, mental health services, family support, mentoring, and housing were all very important services that should be offered to prisoners. According to the same Zogby poll fewer than 10% of those polled (only 2% in the case of job training) thought that these services were unimportant.⁶

A report released by the Legal Action Center in 2004 entitled, *After Prison: Roadblocks to Reentry, A Report on State Legal Barriers Facing People with Criminal Records*, revealed several startling facts about existing legal barriers for people with criminal records:

1. All but two states restrict the right to vote in some way for people with criminal convictions.
2. Most states allow employers to deny jobs to people who may have been arrested *but never convicted of a crime*.

3. Most states allow employers to deny jobs to anyone with a criminal record, *regardless of how old or minor the record or the individual's work history and personal circumstances.*
4. Most states ban some or all people with drug felony convictions from being eligible for federally funded public assistance and food stamps.
5. Most states make criminal history information accessible to the general public through the Internet, making it extremely easy for employers and others to discriminate against people on the basis of old or minor convictions, for example to deny employment or housing.
6. Many public housing authorities *deny eligibility* for federally assisted housing *based on an arrest* that never led to a conviction.

IMPACT OF WAR ON DRUGS ON YOUTH

Unfortunately, one of the negative consequences of the war on drugs has been the abandonment of millions of children due to the increasing numbers of parents, in particular mothers of dependent children, being incarcerated; without intervention and treatment these children are six times more likely to be incarcerated⁷ and to carry on the familial cycle of drug use, addiction, and incarceration.

And similar to the policy for adults, the drug policy governing youthful offenders has resulted in consequences that are more severe when there is a drug-related crime, including transfer to adult court and the adult implications of having an arrest and/or conviction record. As a result, in some states youth age 13 and 14 are being convicted as adults and are permanently being branded as felons, which means that job opportunities, housing, and other essential services are limited or denied to them altogether for the remainder of their lives.

MISGUIDED ADDICTION POLICIES HAVE FUELED INCARCERATION

It has been 50 years since the American Medical Association declared that alcoholism was a disease, and since then scientific research has made astounding breakthroughs in understanding the nature and impact of addiction. More documentation than ever before exists about the benefits of quality addiction treatment and prevention services. Efforts to fight drug use and addiction over the last 20 years have largely failed to incorporate these findings into policy and practice and, as a result, jails and prisons have too often become the de facto treatment system for addiction in this country, which means that in many places it is almost impossible to access addiction treatment without getting arrested first.

The lack of addiction and mental health care in the community, and for youth in particular, continues to result in significant numbers of youth with untreated addiction and mental health conditions ending up in the juvenile

justice system and/or being charged and convicted as adults. Data from the Substance Abuse and Mental Health Services Administration (SAMHSA) found that in 2002, almost 1.5 million youth aged 12 to 17 had been in a jail or a detention center at least once in their lifetime. Past year substance abuse or dependence was almost three times higher among youth who had been in a jail or a detention center at least once in their lifetime than among youth who had never been in a jail or a detention center.⁸ And, according to 2004 data, the criminal justice system was the principal source of referral to treatment for 52% of youth admissions to substance abuse treatment.⁹

The evidence that addiction treatment is effective, prevents crime, reduces recidivism, and saves money is well established. While this idea has been embraced by some, it has not yet permeated the justice system as a whole. When considering the impact of the following research-based information, it is impossible to imagine that a shift in policy and approach to maintaining public safety can be postponed indefinitely:

- Addictions treatment has been shown to cut drug use in half, reduce crime by 80% and reduce arrests up to 64%;
- For every additional dollar invested in addictions treatment, the taxpayer saves at least \$7.46 in costs to society (including the cost of incarceration); when adding the savings to healthcare, for every \$1 spent in addictions treatment, society benefits by greater than \$12 per tax payer.

- The cost of addictions treatment is 15 times less than the cost of incarcerating a person for a drug-related crime.
- Addiction treatment can improve prospects for employment by up to 40% after treatment.

PERPETUAL PUNISHMENT: THE LASTING EFFECTS OF A CRIMINAL HISTORY

Although contrary to the purpose of the creation of two separate justice systems for youth and adults, the irreversible mark of a criminal record is no longer reserved for youth charged as adults. In many instances, youthful adjudications or convictions also are coming back to haunt adults years later because of a lack of information about the process for sealing and expunging criminal records, as well as confusion about what criminal history information can and should be shared. Steps must be taken to ensure that communities consider the amount and type of information that is made available for non-criminal justice purposes in order to avoid unnecessarily limiting the ability of individuals to make their criminal history a history and not a life sentence.

ACCESS TO AND USE OF CRIMINAL INFORMATION IS EXPANDING AT EXPONENTIAL RATES

Virtually anyone with an Internet connection can find information about someone's conviction history online without any guidance or consent from the subject. Criminal record information is increasingly easy to access

on the Internet for free on some states' official websites or for a fee through private companies. So anyone – from an employer with a legitimate interest in evaluating an applicant to an angry co-worker or curious neighbor – can access criminal histories online. Not only is access unrestricted, but the information often can be incomplete, erroneous, or misleading, as well as include arrests that did not lead to conviction.¹⁰

Consider the following:

- 28 states allow Internet access to criminal records or post records on the Internet.
- 14 of these states make all conviction records available on the Internet.
- 6 make available on the Internet records of people who are incarcerated and those on probation or parole.
- 8 post on the Internet only records of people currently incarcerated.

Both the incredible access to criminal records that now exists online and the use by many states of criminal record sharing as a revenue-generating mechanism are having a significant impact on the ability of an individual who has served his or her time and paid their debt to society to put the past behind them, and do what society expects of them, which is to become law-abiding, tax-paying citizens.

In addition to expanding access to conviction records via the Internet and other mechanisms, access to, and use of,

arrest records in considering an individual's suitability for housing and employment is also a widespread practice. In most states, employers can deny jobs to people who were arrested but never convicted of any crime; millions of Americans are arrested but not convicted every year. Most people assume that if criminal charges are dropped or if they are found not guilty, records of those arrests will disappear or, at the very least, cannot be used against them when they apply for a job or housing. The facts suggest otherwise:

- 37 states have laws permitting all employers and occupational licensing agencies to ask about and consider arrests that never lead to a conviction in making employment decisions.
- Only 10 states prohibit all employers and occupational licensing agencies from considering arrests if they did not lead to a conviction and 3 states prohibit some employers and occupational licensing agencies from doing so.

LOSS OF ECONOMIC OPPORTUNITIES: EMPLOYMENT AND EDUCATION BARRIERS

Employment

A host of licensing restrictions and occupational bans exist at the federal, state, and local level to limit the employment prospects for people with criminal histories. Most often these are blanket restrictions that are based on a felony and sometimes misdemeanor conviction without consideration of whether the conviction is related to the job, the length of time that has elapsed since the

conviction, and what efforts an individual may have undertaken since the conviction to rehabilitate him- or herself in the eyes of society. These restrictions lead to fewer employment opportunities and a significant loss of earnings. One recent study indicated that having a criminal record led to a 50% reduction in employment opportunities for white applicants, and a 64% reduction for African-American applicants.¹¹ Another study of employers found that more than 60% probably would not hire an applicant with a criminal record; employers are more willing to hire members of nearly any other stigmatized group.¹²

While most policies and legal standards that govern the employment of people with criminal records are created mainly by state laws, there has been some attempt at the federal level by the Equal Employment Opportunity Commission (EEOC) to establish employment standards that would comply with Title VII of the Civil Rights Act. Although such policy guidance is hard to enforce, it has served to set a sensible standard. The EEOC has ruled that employers governed by Title VII of the Civil Rights Act cannot deny people employment based on arrests that did not lead to conviction unless there is a “business justification”; nor can they deny people employment because of a criminal conviction unless there is a “business necessity.”¹³ To establish business necessity, the employer must consider: the nature and gravity of the offense(s); the time that has elapsed since the conviction and/or completion of the sentence; and the nature of the job held or sought. An example of legitimate business necessity might be denying an applicant employment as a bus driver if he or she has a

recent conviction for a driving-related offense. But an old drug conviction might not justify denial of employment for a food services job on grounds of “business necessity.” Minorities with arrest and conviction records whose civil rights are violated can sue under Title VII.

Most states permit employers to deny jobs across-the-board or fire anyone who has been convicted of a crime or a certain category of crime, without considering the circumstances of the offense, its relevance to the job, the amount of time that has elapsed, the job being sought, evidence of rehabilitation, or the “business necessity” for barring the applicant.¹⁴

- 29 states have no standards governing the relevance of conviction records of applicants for occupational licenses. That means they can deny licenses based on any criminal conviction, regardless of history, circumstance or business necessity;
- 21 states do 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.
- 36 states have no standards governing public employers’ consideration of applicants’ criminal records; 14 do have such standards.
- 45 states have no standards governing private employers; 5 do have such standards.

Education

For court-involved youth, simply gaining access to admission into high school can be difficult, and in some instances the judicial process itself prevents them from going to school altogether. There is ample evidence that education is critical in helping youth avoid crime and access economic opportunities, and it should be made available. Access to post-secondary education for people with criminal histories also has been affected negatively by the pervasive attitude of past policymakers that people with criminal histories are less deserving of opportunities that prevent crime in the first place. Since the elimination of Pell Grant eligibility for incarcerated people in 1994, prison-based education programs have been drastically reduced, despite the evidence of the role of education in reducing recidivism. According to the *Journal of Correctional Education* and the National Institute of Justice's Report to the U.S. Congress, people who attend education programs while incarcerated are less likely to return to prison following their release.

Although there has been some movement on Capitol Hill in recent years to reinstate eligibility, many lawmakers remain strongly opposed to people convicted of offenses receiving assistance from the federal government for post-secondary education. The rise in tuition costs; shortage of financial aid, including until recently a ban on individuals with past drug convictions accessing federal financial aid¹⁵; and limited job training programs in the community that deal specifically with the needs of people with criminal records mean that most are unequipped with the skills necessary to secure gainful employment.

Military Service

While it is the policy of the Department of Defense to require Military Services to review the background of applicants for enlistment and to identify individuals whose background indicates that they may pose a threat to national security or have links to terrorist or criminal organizations¹⁶, a criminal record does not necessarily disqualify a potential recruit from military service. Each branch of the service takes a different approach to evaluating the severity and number of offenses on a candidate's record, the results of which may – or may not – disqualify that person.¹⁷ A process exists for obtaining a waiver that allows recruiters to sign up men and women who otherwise would be ineligible for service because of legal convictions, medical problems, or other reasons preventing them from meeting minimum standards.¹⁸ The waiver process seems to support individualized considerations in the decision-making process and to encourage a review policy that looks at the "whole person " and not just past incidents.¹⁹

FEDERAL BARRIERS CREATED BY CONGRESS AS PART OF WAR ON DRUGS

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, and, in some cases, even applied them to people never convicted of a crime. In the 1990's Congress and state legislatures created new restrictions on eligibility for food stamps, public assistance, public housing, student loans, and driver's licenses, while further expanding bars

to employment, parenting, and voting.²⁰ However, there have been recent efforts to address some of the consequences the nation has suffered as a result of these excessive policies.

PUBLIC ASSISTANCE AND FOOD STAMPS

The 1996 federal welfare law²¹ prohibits anyone convicted of a drug-related felony from receiving federally funded food stamps and cash assistance (also known as TANF, Temporary Assistance for Needy Families). This is a lifetime ban, even if someone has completed his or her sentence, overcome an addiction, been employed but laid off, or earned a certificate of rehabilitation. States can maintain the federal lifetime ban on cash assistance and food stamps, but they also have the option of passing legislation to limit the ban or eliminate it altogether.²²

Most states restrict at least some people with drug felony convictions from being eligible for federally funded public assistance and food stamps.

- 16 states have adopted the federal drug felon ban without modification. They permanently deny benefits, even if a crime occurred years before or the person has been treated and rehabilitated.
- 21 states have limited the ban in some way to enable those with drug felony convictions to get public assistance if they meet certain conditions, such as participating in alcohol or drug treatment, meeting the waiting period, having a “possession only” conviction, or satisfying other conditions.²³

- Only 16 states have eliminated the ban entirely.

Drivers’ Licenses

In 1992, Congress passed a law that withholds 10% of certain federal highway funds unless a state enacts and enforces a law revoking or suspending, for at least six months after the time of conviction, the driver’s license of an individual who is convicted of any drug offense²⁴; however, the Governor can submit written certification to the secretary of the Department of Transportation opposing the revocation/ suspension and stating that the state legislature has adopted a resolution expressing opposition to this law.²⁵ States can satisfy the law by limiting the revocation or suspension to those whose drug convictions were related to driving, such as driving under the influence of a controlled substance, or to other more limited categories of offenses. For example, in 2006, New Jersey enacted a new law giving judges discretion on suspending or revoking someone’s license.²⁶ States also can impose a longer period than the federal law’s minimum six-month policy. Twenty-seven states automatically suspend or revoke licenses for some or all drug offenses; the other half of the states either suspend or revoke licenses only for driving-related offenses or have opted out of the federal law.

- Of the 27 states that automatically suspend or revoke licenses for some or all drug convictions, 21 limit the revocation or suspension of licenses to six months for a first offense.

- Four states – Colorado, Delaware, Massachusetts, and South Carolina – revoke or suspend drivers’ licenses for longer than six months for drug convictions unrelated to driving.

Many states make restrictive licenses available so individuals whose licenses otherwise would be suspended can go to work, attend drug treatment, or obtain an education.

- 32 states offer restrictive licenses; 18 do not.

Public Housing

Federal laws²⁷ give local housing agencies leeway in most situations to decide whether to bar individuals with criminal records from public housing premises and whether to consider the individual circumstances and history of applicants or arrests that never led to conviction. The primary exceptions are for people convicted of the production of methamphetamine on public housing premises and people who are required to be registered under a state’s lifetime sex offender registry program; public housing agencies must deny admission to housing to households with family members with these types of convictions.

According to a survey of the public housing authorities in the largest city in each state, a majority of public housing authorities reported that they make individualized determinations about an applicant’s eligibility that include considering the person’s criminal record, as well as evidence of rehabilitation.²⁸

- In 47 states, public housing policies provide for individualized determinations.
- In three states, housing authorities do not make individualized determinations but instead flatly ban applicants with a wide range of criminal records.

Many public housing authorities consider arrest records that did not lead to conviction in determining eligibility for public housing.

- 27 housing authorities surveyed make decisions about eligibility for public housing based on arrests that never led to a conviction; 23 do not.

Voting

States have absolute power to decide whether someone with a criminal record can vote. All but two states place some restrictions on the right to vote for people with felony convictions. According to the Sentencing Project²⁹:

- 48 states and the District of Columbia prohibit individuals from voting while incarcerated for a felony offense.
- Only two states - Maine and Vermont - permit incarcerated individuals to vote.
- 35 states prohibit individuals with felony convictions from voting while they are on parole and 30 of these states exclude individuals on probation for a felony as well.

- Two states deny the right to vote to all individuals who have completed their sentences. Nine others disenfranchise individuals with certain conviction histories and/or permit application for restoration of rights for specified offenses after a waiting period (e.g., five years in Delaware and Wyoming, and two years in Nebraska). In April, 2007 Maryland Governor Martin O'Malley signed legislation re-enfranchising more than 50,000 Maryland residents who have completed their felony sentences of prison, parole, and probation. The "Voting Registration Protection Act" ends Maryland's lifetime voting ban and eliminates the three-year waiting period for certain people with past felony convictions.
- Each state has developed its own process of restoring voting rights to individuals with criminal histories but most of these restoration processes are so cumbersome that few individuals are able to take advantage of them.

Recommendations and Support for Change

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 reintegrate into the community successfully. The best way to achieve this goal is to adhere to the following four principles³⁰:

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 decisionmakers 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.

In addition, when specifically addressing the issue of court-involved youth the following recommendations are particularly critical:

5. In increasing numbers, youthful convictions are being revealed to employers courtesy of the Federal Credit Reporting Act (FCRA). There is no language contained in FCRA precluding youthful convictions from being revealed to potential employers because the information reported can include “any adverse action” with no further explanation. Further, restrictions that were once in place to limit the criminal history information that could be reported to the past seven years have been eliminated in recent years by Congress so that under the FCRA standards there is literally no end to how long convictions can be used against someone under the FCRA standards in their search for employment and housing.³¹ Congress should provide further guidance on FCRA to prevent information on youthful convictions from being included and should reinstate the seven-year limit on reporting criminal history information. States should adopt legislation that restricts the dissemination and use of old or minor conviction records beyond the federal FCRA law.

6. States should raise the age that youth can be tried as adults and seal low level convictions within a reasonable amount of time.

PROMISING PRACTICES TO LIMIT CONSEQUENCES OF CRIMINAL CONVICTIONS

Adoption of Hiring Policies to Limit Discrimination

Several major cities across the United States (including Boston, Chicago, San Francisco, St. Paul (MN), and the County of Alameda) have adopted significant new policies to limit discrimination in city jobs against people with criminal records. As Mayor Richard Daley explained when he announced Chicago's new hiring policy, "Implementing this new policy won't be easy, but it's the right thing to do. . . . We cannot ask private employers to consider hiring former prisoners unless the City practices what it preaches."³²

In Boston³³...Under a City Council ordinance that took effect in July 2006, the City of Boston and its vendors cannot conduct a criminal background check as part of their hiring process until the job applicant is found to be "otherwise qualified" for the position. This critical protection ensures that everyone is first considered for employment based on their actual skills and experience before the employer takes into account the presence or absence of a criminal record. The ordinance also requires that the final employment decision, which includes information about the individual's criminal record, consider the age and seriousness of the crime and the "occurrences in the life of the applicant since the crime(s)."

In addition, the Boston ordinance creates important appeals rights for those denied employment based on a criminal record and the right to present information related to the "accuracy and/or relevancy" of the criminal record.

In Chicago³⁴...In May 2004, Chicago Mayor Richard Daley created the Mayoral Policy Caucus on Prisoner Reentry, bringing together government and community leaders to address the challenges facing 20,000 people each year who return to Chicago after being released from prison. In January 2006, the Caucus issued a major report calling for broad ranging reforms of City policy. With regard to city hiring, the report recommended that the Mayor "Adopt internal guidelines for the City of Chicago's personnel policies regarding criminal background checks, and advocate for fair employment standards." Implementing the Mayor's new hiring policy, the City Department of Human Resources has issued guidelines imposing standards on all city agencies regulating hiring decisions related to people with criminal records. For the first time, the City of Chicago now requires all agencies to take into account the age of an individual's criminal record, the seriousness of the offense, evidence of rehabilitation, and other mitigating factors before making their hiring decisions. As part of the new hiring process, the City of Chicago also plans on revising its job applications to remove the question about criminal history and defer the criminal background check until later in the hiring process.

In San Francisco³⁵...The campaign to "ban the box" on applications for public employment was led by All of Us or None, a community-based organization of formerly incarcerated people and their families. Like Boston's ordinance, San Francisco's new policy (which took effect in June 2006) seeks to prevent discrimination on the basis of a criminal record by removing conviction history information from the initial application. Instead, an individual's past convictions will not be considered until later in the hiring process when the applicant has been identified as a serious candidate for the position. The only exception is for those jobs where state or local laws expressly bar people with convictions from employment; these applicants will still be required to submit conviction history information at the beginning of the hiring process. Unlike the Boston ordinance, San Francisco's policy only applies to public employment, not to private vendors that do business with the City or County of San Francisco.

In St. Paul³⁶...On December 5, 2006, Mayor Christopher Coleman of St. Paul issued a memo to the City Council directing the City's Human Resources Department to reform its hiring process. According to the new procedure, the City will remove the criminal history question from its job applications and delay the criminal background check until the final stages of the hiring process. In the memo, the Mayor also called on the private sector to play a major role in promoting reforms that remove unfair barriers to employment of people with criminal records.

Adoption of Meaningful Sealing and Expungement Policies

States can and should permit the sealing or expungement of both arrests that never led to conviction and conviction records after an appropriate period of time has elapsed. States can preserve the presumption of innocence by barring access to arrest information and enable access to relevant criminal history information for those who may legitimately need it, such as employers, landlords, and housing agencies. At the same time, they can minimize the risk that old or minor convictions might be used indiscriminately to deny housing or jobs to people with criminal records. Most states never expunge or seal conviction records but do allow arrest records to be sealed or expunged when the arrest did not lead to a conviction.³⁷

- 33 states do not permit the expungement or sealing of any conviction records.
- 17 states allow some conviction records to be expunged or sealed, such as first-time offenses. In most of these states, you are allowed to deny the existence of the conviction record that has been expunged.
- 40 states allow people to seal or expunge records of some or all arrests that did not lead to conviction.
- 30 states allow you to deny the existence of a sealed or expunged arrest record when it did not lead to a conviction, if asked on employment applications or similar forms.

CERTIFICATES OF REHABILITATION

States have the power to offer executive clemency or a pardon to restore civil liberties that have been lost as a result of a state criminal conviction. Often, very few individuals can meet the stringent qualifications required of a governor's office for clemency or pardon. Therefore, some states have created certificates of rehabilitation as another option available to individuals with criminal records to seek restoration of their voting, employment, and other rights that are necessary to living a law abiding life. Employers in a growing number of professions, including home health care, nursing, education, eyeglass dispensing, plumbing, and even barbering, are barred by state licensing agencies from hiring people with a wide range of criminal convictions, even convictions that are unrelated to the job or license sought. All states have the power to lift those bars to employment by offering certificates of rehabilitation. Yet very few states offer certificates of rehabilitation (or a similar mechanism) to remove occupational bars that prevent people with conviction records from being employed in certain occupations; these states include Arizona, California, Connecticut, Illinois, Nevada, New Jersey, and New York. The application processes and eligibility requirements and the extent of relief provided by these certificates vary from state to state.³⁸

CONCLUSION

A recent public opinion poll found that 57% of those surveyed felt that people returning to society from prison experience too many obstacles to living a crime-free life. Although there has been a significant amount of interest and progress over the past several years in Congress, state legislatures, and local governing entities in reconsidering the barriers that result from a criminal history, there is still much to accomplish. There are rational policy decisions that can be made to quell the fear that someone with a criminal history may be placed in an inappropriate employment or living situation, while not making it unnecessarily difficult for those with records to move forward with their lives. Communities do not benefit when their members are unable to acquire the things that are necessary to survive. Housing, employment, health care, and other basic needs should not be denied to individuals or their families because of a criminal record. The public has come to recognize this, and it is time that law- and policymakers follow.

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- 8 THE NSDUH REPORT: SUBSTANCE USE, ABUSE, AND DEPENDENCE AMONG YOUTH WHO HAVE BEEN IN A JAIL OR A DETENTION CENTER, [HTTP://WWW.OAS.SAMHSA.GOV/2K4/DETAINEDYOUTH/DETAINEDYOUTH.CFM](http://www.oas.samhsa.gov/2k4/detainedyouth/detainedyouth.cfm)
- 9 THE DASIS REPORT: CHARACTERISTICS OF YOUNG ADULT (AGED 18-25) AND YOUTH (AGED 12-17) ADMISSIONS, 2004 [HTTP://WWW.OAS.SAMHSA.GOV/2K6/YOUNGTX/YOUNGTX.CFM](http://www.oas.samhsa.gov/2k6/youngtx/youngtx.cfm)
- 10 AFTER PRISON: ROADBLOCKS TO REENTRY, A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS, PUBLISHED BY LEGAL ACTION CENTER, AVAILABLE AT: [HTTP://WWW.LAC.ORG/LAC/INDEX.PHP](http://www.lac.org/lac/index.php)
- 11 BOOM TIMES A BUST: DECLINING EMPLOYMENT AMONG LESS-EDUCATED YOUNG MEN, AVAILABLE AT: [HTTP://WWW.CLASP.ORG/PUBLICATIONS/BOOM_TIMES.PDF](http://www.clasp.org/publications/boom_times.pdf)
- 12 ID
- 13 EEOC GUIDANCE, NO. N-915-061 (SEPTEMBER 7, 1990)

- 14 AFTER PRISON: ROADBLOCKS TO REENTRY, A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS, PUBLISHED BY LEGAL ACTION CENTER, AVAILABLE AT: [HTTP://WWW.LAC.ORG/LAC/INDEX.PHP](http://www.lac.org/lac/index.php)
- 15 DEFICIT REDUCTION ACT OF 2006, PUBLIC LAW NO: 109-171, CHANGED FEDERAL LAW SO THAT THE FINANCIAL AID BAN NOW ONLY APPLIES TO STUDENTS WHO ARE CONVICTED OF A DRUG OFFENSE FOR CONDUCT THAT OCCURRED WHILE THEY WERE ENROLLED IN SCHOOL AND RECEIVING FEDERAL FINANCIAL ASSISTANCE. THE BAN NO LONGER APPLIES TO STUDENTS WHO WERE CONVICTED OF A DRUG OFFENSE PRIOR TO THEIR ENROLLMENT AND APPLICATION FOR FEDERAL FINANCIAL AID. THE TIMETABLE IN THE CURRENT LAW, OUTLINING HOW AN INDIVIDUAL'S AID WOULD BE DELAYED OR DENIED ACCORDING TO TYPE AND NUMBER OF OFFENSES, WOULD STILL APPLY TO STUDENTS CONVICTED OF A DRUG OFFENSE WHILE RECEIVING AID.
- 16 ACQUISITION AND USE OF CRIMINAL HISTORY RECORD INFORMATION FOR MILITARY RECRUITING PURPOSES, ISSUED OCTOBER 2005, AVAILABLE AT: [HTTP://WWW.FAS.ORG/IRP/DOD DIR/DOD/1304_23.PDF](http://www.fas.org/irp/dod_dir/dod/1304_23.pdf)
- 17 [HTTP://WWW.TODAYSMILITARY.COM/APP/TM/FAQ/ENTRANCE](http://www.todaysmilitary.com/app/tm/faq/entrance)
- 18 SALON, "OUT OF JAIL, INTO THE ARMY: FACING AN ENLISTMENT CRISIS, THE ARMY IS GRANTING 'WAIVERS' TO AN INCREASINGLY HIGH PERCENTAGE OF RECRUITS WITH CRIMINAL RECORDS — AND TRYING TO HIDE IT," MARK BENJAMIN, FEBRUARY 2, 2006, [HTTP://WWW.SALON.COM/NEWS/FEATURE/2006/02/02/WAIVERS/](http://www.salon.com/news/feature/2006/02/02/waivers/)
- 19 THE BALTIMORE SUN, "ARMY ACCEPTS CRIME IN RECRUITS TO FILL ITS NEEDS, MILITARY ISSUES WAIVERS FOR SOME PAST MINOR OFFENSES," TOM BOWMAN, FEBRUARY 14, 2006, AVAILABLE ONLINE AT [WWW.BALTIMORESUN.COM](http://www.baltimoresun.com)
- 20 AFTER PRISON: ROADBLOCKS TO REENTRY, A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS, PUBLISHED BY LEGAL ACTION CENTER, AVAILABLE AT: [HTTP://WWW.LAC.ORG/LAC/INDEX.PHP](http://www.lac.org/lac/index.php)
- 21 PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT (P.L. 104-193)
- 22 AFTER PRISON: ROADBLOCKS TO REENTRY, A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS, PUBLISHED BY LEGAL ACTION CENTER, AVAILABLE AT: [HTTP://WWW.LAC.ORG/LAC/INDEX.PHP](http://www.lac.org/lac/index.php)

- 23 FOR EXAMPLE, STATES HAVE MODIFIED THE BAN BY REQUIRING RECIPIENTS WITH DRUG FELONY CONVICTIONS TO SEEK OR PARTICIPATE IN ALCOHOL AND DRUG TREATMENT TO KEEP THEIR ELIGIBILITY; BY PROVIDING BENEFITS TO THOSE WHO SUBMIT TO DRUG TESTS, WAIT A CERTAIN PERIOD OF TIME, WERE CONVICTED OF POSSESSION OFFENSES ONLY, OR MEET OTHER CONDITIONS; OR ELIMINATED THE BAN ON FOOD STAMPS AND MODIFIED, BUT DID NOT ELIMINATE, THE BAN ON CASH ASSISTANCE.
- 24 DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATION ACT (P.L. 102-388)
- 25 AFTER PRISON: ROADBLOCKS TO REENTRY, A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS, PUBLISHED BY LEGAL ACTION CENTER, AVAILABLE AT: [HTTP://WWW.LAC.ORG/LAC/INDEX.PHP](http://www.lac.org/lac/index.php)
- 26 P.L. 2005, c. 343
- 27 HOUSING OPPORTUNITY PROGRAM EXTENSION ACT (P.L. 104-120) AND QUALITY HOUSING AND WORK RESPONSIBILITY ACT (P.L. 105-276)
- 28 AFTER PRISON: ROADBLOCKS TO REENTRY, A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS, PUBLISHED BY LEGAL ACTION CENTER, AVAILABLE AT: [HTTP://WWW.LAC.ORG/LAC/INDEX.PHP](http://www.lac.org/lac/index.php) LOCAL HOUSING AGENCIES SET PUBLIC HOUSING POLICY, NOT STATE LAW. TO DETERMINE HOW HOUSING POLICIES AFFECT PEOPLE WITH CRIMINAL CONVICTIONS, LAC FOCUSED ITS INVESTIGATION ON THE LOCAL HOUSING AGENCY OF THE LARGEST CITY IN EACH STATE SINCE, MANY PEOPLE LEAVING PRISON RETURN TO THE LARGEST CITY IN THE STATE. LAC'S DATA RELIES ON REPORTS FROM THE AGENCIES THEMSELVES, WHICH WE WERE NOT ABLE TO VERIFY IN THE FIELD. FOR THAT REASON, IT WAS NOT POSSIBLE TO DETERMINE ACCURATELY WHETHER AND HOW OFTEN SUCH INDIVIDUALIZED DETERMINATIONS WERE MADE IN PRACTICE. WHILE NOT COMPREHENSIVE, THE STUDY DOES PROVIDE A SNAPSHOT OF THE HURDLES PEOPLE WITH CONVICTIONS FACE IN FINDING PUBLIC HOUSING AFTER PRISON.
- 29 [HTTP://WWW.SENTENCINGPROJECT.ORG/ADMIN/DOCUMENTS/PUBLICATIONS/FD_BS_FDLAWSINUS.PDF](http://www.sentencingproject.org/Admin/Documents/Publications/FD_BS_FDLAWSINUS.PDF)
- 30 AFTER PRISON: ROADBLOCKS TO REENTRY, A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS, PUBLISHED BY LEGAL ACTION CENTER, AVAILABLE AT: [HTTP://WWW.LAC.ORG/LAC/INDEX.PHP](http://www.lac.org/lac/index.php)

31 IN THE PAST, THE FAIR CREDIT REPORTING ACT PROHIBITED THE REPORTING OF “OBSOLETE” CONVICTIONS MORE THAN SEVEN YEARS OLD. HOWEVER, AS A RESULT OF 1998 LEGISLATIVE AMENDMENTS, THIS PROVISION WAS DELETED, ALLOWING CONVICTIONS TO REMAIN ON CREDIT REPORTS IN PERPETUITY. EVERY DOOR CLOSED BARRIERS FACING PARENTS WITH CRIMINAL RECORDS, REPORT BY COMMUNITY LEGAL SERVICES, AVAILABLE ONLINE AT [WWW.CLSPHILA.ORG](http://www.clsphila.org)

32 ONSTANDARD WORKER PROJECT, SECOND CHANCE LABOR PROJECT,
[HTTP://WWW.NELP.ORG/NWP/SECOND CHANCE LABOR PROJECT/CITYPOLICIES.CFM](http://www.nelp.org/nwp/second_chance_labor_project/city_policies.cfm)

33 Id

34 Id

35 Id

36 Id

37 AFTER PRISON: ROADBLOCKS TO REENTRY, A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS, PUBLISHED BY LEGAL ACTION CENTER, AVAILABLE AT: [HTTP://WWW.LAC.ORG/LAC/INDEX.PHP](http://www.lac.org/lac/index.php)

38 Id

39 BARRY KRISBERG, PhD, SUSAN MARCHIONNA, *ATTITUDES OF US VOTERS TOWARD PRISONER REHABILITATION AND REENTRY POLICIES*, APRIL 2006, NATIONAL COUNCIL ON CRIME AND DELINQUENCY COMMISSIONED ZOGBY INTERNATIONAL POLL, AVAILABLE AT:
[HTTP://WWW.FACESANDVOICESOFRECOVERY.ORG/PDF/ZOGBY_POLL.PDF](http://www.facesandvoicesofrecovery.org/pdf/Zogby_poll.pdf)