

Executive Summary

Every Door Closed

Barriers Facing Parents With Criminal Records

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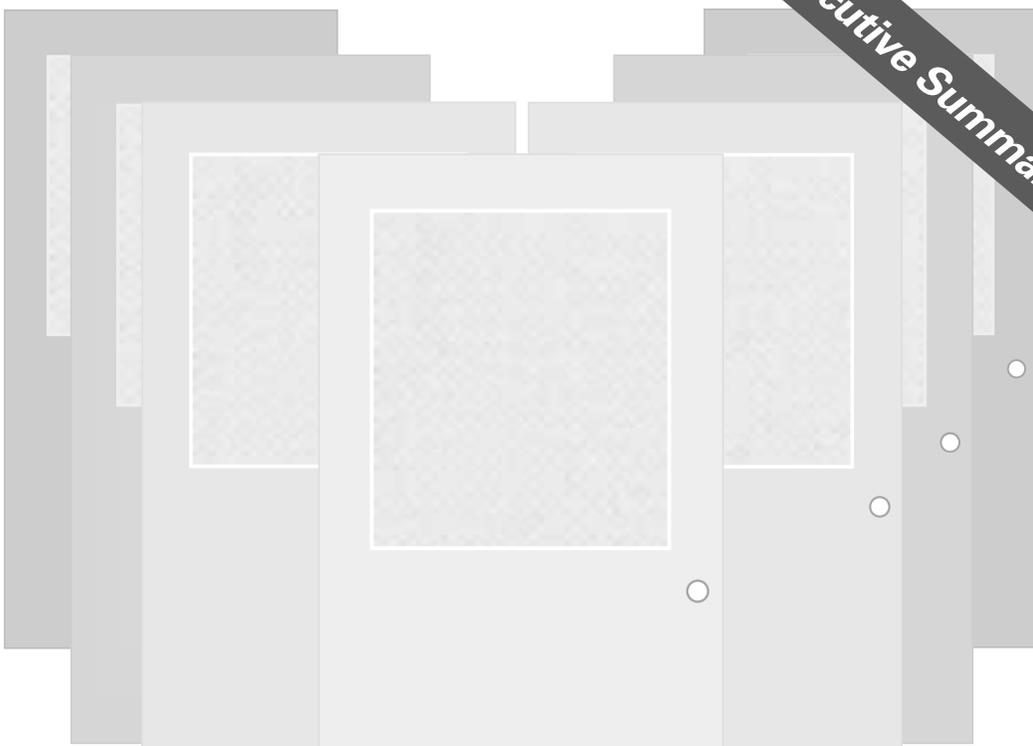
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CENTER FOR LAW AND SOCIAL POLICY



**COMMUNITY
LEGAL SERVICES, INC.**

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For further information concerning this report, contact Community Legal Services, Inc. To request the full, 104-page report, contact the Center for Law and Social Policy.

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Barriers Facing Parents With Criminal Records

Executive Summary

Over 10 million children in the United States “have parents who were imprisoned at some point in their children’s lives.”¹ In 2001, approximately 400,000 mothers and fathers will finish serving their prison or jail sentences and return home eager to rebuild their families and rebuild their lives.

As these parents struggle to make a fresh start, they will encounter a myriad of legal barriers that will make it extraordinarily difficult for them to succeed in caring for their children, finding work, getting safe housing, going to school, accessing public benefits, or even, for immigrants, staying in the same country as their children.

The report upon which this summary is based examines some of the barriers that, singly and in combination, tear families apart, create unemployment and homelessness, and guarantee failure, thereby harming parents and children, families, and communities.

An individual experiencing any one of these problems is likely to find that it dominates his or her life. But an ex-offender might well confront several of these issues simultaneously. Sometimes these problems exacerbate each other. For instance, a parent who cannot find stable housing is unlikely to find or keep employment or reunify his or her family. An ex-offender without income because of

1 Charlene Wear Simmons, *Children of Incarcerated Parents*, 7(2) California Research Bureau Note 2 (March 2000).

ineligibility for public benefits and lack of employment is unlikely to find stable housing. Cumulatively, these civil consequences of a criminal record can be devastating and will continue to punish an ex-offender — and his or her family — long after his or her formal sentence has been served.

This booklet provides a summary of a six-chapter report. The full report, which is available from the Center for Law and Social Policy (see the Acknowledgments page for more information), contains an introduction with background information on parents with criminal records, and chapters on employment, public benefits, housing, child welfare, student loans, and immigration. These chapters feature stories of ex-offenders who have confronted these barriers, illustrating the inequities of these collateral consequences (see the Appendix for the report's table of contents.)

Employment

Parents with criminal records, like other parents, need jobs to support their families and to be part of mainstream society. However, ex-offenders' criminal records typically create an employment barrier for the rest of their lives.

- * Criminal records result in legal prohibitions against employment in certain occupations. These legal

restrictions vary greatly from state to state. An occupation in which employment of ex-offenders is strictly prohibited in one state may be subject to a licensing procedure in which evidence of rehabilitation is considered in another state, and not subject to any regulation at all in a third. Some states may establish a lifetime bar on employment; others may restrict employment for a limited number of years.

- * In professions in which criminal records are not the subject of regulation, employers nevertheless often refuse to hire or retain persons with criminal records. Employers can easily obtain criminal records on job applicants, and ex-offenders have great difficulty finding work, even many years after completing their sentences.

Policy Recommendations: Improving Employment Prospects of Ex-Offender Parents

- * Avoid overbroad, blanket employment prohibitions on ex-offenders that are created by law.
- * Publicize and enforce existing laws limiting employer consideration of criminal records and enact new laws to protect ex-offenders.
- * Improve bonding and tax credit programs to encourage employers to hire ex-offenders.

- * Increase resources for employment programs for ex-offenders.
- * Assist rehabilitated ex-offenders in finding work by expunging offenses, sealing records, offering certificates of rehabilitation, and/or revising pardon standards and procedures.
- * Strengthen employment conditions in the low-wage labor economy.
- * Parents with certain kinds of ongoing problems with the criminal justice system (outstanding felony bench warrants or in violation of probation or parole) are ineligible for Food Stamps, Supplemental Security Income (SSI), or TANF until those problems are resolved.
- * Parents with criminal records may have particular difficulties complying with TANF and Food Stamp work requirements.

Public Benefits

Parents who are reentering the community after incarceration often need public benefits in order to reunify their families, pay rent, and buy food, clothing, and other necessities. Some parents with criminal records have disabilities that prevent them from working. Others can work but need assistance until they are able to find a job. Yet parents with criminal records face serious barriers in accessing the public benefits that they need to rebuild their families and move forward with their lives.

- * The 1996 federal “welfare reform” law imposed a lifetime ban on Temporary Assistance for Needy Families (TANF) and Food Stamp benefits for people with felony drug convictions for conduct after August 22, 1996 — regardless of their circumstances or subsequent efforts at rehabilitation — unless their state affirmatively passes legislation to opt out of the ban.
- * Caseworker confusion and stringent “verification” requirements result in parents wrongly being denied benefits because of their criminal records.
- * Welfare department requirements concerning work, child support enforcement, and verification may directly conflict with court-ordered probation or parole conditions or with other demands of the criminal justice or child welfare systems. As a result, parents may be forced to choose between doing what is required to get or keep welfare benefits and doing what is required to recover from alcoholism or drug dependence, retain or regain custody of their children, or stay out of jail.
- * In a vicious cycle, losing public benefits is likely to make it harder for parents with criminal records to stay clean and sober, avoid abusive relationships, take care of their children, and resist engaging in criminal activity.

Policy Recommendations: Improving Access to Public Benefits for Ex-Offender Parents

- * Allow individuals with criminal records for offenses other than public assistance fraud to receive public benefits if they are otherwise eligible.
- * Allow pre-employment activities, including alcohol and drug treatment and mental health treatment, to count as work activities.
- * Develop programs to process public benefits *rapidly* for eligible individuals who are leaving prisons or jails, so that they can more appropriately reenter the community and lessen their chances of a revolving-door return to jail.
- * Create targeted welfare-to-work programs that address the needs of parents with criminal records, recognizing that they must meet often conflicting requirements of the welfare, child welfare, and probation systems.

Housing

Safe, decent, and affordable housing is critical to the well-being of parents and children. Parents returning to the community after incarceration will be unable to regain custody of their children if they cannot find appropriate

housing. Lack of stable housing makes it very difficult for parents to find work and for children to concentrate in school. Yet families in which any member (or even a guest) has a criminal record may be unable to rent an apartment, or may face eviction, often without consideration of mitigating circumstances. Chapter Three examines the federal “one strike and you’re out” policy concerning subsidized housing.

Policy Recommendations: Improving Access to Housing

- * Require Public Housing Authorities to evaluate evictions and admissions on a case-by-case basis, to look to mitigating circumstances, and to weigh fully the consequences of a loss of subsidized housing for the family.
- * For families with children, Public Housing Authorities should use the “best interest of the child” standard when determining whether to grant admission to an ex-offender or to evict families based on criminal activity.²
- * Congress should supply sufficient funding to substantially increase the stock of subsidized housing so that parents reentering the community after their incarceration can begin to rebuild their lives.

2 Barbara Sard, Center for Budget and Policy Priorities, *Memorandum re: Housing Proposals Related to TANF Reauthorization and Support for Working Families* (Jan. 18, 2002).

Child Welfare

Any parent who goes to prison, even for a short time, faces the grave risk of losing his or her children forever. Many parents will leave prison having served their time but facing a far worse sentence: the imminent loss of all rights as parents and all contact with their children. Many other parents will have lost their parental rights before their release. To protect their parental rights, incarcerated parents must work consistently, and against difficult barriers, both while in prison and afterwards. Because a parent's ability to preserve parental rights after release can be critically affected by decisions made and actions taken while the parent is still incarcerated, Chapter Four addresses the ways in which the law affects parents during the period of incarceration as well as after release.

- * Conviction of a crime or incarceration does not mean that a parent cannot continue a loving, committed relationship with his or her child. As one court has noted, "While 'use a gun, go to prison' may well be an appropriate legal maxim, 'go to prison, lose your child' is not."³
- * Children as well as parents are affected by the dissolution of their

families. Many children in foster care, especially older children, value their relationships with their parents and "[derive] considerable strength" from them.⁴ It is important to these children that the relationship be sustained wherever possible. "Legally severing these children's ties with their parents will not erase their emotional connection, nor will adoption make their biological parents disappear from their hearts and minds."⁵

- * No matter how a parent comes into contact with the child welfare system, the consequences can be harsher and the goal of family preservation or reunification more difficult to achieve when the parent has the added burden of a criminal record.

Policy Recommendations: Strengthening Families

Laws and policies must change to allow incarcerated parents to be able to maintain their ties to their children, so that their children will not forever lose the opportunity to know and have a loving relationship with their parents.

3 *In re Brittany S.*, 17 Cal. App. 4th 1399, 1402 (Cal. Ct. App. 1993), *rev. den.* 1993 Cal. LEXIS 6444 (1993).

4 Malcolm Bush and Andrew C. Gordon, *The Case for Involving Children in Child Welfare Decisions*, in 27 *Social Work* 309, 310 (1982), cited in Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* (2002) at 160.

5 Roberts, *supra*, at 160. The phrase "these children" refers specifically to a study of children in foster care between the ages of nine and 18, a majority of whom stated that they did not want to be adopted.

- * States should make appropriate services available to incarcerated parents and their families including:
 - Actively encouraging kinship care placements.
 - Ensuring that child welfare authorities remain in touch with incarcerated parents.
 - Facilitating visitation between children and incarcerated parents.
 - Making appropriate reunification services available to incarcerated parents.
 - Exploring alternatives to incarceration that could make child welfare intervention and child removal unnecessary in many cases.
- * States should avoid overly broad application of the law and ensure that decisions are made based on the facts of each case, including:
 - Avoiding overly broad termination statutes and statutory interpretation.
 - Applying the Adoption and Safe Families Act's time deadlines flexibly.
 - Offering relief from child support obligations to parents who are returning from incarceration and seeking reunification with their children.
- * States must scrupulously respect procedural fairness and ensure that termination procedures com-

ply with requirements of due process, including:

- Ensuring that incarcerated parents have the opportunity to attend all hearings in their cases.
- Providing incarcerated parents with counsel at all stages of their child welfare cases.

Student Loans

Access to higher education is important for low-income parents who are trying to improve their ability to support their families. For many working parents, a return to school may be a matter of economic necessity. For ex-offender parents, who face additional difficulties finding work in the low-wage sector, the decision to enroll in college can represent an enormously powerful opportunity to enter mainstream society. No matter how positive such a step might be — not only for the parent and her children, but also for society at large — the ex-offender seeking to enroll in college may find yet another door closed to her, the door to federal financial aid.

- * As part of its 1998 reauthorization of the Higher Education Act of 1965, Congress enacted a complicated eligibility restriction applicable to students who have prior convictions for possession or sale of controlled substances.

- * Applicants subject to this bar cannot obtain Pell grants or student loans, which, for low-income students, effectively means a denial of higher education. *The New York Times* reported on December 29, 2001, that “[m]ore than 43,000 college students face possible denials of federal aid this [school] year” as a result of the 1998 ban.⁶
- * Even applicants not technically subject to the bar may be discouraged from applying for financial aid as a result of misinformation, bad advice, or wrong assumptions about how the new law works.

Policy Recommendation: Allow Access to Student Loans

- * Repeal the ban on student financial aid. If we want ex-offender parents to reintegrate fully into their communities, to find sustainable employment, and to care for and encourage the education of their children, then we should support their efforts to further their own education.

Immigration

The intersection of immigration law and criminal law, particularly in the wake of 1996 changes to federal

immigration law, leaves many ex-offender parents facing the loss of a fundamental “benefit” — the ability to live in the United States with their families. An increasing list of over 50 different crimes can now trigger deportation.

- * Immigrant parents become entangled in the criminal justice/immigration systems in a number of ways. A lawful permanent resident may legally leave the country to visit relatives and, upon return, be apprehended by Immigration and Naturalization Service (INS) border officers for crimes from the past. The apprehension is *not* based on outstanding warrants, but rather on any record of a prior conviction that can *now* be considered grounds for removal. Likewise, an immigrant who is applying for lawful permanent residence or citizenship can be placed in removal if the application or fingerprint check reveals a criminal history.
- * Alternatively, an immigrant may run afoul of the system beginning with a law enforcement encounter. If prior criminal history or undocumented status appears in the course of a law enforcement background check, then the person will be placed in deportation proceedings.

6 Associated Press, *43,000 Students With Drug Convictions Face Denial of Aid*, N.Y. Times, Dec. 29, 2001, at A11.

Policy Recommendations: Keeping Families Together

- * Federal law should be amended to help keep families together by:
 - Restoring the possibility of a grant of relief by immigration judges during the deportation process.
 - Reducing the number of crimes for which deportation is imposed.
 - Reinstating eligible immigrants' ability to apply for bond and parole.
 - Limiting the circumstances in which mandatory detention is required.
- * Helpful administrative changes have been announced by the INS but will need careful implementation and monitoring.
- * Low-income immigrants need access to legal counsel on these issues, and immigrant communities need education about the current immigration laws.
- * Initiatives that encourage the exchange of information among criminal lawyers, immigration lawyers, and immigration service providers should be supported.

Conclusion

Every Door Closed examines the civil consequences of criminal records —

not the sentence imposed by a judge for a crime but rather the ancillary effects of which the judge, defendant, prosecutor, and defense attorney may all be unaware. However, these civil consequences have a tremendous impact on the long-term ability of ex-offender parents to reintegrate into the community, resume parental responsibilities, and be productive members of society.

Many of the barriers described in this report are the result of policies intended to reduce crime and enhance community security. Yet they have the ironic and counter-productive effect of making it more difficult for parents with criminal records to successfully reenter the community, and of making it less likely that they will be able to take care of their children and avoid criminal activity.

The barriers that ex-offenders experience — to getting a job, renting an apartment, getting a student loan, regaining custody of children from the child welfare system, accessing basic public benefits, or staying in this country — make it virtually impossible to resume a normal life after even minor offenses. The cumulative impact of these barriers is that every door is closed to parents with criminal records.

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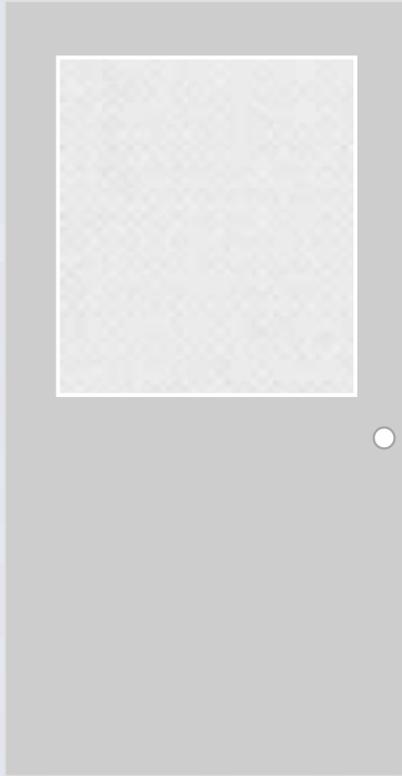
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Divided Families:

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Judith Bernstein-Baker in collaboration with Joe Hohenstein



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