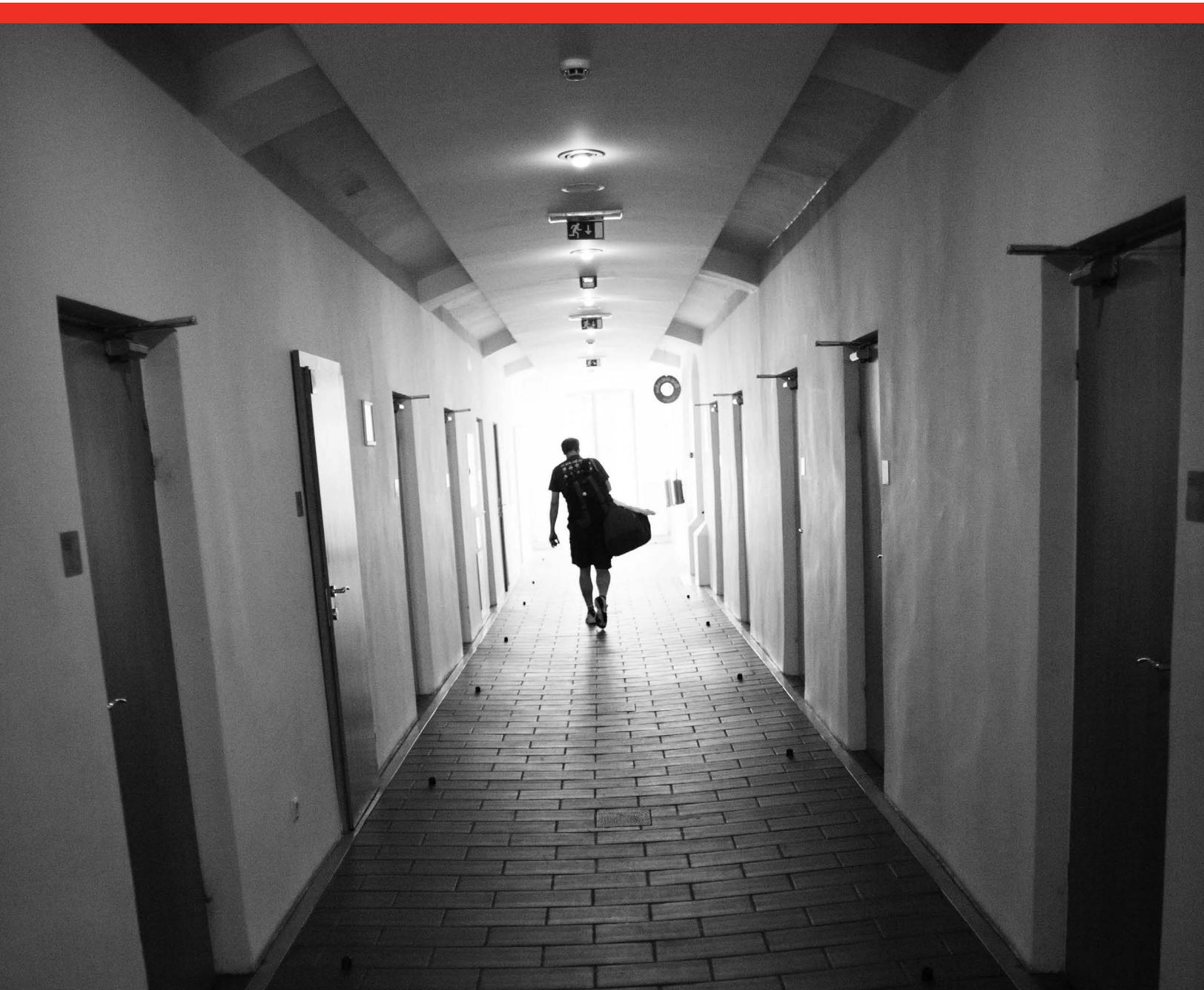


A Second Chance:

Charting a New Course for Re-Entry and Criminal Justice Reform

October 2013



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In releasing this report, our goals are to help raise awareness about the need for policies to remove barriers to full participation for formerly incarcerated individuals so that they can become fully contributing members of society instead of marginalized from our communities. We hope that the current focus on re-entry issues will serve as an entry point for greater and more widespread reforms to the nation's system of mass incarceration.

The authors and publisher are solely responsible for the accuracy of statements and interpretations contained in this publication.



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Foreword

Michelle Alexander

Associate Professor of Law at Ohio State University
Author of “The New Jim Crow: Mass Incarceration in the
Age of Colorblindness”

Reforming the American criminal justice system is a defining moral challenge of the 21st century, just as dismantling de jure segregation in the American South was a moral imperative during the Jim Crow era. Our system of mass incarceration is, at its very core, deeply unjust and inhumane. It relegates an astonishing number of people to permanent second-class citizenship and makes a mockery of America’s professed commitment to democracy, opportunity and basic human rights.

With a correctional population of more than 2.2 million individuals, the United States currently incarcerates more people than any other country in the world. And that’s just people who are physically in jail or prison. If we count people on parole and people on probation, that number jumps to almost 7 million—a nearly 300 percent increase since 1980. Most of these people are Black, Brown, poor, and undereducated.

Most of the people under the thumb of this system are not actually incarcerated. And yet they are not truly free. We continue to punish them long after they have been released from their cages, discriminating against them legally in employment, housing, access to education and public benefits. We deny them the right to vote in many states and systematically exclude them from juries. By relegating them to a permanent undercaste, we make it practically impossible for millions of people to be the engaged, responsible citizens we say that we want them to be.

As “A Second Chance: Charting a New Course for Re-Entry and Criminal Justice Reform” shows, our policy choices have had real world consequences in the form of laws and regulations that create an unnecessary cycle of incarceration, broken homes, and shattered dreams. This system benefits only politicians who exploit our fears and biases with “get tough” rhetoric, and

the many private interests—including private prison companies—that now profit from prisons.

Our current system is indefensible. There is no rational reason to take away someone’s voting rights for life. It makes no sense to deny people who are returning to society an opportunity to get an education, housing, or a decent job. It defies reason to make it nearly impossible for parents to care for their children. We cannot claim to care about communities plagued by crime when we design and maintain a system that virtually guarantees that most people who go to prison will return to prison, rather than becoming productive, caring members of their communities.

As a society, we owe it to ourselves and our communities to ensure that all people—including those who have committed crimes and paid their price or made amends—have every opportunity to reform their lives, improve themselves, and contribute to their families and communities.

When I began writing my book, “The New Jim Crow,” I hoped that it would help to inspire my friends and colleagues working for civil rights and social justice to pay greater attention to the enormous crisis that communities of color are facing as a result of our nation’s system of mass incarceration. It is my firm belief that if people who care deeply about racial, social, and economic justice fail to rise to the challenge that mass incarceration presents, history will judge us harshly.

And that’s why I welcome this report. A movement to end mass incarceration is growing in the United States—a movement that not only seeks to re-imagine the role of the criminal justice system in our society but also seeks to guarantee basic civil and human rights for all. Reducing recidivism and removing barriers to re-entry are but one piece of a larger effort to dismantle

our system of mass incarceration and build instead a new public consensus that will support caring, compassionate communities in which none of us is viewed as disposable.

Releasing this report at a time when Congress is considering the reauthorization of important legislation like the Second Chance Act is an essential step in our collective work to end mass incarceration. The scale of change that is required is staggering, but progress begins with first steps. Future generations depend on us blazing a new path, one that takes us to much higher ground and ensures that our nation never returns to a place like this again.

Michelle Alexander is the associate professor of law at Ohio State University and the author of “The New Jim Crow: Mass Incarceration in the Age of Colorblindness.”

Chapter I: Introduction

In May 2011, the U.S. Supreme Court issued its landmark decision in *Brown v. Plata*, which found that the overcrowded conditions of the California penal system violated prisoners' Eighth Amendment right to be free from cruel and unusual punishment. The case represented the culmination of many challenges to California state prison conditions of confinement regarding medical, mental health, and dental services.

The Court ordered California to reduce its prison population by about one-third, or 33,000 people, by May 2013.¹ Faced with this order, along with legislative mandates and budgetary constraints, California made a momentous decision: it would no longer take into state facilities or under state custody most people convicted of low-level, nonviolent offenses; instead, counties would deal with these individuals at the local level. In turn, many of the solutions adopted by California's 58 counties would involve diverting parole violators and low-level felony offenders away from prison and into county court systems.²

In October 2011, California's realignment plan went into effect, offering an opportunity to help achieve both a significant decrease in California's prison population and shape the lives of incarcerated individuals through an increased focus on education, job training and re-entry, among other measures.

Instead, nearly two years later many questions remain unanswered, even as the state continues to request that federal judicial oversight over state prisons be terminated.³ These include:

- Are the county jails equipped to comply with the state's decisions in a way that passes constitutional muster?
- How will counties determine if recidivism rates have changed, given that most jails lack research

staff to conduct adequate data collection?

- Will the state's investment in criminal justice at the local level come at the expense of needed rehabilitative and re-entry services that reduce recidivism?
- Will the state continue the practice of "mass incarceration" that has affected low-income and minority communities disproportionately?⁴

These questions reflect the host of challenges that California and many other states must address as they reform their criminal justice systems. They also offer a critical opportunity to examine policies geared toward successful re-entry and reducing recidivism.

Though the road from *Brown v. Plata* to meaningful prison reform may be a long one, to the extent the case revives the belief—now largely abandoned—that prisons should be institutions of rehabilitation, not just punishment, it represents an important first step.

The Road to Reform

Today there are nearly seven million people under the control of the U.S. criminal justice system, which includes people incarcerated and those individuals released and on probation.⁵ Over the coming years, many more states—caught in a fiscal vise that is making current incarceration policies impossibly expensive to maintain—may seek alternatives. They will likely see lower prison populations than they have seen in the last decade—though still higher than what America saw as "normal" before the start of the Wars on Crime and Drugs. Some cities and counties may also see reduced jail populations—though others will see their populations increase as states, following California's lead, turn over responsibility for lower-level offenders and juvenile detainees to counties. The risk is that, as a shortcut to cost savings, states could see thousands of prisoners simply released early, with no infrastructure in place to help them situate themselves.

Already, every year, nearly 700,000 people are released from state and federal prisons in the United States.⁶ For these individuals, and for the society they seek to re-enter, policies that fail to account for how these individuals will successfully reintegrate have a real human cost. A prison system that focuses primarily on punishment, rather than rehabilitation—and creates barriers to family unification, employment, education, and civic participation—makes it increasingly difficult for the people reintegrating into their community to remain crime-free and become fully contributing members of society.

on employment; and restrictions on voting—demonstrate a particular continuum of poor correctional methods and misguided priorities; that, disproportionately, these practices hit low-income people and communities of color hardest; and, as a result, that they further widen divides that already threaten to undermine the country's democratic premise.

Based on the growing body of knowledge about what barriers to re-entry look like and how they impact communities, The Education Fund concludes that the

The Second Chance Act

In 2008, Congress passed, and President George W. Bush signed into law, the bipartisan Second Chance Act to provide \$165 million in grants for local, state, and tribal agency programs aimed at helping individuals navigate their move from prison and reducing recidivism.⁷

To date, the Second Chance Act has been successful and its benefits have extended to many states across the country. Nearly 500 Second Chance Act grants have been awarded to state and local governments, nonprofit organizations, and federally-recognized Native American tribes since the program was established in 2008. Grant awards have totaled \$250 million.⁸

Second Chance programs have served more than 11,000 individuals before release from jails, prisons, and juvenile systems⁹ and nearly 9,500 individuals after release. Most of the program's efforts have focused on "medium-risk" and "high-risk" individuals, which experts say have the "strongest impact" on working to reduce recidivism. For example, a recent study by the Council of State Governments indicates that in the three years after the Second Chance Act's passage, the rate of recidivism in four states (Texas, Michigan, Kansas, and Ohio) fell between 11 and 18 percent.¹⁰

Unfortunately, from the beginning, the Second Chance Act has been underfunded. In only one year of the four following its passage was the full \$100 million budget request granted by Congress. In 2012, it was allotted only \$63 million.¹¹ As a result, the programs it supports, while effective, are just a drop in the bucket of reforms that are needed to fully reintegrate former prisoners into their communities.

Recent initiatives have recognized the need not only to reform our criminal justice system and decrease prison populations, at least at the state levels, but also to provide wraparound services to formerly incarcerated people to prevent the cycle of incarceration. The Obama administration has made considerable strides in decreasing federal barriers to successful reintegration through the formation of the Attorney General's Federal Interagency Reentry Council.¹² More recently, in August 2013, Attorney General Eric Holder announced a package of reforms known as the "Smart on Crime" initiative, which includes a focus on efforts to aid re-entry.

A Civil and Human Rights Crisis

While many aspects of prison life, and the post-prison experience, deserve attention, The Leadership Conference Education Fund (The Education Fund) believes that the impact of four barriers that make re-entry more difficult and recidivism more likely—predatory prison phone rates; inadequate access to education; restrictions

economic and political marginalization of formerly incarcerated people now stand as among our era's most critical civil and human rights concerns. These practices come with distinct racial and economic justice implications. And the consequences of these practices too often put the United States at odds with overarching human rights norms and principles under the Universal Declaration of Human Rights and its own signatory obligations to an array of international treaties and conventions, including the International Convention on Civil and Political Rights (ICCPR), and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

Under both the ICCPR and the CERD, for example, there is an obligation on behalf of the U.S. and state and local governments to take appropriate steps to affirmatively protect the rights enumerated, such as the right to vote, and to provide effective remedies to address injustices. The CERD goes even farther and prohibits policies

that have a discriminatory impact on people of color, even where there is no intent to discriminate. The human rights frame presented by these instruments provides a broader set of protections and in many cases fills in gaps for certain protections not available under our current civil rights laws.

The ill-conceived War on Drugs and the overly harsh sentences imposed for low-level offenses have affected almost every area of our criminal justice system, from over policing to sentencing and re-entry. As a result, the disproportionate number of minorities and low-income individuals that encounter our criminal justice system face numerous barriers to successful re-entry when attempting to reintegrate into society.

This report examines the consequences of these practices and makes a series of policy recommendations regarding their reform. While it is beyond the scope of the report to examine policy solutions to address racial disparities and the disparate impact on low-income individuals entering the criminal justice system, it examines some of the many challenges faced by individuals reintegrating into society and offers policy suggestions. In the chapters that follow we explain the problem of mass incarceration in the U.S. (Chapter II); review the challenges faced by formerly incarcerated people as they seek to re-enter society (Chapter III); address the problem of exorbitantly high prison phone rates (Chapter IV); examine inadequacies in access to education (Chapter V); focus on barriers to employment (Chapter VI); highlight restrictions on voting (Chapter VII); and conclude with recommendations designed to reset our nation's re-entry policies (Chapter VIII).

Getting “Smart on Crime”

The Justice Department's new “Smart on Crime” initiative, announced in August 2013, is part of an ongoing effort to modernize the criminal justice system by shifting away from an over-reliance on incarceration. The initiative includes five core principles: (1) Prioritize prosecutions to focus on the most serious cases; (2) Reform sentencing to eliminate unfair disparities and reduce overburdened prisons; (3) Pursue alternatives to incarceration for low-level, non-violent crimes; (4) Improve re-entry to curb repeat offenses and revictimization; and (5) “Surge” resources to violence prevention and protecting the most vulnerable populations. The department is calling for U.S. attorneys to designate a prevention and re-entry coordinator within each of their offices to focus on prevention and re-entry efforts. The department is also working with the American Bar Association to identify and publish a catalogue of collateral consequences imposed at the state and federal level and will then issue a new memorandum requiring all divisions within the Justice Department to factor these collateral consequences into their rulemaking to reduce the burdens on formerly incarcerated individuals.

Chapter II: The Problem of Mass Incarceration

In the last three decades, state and federal prison populations have skyrocketed, due in large part to the War on Drugs that began in earnest with the Drug Abuse Act of 1986, as well as the rise of so-called “get tough” laws such as “Three Strikes,” “Truth in Sentencing,” and “Mandatory Minimum” sentencing.

Decades of these kinds of policies have led to the burgeoning of our state and federal prison population—growing from approximately 338,000, in 1972, to more than two million.¹³ Today, the U.S. incarcerates more people and a higher percentage of its population than any other country in the world.

Prior to the onset of the drug wars, America’s incarceration rate had hovered for decades between 100 and 125 per 100,000 people. Then it began increasing. In the mid-1980s, the incarceration rate was above 200 per 100,000 and rising rapidly. By 2000, approximately two million Americans, nearly 1 percent of the country’s adult population, were incarcerated in prisons and jails.¹⁴ By 2010, more than 2.2 million Americans were living behind bars.¹⁵ No other country on Earth had a larger prison population; after America surpassed Russia in 1991, no other country has had a higher rate of incarceration.

The U.S. prison system has also produced large racial disparities.¹⁶ As of 2007, African Americans comprised 900,000 of the country’s 2.2 million inmates (according to the Sentencing Project).¹⁷ In 2011, Hispanics comprised more than half of new admissions to the federal prison system run by the Bureau of Prisons.¹⁸ At any given moment, 10 percent of the country’s 18-to 24-year-old African-American men are living behind bars.¹⁹ In 2010, researchers working for the Pew Charitable Trusts calculated that young Black men without a high school diploma are more likely to be living behind bars in the United States than to be employed.²⁰

As evidence of a particularly disturbing trend, at the start of the new century, the Bureau of Justice Statistics estimated that 336,000 households with children had at least one parent incarcerated, and that African-American families were nine times more likely than White families to fall into this category.²¹ Seven years later, the Department of Justice concluded that more than 800,000 of the nation’s prisoners had children under the age of 18; fully 2.3 percent of all American kids had a parent living behind bars.²² These children were more likely to live in poverty, to enter the foster care system, and, ultimately to end up in prison themselves than were their peers.²³

At the same time as the incarceration rate has exploded, crime rates have declined. However, there is little data to suggest that the two phenomena are linked. According to Sentencing Project Executive Director Marc Mauer:

While incarceration has some impact on crime, this effect is generally more modest than many believe. The most optimistic research to date on the crime decline of the 1990s finds that 25 percent of the decline in violent crime can be attributed to rising imprisonment, but other scholarly work concludes that this effect may be as small as 10 percent. And in either case, such studies do not tell us whether using resources to support expanded incarceration is more effective than targeted social interventions, such as expanded preschool programming, substance abuse treatment, or improving high school graduation rates, all of which have been demonstrated to improve public safety outcomes.²⁴

Meanwhile, Americans are paying dearly for this multigenerational trend, which has led to the decimation of communities of color and an increase in unemployment and poverty. Once in contact with the system, people are

effectively stripped of their rights and face significant challenges in communicating with their families and acquiring access to educational opportunities. As a result, upon re-entry, formerly incarcerated individuals are relegated to the lowest rungs of society and most ladders of opportunity are blocked.

Chapter III: Navigating Life after Re-Entry

Every year nearly 700,000 people are released from American prisons.²⁵

According to the Sentencing Project, approximately two-thirds of these formerly incarcerated people are either African-American or Latino. The median education level of those released is 11th grade—meaning that more than half of all people released from prison have not completed a high school education. In addition, three-quarters have some form of drug addiction; one in six have a serious mental illness;²⁶ and 55 percent of these formerly incarcerated people have young children.²⁷ Although the Department of Labor does not track the unemployment rate for formerly incarcerated people, various studies have found their unemployment rates to be 50 percent or higher nine months or a year after their release.²⁸

Once released, formerly incarcerated people face diminished chances of successfully re-entering society because they often lack access to education, training and other supports, such as the ability to communicate with their families and loved ones while incarcerated. The effects of these obstacles are compounded after release by other institutionalized barriers such as being ineligible to vote, having little access to postsecondary education, facing scant job opportunities, and being ineligible for public benefits, public housing, and student loans—thus having a profoundly negative effect on millions of families.

This reality of perpetual punishment, meted out to many who, in most cases, have committed nonviolent crimes often early in life and were likely victims of our failed education system, calls into question the character of our country. Are we, in fact, a nation committed to the principles of equality and justice for all?

We recommend that policymakers begin to approach

these problems not simply as technical criminal justice questions, but also as civil and human rights abuses. For those caught within the system of mass-incarceration, too often basic human rights—rights defined and codified in such treaties as the ICCPR and CERD—are denied; and, because of the disproportionate effect on racial minorities, too often civil rights also end up being sacrificed.

An approach that focuses on the human outcomes of the nation's misguided criminal justice policies—i.e. the creation of barriers to family unification, employment, education, and civic participation—would be consistent with human rights standards. Within this framework, the onus is on government to create policies that protect human rights, such as the right to vote, the right to education, the right to dignified work.

In the chapters that follow, we examine the impact of four barriers that make re-entry more difficult and recidivism more likely—predatory prison phone rates; inadequate access to education; restrictions on employment; and restrictions on voting.

Chapter IV: The Dirty Little Secret of Exorbitant Prison Phone Rates

Almost by definition, incarcerated people are among the most socially excluded, and marginal, members of society. They are locked away, usually in far-off corners of their states; they disappear from public view, frequently for years at a time. What bonds they have with the broader community—whether through jobs, family relationships, or skills—are, inevitably, corroded by time. When they emerge from prison, it is often into a community that has largely forgotten them and into a world that has changed beyond recognition.

One of the few methods that incarcerated people have of maintaining contact with the world they knew before they were incarcerated is communication: in-person visits, letter writing, and phone calls. Many prisoners are incarcerated hundreds of miles from their families, making in-person visits too expensive and time-consuming to be conducted more than a few times a year; and, while many prisoners *do* write letters, prison systems can limit the number of letters permitted per month. Exacerbating this problem is the fact that large numbers of incarcerated people are either illiterate or only marginally literate. Thus, for a sizeable proportion of the country's prison population, phone calls are the most reliable and practical method of maintaining relationships with parents, children, spouses, siblings, and friends.

Yet, discouragingly, too often prison systems and phone companies take advantage of this dependence and—banking on the fact that neither the general public nor its political leaders are likely to make much of a fuss on behalf of incarcerated people—charge what can only be described as scandalously high rates for these vital phone calls.²⁹

They do so in part because regulatory agencies—state public utility commissions for local and intrastate calls, and the Federal Communications Commission (FCC) for interstate calls—have tended to turn a blind eye to the

high prices charged to incarcerated people. They do so also partly as a result of what is euphemistically termed a “commissions” system in place between departments of corrections and phone companies. For every dollar spent by incarcerated people on phone calls, the companies give a payment to the correctional system or the local sheriffs’ department. In many parts of the country, these money transfers can reach upwards of 50 cents on the dollar. Euphemisms aside, these payments, which would be illegal in almost any other branch of government, look strikingly like kickbacks.

The Business of High Prison Phone Rates

Phone companies wanting to do business inside prisons put together proposals that include a commission, in the form of a percentage of gross revenues, paid to the system. The higher the commission a phone company offers correctional departments, the bigger incentive those departments have to go with that particular company. Averaged across the country, these commissions come to just under 42 percent of phone company revenues behind bars, according to data compiled by *Prison Legal News*. In some states, the kickbacks are even more extreme: 49.5 percent in Georgia; 53.7 percent in Arizona; up to 55 percent in Utah; 55.6 percent in Missouri; 56 percent in Illinois; up to 60 percent in Maryland and Oregon.

For the larger state systems, revenues generated for correctional departments can run to millions of dollars per year: nearly \$20 million in California, prior to the state's banning of phone contract commissions in 2011; \$10 million in Illinois; approximately \$4.5 million in Connecticut; nearly \$5 million in Virginia; and \$4 million in Louisiana.³⁰ This is big business, and it locks in place a perverse incentive for companies to charge more, rather than less, for their services, since the state takes almost half of their revenues upfront. The system also provides incentives for states to go with companies that

offer higher kickbacks rather than better phone options for prisoners.

All but eight states have these commission systems in place. The ones that don't, including New York, New Mexico, and South Carolina, have either legislated against the practice or have governors or directors of their departments of corrections who have taken executive action to stop the kickbacks. The efficacy of the bans can be seen when comparing the rate in a state like Arkansas, which retains the commission system, versus Rhode Island, which no longer allows such practices. In Arkansas, *Prison Legal News* researchers found that a 15-minute local call placed on GTL lines costs a person in prison in Arkansas \$4.80 compared to the 70 cents it costs a person in prison in Rhode Island.³¹

In 2005, an article by *Newsday* reporter Zachary Dowdy quoted a New York resident, Rae Walton, whose grandson was serving a 15-year prison sentence. "When the phone bill comes," Walton said, "I look at it and weep. And then I pay the bill because I don't want to jeopardize the line of communication."³² In 2006, Ben Idings, then a student at the University of North Carolina School of Law, wrote about a New York woman with a son incarcerated in a Florida jail on marijuana charges who was billed \$7,000 for phone calls from her son over a 10-month period.³³ And in November 2012, reporter Katy Reckdahl wrote in *The Lens* that "phone calls from Louisiana prisons cost an average of 30 cents a minute—15 times more than non-collect calls originating outside prison gates." Some families, she reported, had spent thousands of dollars over the years to stay in phone contact with incarcerated relatives.³⁴

Numerous court cases have been brought on this issue, but the courts have been extremely reluctant to intervene given the primary jurisdiction of state and federal agencies. Except in cases where phone companies have literally been caught committing fraud—charging incarcerated people for more minutes than they were actually on the phone for—the courts have adopted a hands-off approach. As a result, phone companies in Washington, for example, can charge a \$4.95 connection fee for a long-distance call, plus 89 cents per minute. After 20 minutes, the incarcerated person has to hang up. To continue talking, he has to make a new phone call and pay another \$4.95 connection fee. Phone companies in Oklahoma can charge a \$3.60 connection fee to make a local call. In Colorado, they can charge \$7.35 for a 20-minute local call. In Oregon, they can charge \$17.75 for a 20-minute intrastate call (a call within the state that is outside the local zone).³⁵

The Wright Petition

Traditionally, local and intrastate calls have been under

the jurisdiction of state-level public utility commissions; hence, the federal government has almost no ability to regulate the cost of these calls. But interstate calls fall under the purview of the FCC. And it was here that The Education Fund believed reform needed to start.

In 2000, attorneys working for the Center for Constitutional Rights (CCR) filed a class action lawsuit, *Wright v. Corrections Corporation of America*, alleging that the private prison company was conspiring with phone companies to keep prison phone rates artificially high and, by so doing, to negatively affect incarcerated people's family relationships. The relief sought was better regulation of the cost of interstate phone calls made by incarcerated people. The following year, a district judge referred the case to the FCC. After two years without a settlement, in 2003 the CCR filed its own petition, on behalf of Martha Wright, asking the FCC for a ruling.³⁶

In the years since the petition was filed, numerous incarcerated people wrote to the FCC to urge change. From Pennsylvania's SCI Somerset prison, Cesar Fernandez Jr. wrote to the FCC, as part of the public comments on behalf of the *Wright* petition, urging it to intervene against high phone fees. Every time Fernandez phoned his mother, in Florida, he wrote, it cost more than \$10. And every time he phoned his wife, in Reading, Pennsylvania, it cost him \$5.60.

From a prison in Virginia, Courtney Hienson wrote that it cost him \$12.95 to make a 20-minute call to his family in Maryland. "This makes it nearly impossible to keep a healthy family relationship." He continued, "Please look fairly and openly at this issue when you can. I really miss my family and calling would help!"

Danny Thomas, an incarcerated person in Virginia, wrote that, "Because my children are out of state our level of communication diminishes because of these exorbitant prices. This has a profound effect on our relationship as communication in this environment is absolutely essential for moral, spiritual and social support." Another incarcerated person wrote of having to spend \$20 on cross-country calls. From outside prison, a retired couple whose son was incarcerated wrote of having to spend \$100 a month of their Social Security income on collect calls from their son.³⁷

After more than a decade of advocacy by families, alongside civil rights, consumer, and religious groups, in August 2013, the FCC finally took a stand against predatory prison phone rates, voting 2-1 to reform and reduce interstate rates. With this vote, we believe it will be far more likely that state public utility commissions will also act to limit the rates charged for local and intrastate calls. Strong FCC action on this front has

highlighted an issue too long ignored and can provide powerful precedent for state governors or directors of correctional departments to ban the commissions system that lies at the heart of the high prison phone rate crisis.

We therefore recommend that state public utility commissions cap the rates charged for local and intrastate calls.

Chapter V: Education Works, So Why Isn't There More of It?

As a group, incarcerated people in America are far less educated than their nonincarcerated peers. Nearly 40 percent of incarcerated individuals over 18 years old have not graduated from high school, compared with just over 14 percent of the general population; nearly 20 percent have as their highest educational attainment either a GED® test credential or other high school equivalency, compared with only 4 percent of the non-incarcerated adult population; and only 23 percent of incarcerated people have any post-secondary education, compared with more than half of the general population.³⁸

Historically, people of color make up a disproportionate percentage of incarcerated individuals without a high school diploma. The Bureau of Justice Statistics reported that “27 percent of White [incarcerated people], 44 percent of Blacks, and 53 percent of Hispanics” lacked a high school education in its most recent data from 2003.³⁹

Society has a strong interest in eliminating these disparities. Numerous studies, over several decades, have shown that the more education an incarcerated person receives, the less likely he or she is to return to prison upon release, and the more likely he or she is to earn a living wage once released. As a 2008 meta-analysis of dozens of education outcome surveys published by the Reentry Roundtable on Education found, “Strong observational studies support a conclusion that correctional education reduces recidivism and enhances employment outcomes.”⁴⁰

Researchers with New York’s John Jay College found that offering higher education in prison creates a magnifier effect: prisons with functioning college programs also see increases in numbers of less-educated prisoners completing GED programs (which are still legally mandated, and widely available, in prisons).⁴¹ “It created

an environment in which education was important and people saw a goal to reach for,” explained Vivian Nixon, executive director of the Community and College Fellowship, an organization that helps formerly incarcerated women access higher education.⁴²

The benefits of providing educational services to incarcerated individuals are clear: “Research supports the conclusion that educational programs in prisons reduce recidivism,” according to the College Board.⁴³

The Texas Department of Criminal Justice reported that in 1993, 60 percent of individuals released from prison were reincarcerated, but for those with an associate’s degree the rate was 13.7 percent, and for those with a bachelor’s degree it was 5.6 percent.⁴⁴ Analyses from other states have also found that education generated large declines in recidivism.⁴⁵

A 2003 study of people incarcerated in New York suggested that for those under the age of 21, attaining a GED reduced their likelihood of returning to prison within three years by 14 percent; for those over 21, it reduced the likelihood by 5 percent.⁴⁶ An array of other state studies in Colorado, Maryland, Minnesota, Ohio, and elsewhere over the last couple of decades have shown significant drops in recidivism when incarcerated people earn their GEDs.⁴⁷

The more education a person has, the more likely he or she is to be employed, and the higher his or her earnings will be. According to the Bureau of Labor Statistics, the median weekly earnings in 2012 for those without a high school diploma was \$471, compared with \$1,066 for those with a bachelor’s degree.⁴⁸

Yet despite the evidence extolling the benefits of creating greater access to education for incarcerated and formerly incarcerated people, access to higher education for these individuals has been severely curtailed. In

1994, the Omnibus Crime Bill included a provision that blocked Pell Grants for incarcerated people. Proponents argued that people who had been incarcerated shouldn't be coddled, and that funding their education meant that other, "more deserving," students would end up without grants—though Pell Grants to formerly incarcerated people amounted to only 0.1 percent of the cost of the Pell Grant program.

As a result of this change to the law, the number of higher education programs inside prisons declined precipitously. The very next year, the number of incarcerated individuals able to access higher education declined by 44 percent.⁴⁹ Advocates estimate that the number of functional college programs inside prisons nationally declined from a high of more than 350 in the mid-1980s to eight programs by 1997.⁵⁰

By December 30, 2005, the Bureau of Justice Statistics reported that only 35 percent of prisons were providing some sort of access to higher education.⁵¹ At the same time, the percentage of educators among prison staff declined significantly (to just 3 percent of all employees in state and federal correctional facilities⁵²), thus stretching their expertise even more thinly over an ever-growing incarcerated population.

Promising Investments Still Fall Short

GED Testing Services, the company that develops the GED, estimates that in 2010, 75,000 incarcerated people took their GED—making up 10 percent of the total number of Americans who tested for the GED that year—with a pass rate of 75 percent.⁵³

In 2003, the Federal Bureau of Prisons (BOP) acknowledged the positive impact of education on recidivism rates by requiring incarcerated people in BOP prisons without a high school diploma to study at least 240 hours toward attaining their GEDs while incarcerated. And since 2007, the BOP supported this mandate by heavily investing in GED programs to expand access, especially for those who are nearing their release dates.⁵⁴ Similar efforts were also undertaken by many states.

Between 2002 and 2010, the number of incarcerated people in federal prisons taking the GED increased from about 5,000 per year to 10,000; at a state level, the number rose from about 18,000 to more than 45,000 during this time, while at a local level, the number of test-takers tripled from about 4,100 to nearly 13,000.⁵⁵

Some states and cities have also made significant investments in younger formerly incarcerated individuals. For example, in 2002, a high school catering exclusively to formerly incarcerated people was opened in New York. The school, Community Prep High School, operated until 2010, when the city, struggling to save dollars in the post-2008 fiscal environment, defunded the program.⁵⁶

San Francisco has set up an actual charter school inside its county jail, the first such school in the country.⁵⁷

Yet, despite these innovations, the criminal justice system—including state juvenile facilities, county jails and state and federal prisons—remains disproportionately populated by those lacking high school diplomas and post-secondary education.

Moreover, despite some steps to increase GED accessibility, the country's willingness to tackle comprehensively the correlation between the poor-quality education afforded low-income people and people of color and mass incarceration has diminished in recent years in a number of significant ways.

For example, in 1964, Title II B of the Economic Opportunity Act authorized funding for the country's first federally funded adult basic education program, through the Adult Basic Education Act. The Economic Opportunity Act required that at least one in every \$10 spent on these programs to be used for correctional education. In 1998, the ABEA was replaced by the Workforce Investment Act. Priorities were reversed. Thereafter, despite the growing size of the incarcerated population, *no more* than 10 percent of the funds were allocated to educate incarcerated individuals.⁵⁸

Real People, Real Impacts

Finding better ways to fund prison college education would likely have economic benefits for formerly incarcerated individuals, as well as society as a whole.

Consider, for example, the story of Yanis, a young woman who moved from Puerto Rico to New York and ended up sentenced to 19 years-to-life on drug charges. After two years of English classes, and five more of night classes, she earned her associate's degree. Released from prison several years ago, she enrolled in college to get her bachelor's degree, found a job with a transitional housing agency, and stayed clear of more entanglements with the law.

"Education helped me think beyond myself and my environment and see that there was a better future to head towards," Yanis told the Education from the Inside Out Coalition. "I got into my situation because, as a teenager, money was God to me. But education gave me a new perspective, and a sense of compassion that I work daily to pass on to my son."⁵⁹

Glenn, who went to prison in 1994, earned a degree and now works as the director of The Fortune Society's David Rothenberg Center for Public Policy. "I was lucky enough to have access to college in prison when so many don't," he says, "and the sense of responsibility I have towards these men and women drives my attitude and work ethic to this day."⁶⁰

Yanis and Glenn were fortunate to be able to access higher education despite the changes in the law that took effect in the 1990s. In addition, the viability of this system has been put at risk by the economic recession and the cuts to state-funded programs that occurred in its wake. For example, lawmakers in Indiana recently eliminated higher education scholarships for incarcerated people, essentially dealing a deathblow to the state's correctional college programs.⁶¹

In 2010, Malik Alayube, incarcerated in California, wrote an article for *New America Media*, stating: "I'm an inmate at High Desert State Prison who was on track in pursuing my associate's degree until the prison college programs were recently reduced. State budget cuts have taken away educational opportunities in prisons. Teachers were laid off. College correspondence courses and vocational trainings have been cut drastically. All of these changes signify fewer opportunities for inmates to educate themselves and become more productive citizens when released back into society. If inmates are not given the opportunity to learn new skills in prison, how can you expect them to become law-abiding citizens upon release and re-entry into society?"⁶²

In Texas, the Wyndham School District—a separate school district run exclusively to provide educational opportunities for prisoners—had its budget cut by more than 25 percent in 2011, "from \$130.6 million for the 2010-11 academic year to \$95 million in 2011-12," according to a report in the *Amarillo Globe-News*.⁶³

Access to education and training both inside and outside of prison is fundamental to successful re-entry, decreasing recidivism, and helping the formerly incarcerated find work that pays a living wage. As a nation, we

cannot afford the moral and economic costs of continuing to severely limit incarcerated individuals' access to continuing education and effectively condemning them to unstable, low-wage jobs with the ever-present threat of recidivism.

Instead, *all* those who are incarcerated without a high school diploma or GED ought to be given the right to participate in high school equivalency educational programs and testing. In instances where resources are scarce, those individuals who are close to their release date should get preference for access to education and job skills training programs. It is unconscionable that such a large number of people, who all too often attended underfunded and under-resourced schools, are not provided sufficient opportunities to take basic education classes, which would afford them a chance to participate in the legitimate economy upon release.

We therefore recommend that the federal government:

- **Improve educational opportunity, quality, opportunities and outcomes for incarcerated youth, or those being held in residential juvenile facilities. This should become a priority of the Department of Education's Office of Elementary and Secondary Education, Office of Special Education and Rehabilitative Services, Office of English Language Acquisition, and Office for Civil Rights.**
- **Establish an office of corrections education and staff it with experts on the educational needs of and effective programs for incarcerated and formerly incarcerated youth and adults. The work of this office should be guided by an advisory committee representing diverse stakeholders, including formerly incarcerated individuals.**

Youth Re-Entry

Of the 700,000 individuals that are released from correctional facilities each year, roughly 100,000 are youth ages 24 and under. Lapses in education for youth in juvenile facilities often prevent their successful reintegration. Even in cases where adequate educational programs are provided, students released from juvenile correctional facilities often have difficulty transferring credits to their high schools. These conditions significantly increase the risk of youth dropping out or falling behind and tend to contribute to higher rates of recidivism. In November 2012 and April 2013, the U.S. Department of Education hosted two Summits on Education in Correctional Facilities to address correctional and re-entry education for youth and adults. These meetings identified several critical issues facing youth re-entering society and a coalition of advocates has developed a set of policy recommendations that sought to: 1) improve the quality and availability of educational programs, including special education, programs for English Language Learners, and career/technical training for young people in juvenile and adult correctional settings; 2) improve access to post-secondary education and career/technical training, and necessary supports for young people re-entering the community from secure facilities; and 3) improve cross-system collaboration and appropriate information-sharing that facilitates full access to quality education, career/technical training and necessary supports. See Juvenile Law Center et al., *Recommendations to Improve Correctional and Reentry Education for Young People* 4, 5 n.5 (2013).

- **Fund more pilot programs, making both high school equivalency and higher education more widely available in prisons, utilizing local educational agencies, community colleges, and online learning models. The Department of Education, state education associations and local education associations, in collaboration with local government agencies, community and youth-serving organizations, should establish pathways, programs and supports for re-entering juveniles and youth to enable them to return to an appropriate educational setting and to complete their secondary education and earn a diploma.**

The Benefits of Correctional Education

A new report by the RAND Corporation—funded through the Second Chance Act—examines all U.S.-based studies on correctional education in order to assess the impact that correctional education has on the post-release outcomes of individuals returning home from prison or jail. The RAND report confirmed what we already know about the importance of correctional education programming—namely, that educational programs in prison reduce the risk of recidivism. The report concludes that, “on average, inmates who participated in correctional education programs had 43 percent lower odds of recidivating than inmates who did not.” The report also suggests that there is a strong correlation between correctional education and post-release employment, finding that the “the odds of obtaining employment post-release among inmates who participated in correctional education (either academic or vocational) was 13 percent higher than the odds of those who had not participated.” Moreover, these programs are extremely cost effective. When comparing the direct costs to incarcerate versus the cost to educate (based on three-year incarceration rates of a pool of 100 inmates), RAND concluded that reincarceration costs would be \$0.87 million to \$0.97 million less for those who receive correctional education than for those who did not. As the RAND report demonstrates, sound investments in correctional education programs are instrumental to the reintegration of formerly incarcerated individuals into their communities, and actually save taxpayers some money.

Chapter VI: Out of Prison, Out of Work

Whatever their education level, formerly incarcerated people face a slew of state and federal restrictions on employment eligibility, limits on their ability to access public housing, and harsh regulations that make it difficult-to-impossible to receive government education grants. Cumulatively, these restrictions make it that much harder for formerly incarcerated people to find, and hold, employment.

“In 2008, about one in 33 working-age adults was an ex-prisoner and about one in 15 working-age adults was an ex-felon,” the Center for Economic and Policy Research reported in November 2010.⁶⁴

According to the Urban Institute, “Most individuals released from prison held some type of job prior to incarceration and want legal, stable employment upon release. . . . However, most former prisoners experience difficulty finding a job after release.”⁶⁵ The researchers found that two months after being released, only 31 percent of inmates were employed. Even eight months after release, fewer than half were currently employed. The majority of those who had found work were working in construction or manual labor, in maintenance, or in factories. Their median hourly wage was \$8 per hour.

In some instances, formerly incarcerated people find themselves unable to utilize the skills and knowledge picked up in education programs while in prison. “Once my felony was detected,” wrote one formerly incarcerated individual with a master’s degree in public administration, “all offers of employment were rescinded immediately. I found myself joining the ranks of the unemployable.”⁶⁶

In fact, only about half of formerly incarcerated people find employment within a year of release.⁶⁷

Stable employment lowers recidivism and is key to successful re-entry into society. Studies have shown

that providing individuals who were once incarcerated the opportunity for stable employment actually lowers recidivism rates and thus increases public safety.⁶⁸ According to former Secretary of Labor Hilda L. Solis, “Stable employment helps ex-offenders stay out of the legal system. Focusing on that end is the right thing to do for these individuals, and it makes sense for local communities and our economy as a whole.”⁶⁹

Unfortunately, restrictions on the sorts of jobs that people with criminal records can hold have been increasing for several decades and have accelerated in recent years. Use of criminal background checks in employment is widespread. More than 90 percent of companies reported using criminal background checks for their hiring decisions, which is up from 51 percent in 1996.⁷⁰ These background checks are used for a wide range of jobs, from warehouse workers and delivery drivers to sales clerks.

At the federal level, the security precautions taken post-9/11 have interacted with the War on Drugs, in particular, to create a set of unintended consequences that bar huge numbers of people, a disproportionate number of whom are Black and Latino, from working in ports and other important, well-paying sectors, despite the fact their crimes have nothing to do with terrorism.

Thus, one of the great paradoxes within the criminal justice system is that even when incarcerated people have access to education and training inside prison, too often restrictions on employment and accessing government assistance when they are released mean that they cannot fully utilize the skills they have acquired while living out their sentences behind bars. It’s a uniquely dysfunctional and costly form of double indemnity.

Take, for example, the story of Tim Baker, as told by *Fort-Worth Star-Telegram* reporter Mitch Mitchell.

“Baker had a number of scrapes with the law, ending with felony convictions on two charges of driving while intoxicated. After an eight-year prison stay, he was released. He got a job as a heating and air-conditioning technician and reunited with his family. But he was let go after the company began working for a school district, which prohibits convicted felons from being on school property.” Baker’s crimes didn’t involve children, but the catch-all legislation meant he couldn’t work a job for which he was well qualified.⁷¹

Or take the catch-22 faced by D.C. resident Haywood Warner, as reported in a 2009 *Washington Times*’ article. “He left out his convictions—one for robbery, two for selling narcotics—on a job application for a road-maintenance position. He was hired and worked for two years until his background was checked. The employer fired him for lying on his job application. ‘But if I wouldn’t have lied, you understand, I wouldn’t have gotten the job,’ he said. ‘And I wasn’t doing anything but pushing the lawn mower.’”⁷²

Limited Options

Formerly incarcerated people are limited by state and federal laws from working in a host of industries, including, in many states, all those that require professional licenses. In Texas, for example, 171 types of occupations require licenses that individuals convicted of a felony or misdemeanor cannot get. Thus, everything from accountant to truck driver to plumber is off-limits to formerly incarcerated people looking for work in Texas.⁷³

Criminal background checks carried out by employers frequently result in individuals with criminal records not being hired, or being fired for having not mentioned their criminal past in their job interview. Because people of color are arrested and convicted at rates that far exceed their representation in the population at large, criminal records-based discrimination can be a proxy for discrimination based on race. The effect of these racially disparate statistics is substantial. As a recent study found,

*a criminal record reduces the likelihood of a callback or employment offer by nearly 50%. But the penalty of a criminal record is significantly more severe for Blacks than Whites. Among Blacks without criminal records, only 14% received callbacks, relative to 34% of White noncriminals In fact, even Whites with criminal records received more favorable treatment (17%) than Blacks without criminal records.*⁷⁴

In addition to having a discriminatory impact, employer precautions may result in eliminating job opportunities for many people who pose minimal to no risk. In fact,

there is little research that shows any correlation between the existence of a criminal record and the propensity to commit crimes at the workplace.⁷⁵ It is also worth noting that background checks are often plagued by errors in reporting data, because the reports often inappropriately include information about sealed or expunged offenses (like juvenile offenses) or arrests that don’t lead to conviction.⁷⁶ Federal Bureau of Investigation (FBI) records routinely fail to report important information on the outcome of arrests. Clear federal mandates require background reports to be complete and accurate, yet 50 percent of the FBI’s records fail to include information on the final disposition of the case. With 17 million background checks conducted in 2012, the errors in the federal database adversely affect workers who have had contact with the criminal justice system.⁷⁷

In short, getting a job may be one of the most important steps toward successful re-entry for people who have been incarcerated. The fact that some employers cast an overly broad net by issuing a blanket ban on hiring all individuals with criminal backgrounds has a disproportionate impact on people of color and may run afoul of civil and human rights protections.

Striking the Right Balance

The Education Fund believes that as a society we must balance security and safety requirements with the economic needs of people re-entering society.

The Equal Employment Opportunity Commission (EEOC) has tried to strike this balance. In its revised guidance, the EEOC has provided best practices for employers who are considering criminal record information when making employment decisions.⁷⁸

Recognizing that hiring new employees is a critically important function in any business, government agency, or nonprofit organization, the recently released “[Best Practice Standards: The Proper Use of Criminal Records in Hiring](#)” provides guidance to employers to avoid running afoul of the EEOC hiring guidelines, by weighing adverse personal histories to find applicants who will contribute most to the productivity of the organization. The report detailed a number of recommendations and advised employers as follows:

- Consider only convictions and pending prosecutions, rather than arrests not subject to active prosecution.
- Consider only convictions recent enough to indicate significant risk
- Do not ask about criminal records on applicant forms.
- Use a qualified consumer reporting agency to con-

duct records checks.

- Confirm all information from online databases with original source information.
- Consider evidence of rehabilitation when evaluating individuals with convictions for future employment.

We recommend that the federal government adopt fair hiring policies regarding federal employment and contracting that serve as a model for all employers. Additionally, proposals like the Work Opportunity Tax Credit provide needed incentives for employers to hire suitably qualified formerly incarcerated workers.

There is also a critical need for legislation that ensures accuracy and provides safeguards for criminal background records prepared for employment. For example, legislation like the Fairness and Accuracy in Employment Background Checks Act and the Accurate Background Check Act would improve the reliability and accuracy of criminal background checks issued by the FBI for employment screening purposes, greatly assisting job applicants, employers, and government agencies that conduct background checks.

Chapter VII: When Millions of Americans Aren't Allowed to Vote, It's Bad for the Citizen and Bad for the Community

While employment is clearly a vital part of successful re-entry, The Education Fund believes that civic engagement is equally important and that there is no rational reason to take away someone's voting rights for life just because they've committed a crime, especially after they've completed their sentence and made amends. According to the American Civil Liberties Union:

Studies have shown that the benefits of voting are numerous. Individuals who vote generally help to make their communities safer and more vibrant by giving to charity, volunteering, attending school board meetings, serving on juries and participating more actively in their communities.

Research has also shown that formerly incarcerated individuals who vote are less likely to be rearrested.⁷⁹ In Florida, where former Governor Charlie Crist briefly made it easier for people with felony convictions to get their voting rights restored, a parole commission study found that re-enfranchised people with felony convictions were far less likely to reoffend than those who hadn't gotten their rights back.⁸⁰ According to the report, the overall three-year recidivism rate of all formerly incarcerated people was 33.1 percent, while the rate for formerly incarcerated people who were given their voting rights back was 11 percent.

Yet despite this, several states, mainly in the South, still impose what amounts to permanent disenfranchisement for felony convictions. According to data released by the Sentencing Project in July 2012, in Florida alone a stunning 1.5 million people, or more than 10 percent of the voting age population, are disenfranchised because of previous felony convictions. In Mississippi, more than 8 percent have lost the right to vote. In Kentucky, Virginia, Alabama, and Tennessee, more than 7 percent are unable to vote. This contrasts with a state like

Hawaii, which has no permanent disenfranchisement provision and has a 0.5 percent disenfranchisement rate reflecting those currently in prison.⁸¹

While there was a flurry of reform regarding disenfranchisement of formerly incarcerated individuals in the years following the 2000 election, the reforms have stalled and, in some cases, the process has gone into reverse. In 2005, Iowa Governor Tom Vilsack issued an executive order automatically restoring voting rights to all people who were formerly incarcerated for felony convictions. Six years later, his successor Terry Branstad nullified the reform.⁸² In March 2011, former Florida Governor Crist's attempts to streamline the re-enfranchisement process were ended by his successor, Rick Scott.⁸³

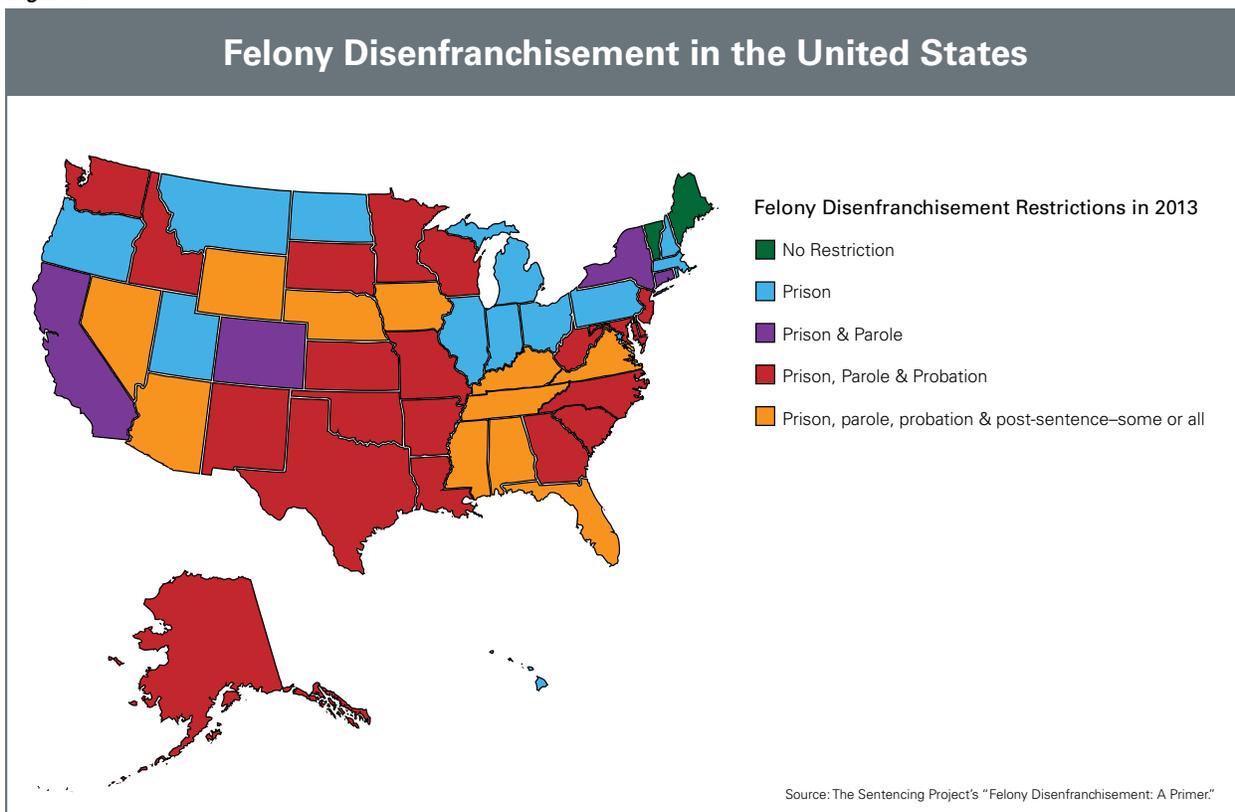
Recently, there have been efforts in two states to re-enfranchise a segment of the formerly incarcerated population. In both Delaware and Virginia, lawmakers have made it easier for nonviolent offenders to regain their voting rights upon completion of their criminal convictions. While these efforts are noteworthy and progressive, much more reform is needed to significantly reduce the numbers of disenfranchised individuals.

Today, approximately a dozen states still have some form of permanent disenfranchisement on the books.

Because each state in the United States has established its own laws with regard to the deprivation of the right to vote after a criminal conviction, what has resulted is a patchwork of laws throughout the country. (See *Figure 1*) In brief:

- Thirty-five states prohibit voting by persons who are on parole but not incarcerated; 30 deny voting rights to persons on felony probation.
- Eleven states restrict the rights of persons who have completed their sentences in their entirety; and formerly incarcerated persons in those 11 states make

Figure 1



up about 45 percent of the entire disenfranchised population, totaling more than 2.6 million people.

- Four states deprive all people with a criminal conviction of the right to vote unless pardoned by the governor, irrespective of the gravity of the crime or if the sentence has been served.
- In America's 11 permanent disenfranchisement states, even after the completion of a probation sentence or completion of a prison sentence followed by parole, an individual can't vote without extraordinary intervention from political leaders. In Mississippi, that intervention involves the legislature passing a bill to personally re-enfranchise an individual, while in Florida it involves the governor signing off on clemency papers.⁸⁴

The racial aspect of disenfranchisement makes this unjust situation even worse. Since the late 1990s, as the legacy of mass incarceration collided with permanent disenfranchisement laws, in some states in the Deep South, upwards of one quarter of Black men are disenfranchised.⁸⁵ In 2012, sociologists Christopher Uggen, Sarah Shannon, and Jeff Manza estimated that 5.8 million felons and ex-felons are currently barred from voting. Nationally, one out of every 13 African-American men are disenfranchised, a rate more than four times greater than for non African-American men. In total, nearly 7.7 percent of the African-American population

is disenfranchised compared to 1.8 percent of the non African-American population.⁸⁶

Disenfranchisement not only has a detrimental impact on individuals, it cumulatively impacts the greater society as a whole because it only serves to further isolate and alienate a group of individuals at a time when they are trying to reintegrate into society. In effect, the United States has established a system of second-class citizenry for those who have been incarcerated.

As Jamaica S., a 25-year-old on probation in Tennessee who had lost her right to vote, told journalist Sasha Abramsky, "It seems when you're convicted of a felony, the scarlet letter is there. You take it everywhere with you."⁸⁷

The scope and impact of these disenfranchisement laws in the United States are harsher than those in any other democracy, especially with regard to the continued deprivation of rights after incarceration. "The United States stands alone in the democratic world in imposing restrictions on the voting rights of a very large group of non-incarcerated felons," wrote Uggen and Manza.⁸⁸ Because of the anomalous nature of American felon disenfranchisement codes, several leading human rights scholars have urged the International Covenant on Civil and Political Rights (ICCPR), which already contains

language declaring every citizen has the right to vote, to add in a protocol explicitly banning the practice of permanent felon disenfranchisement.⁸⁹

The Human Rights Commission (HRC), a panel of international legal scholars that determines whether states are in compliance with the provisions of the IC-CPR, believes that catch-all laws barring people who were formerly incarcerated for felony convictions from voting violate Articles 25 and 10.3 of the convention. “We’d question whether blanket disenfranchisement was compatible with the convention at all, bearing in mind Article 25—the right to participate in government; and article 10.3, which states that the primary goal of incarceration is rehabilitation,” argues HRC member Nigel Rodley.⁹⁰

Many politicians agree with Rodley. In 2009, then-Senator Russ Feingold and Representative John Conyers introduced the Democracy Restoration Act. It would have restored the right to vote in federal elections for those on probation, as well as for those who had completed their prison and parole sentences. Importantly, in an era in which misinformation about voting rights is rife, it would have set aside resources to educate formerly incarcerated individuals about their political rights. Yet the Act hasn’t moved through Congress. It has been introduced every year since 2009, and each year, it has stalled.⁹¹

Since states have shown themselves to be reluctant to deal with the crisis of disenfranchisement—and have even moved, in the case of Florida and Iowa, to reinstitute disenfranchisement—there is a critical need for federal intervention on the issue.

On November 3, 2012, *The New York Times* ran an editorial highlighting the resulting confusion in the states that the absence of federal intervention has helped create. Citing a 2005 finding of the Sentencing Project, the editorial stated:

37 percent of public officials surveyed in 10 states either misstated a central provision of the voter eligibility law or were unsure about what the law said. Disenfranchisement and restoration policies represent a kind of ‘crazy quilt’ of strictures that differ not just among states, but among counties, cities and towns as well. Some states even ban people convicted of misdemeanors from voting. With so much confusion among those who administer the laws, it is no surprise that people who are legally entitled to vote either don’t try out of fear that they would be committing a crime or are wrongly turned away.⁹²

The situation is so grim that, in December 2012, The Leadership Conference on Civil and Human Rights filed a report with the ICCPR Human Rights Committee, urging the committee to question the United States about how it is implementing treaty provisions related to access to political life, and specifically felony disenfranchisement. This request followed up on the committee’s 2006 concluding observations and recommendations to the U.S. addressing its failure to take the necessary steps to ensure access to political participation for all citizens, including persons with felony convictions.

As it stands now, such widespread confusion and isolation neither facilitates reintegration of formerly incarcerated individuals back into society nor assists the broader community in living up to its democratic aspirations. Thus, it is reasonable to assume that this kind of alienation and isolation only serves to increase further incidences of criminal activity. Simply put, without a stake in one’s community, there is little incentive to behave in a manner that furthers the common good.

If the goal of the American criminal justice system is to increase public safety by reducing crime, then policies like felony disenfranchisement, which result in increased rates of crime, are counterproductive. **Rather, it is in the best interests of our society for policymakers to support national and local legislation, like the Democracy Restoration Act, and other initiatives to provide formerly incarcerated individuals with access to the franchise.**

Additionally, we recommend that the federal government:

- **Implement the recommendations of the 2001 report of the National Commission on Federal Election Reform, chaired by former Presidents Carter and Ford, which recommended that all states restore voting rights to citizens who have fully served their sentences.**
- **Commission an independent report to study the impact of felony disenfranchisement laws on minority populations.**
- **Create incentives for the states to encourage automatic restoration of voting rights upon release from prison; provide appropriate notice to criminal defendants of the impact of prison on their voting rights; and make the Department of Corrections, as well as probation and parole authorities, responsible for assisting with voluntary voter registration.**

Conclusion and Recommendations

The issues that this report focuses on segue one into the other. A formerly incarcerated person who maintains strong family ties, facilitated by affordable phone communications, is more likely to be motivated to take part in education and training opportunities that present themselves in prison. An educated, trained prisoner is more likely to find employment once released; more likely to keep that employment; more likely to earn more than minimum wage; and far less likely to return to prison. Conversely, an undereducated formerly incarcerated individual is likely to spend the rest of his or her life struggling to make ends meet.

For formerly incarcerated individuals who are educated and employed, the post-prison economic situation they face may not be quite as bleak—and those earning a paycheck are certainly more likely to feel like they have a stake in their community and to want to participate politically. But their civic status remains scarred by the fact that, in many states, felon disenfranchisement laws remain on the books. The effect is to push out to society's margins people trying, and needing, to participate as citizens.

With nearly 700,000 people released from prison each year, these overlapping issues are an imminent challenge. While The Education Fund recognizes that these recommendations alone will neither solve the problems that led to mass incarceration in the first place, nor eliminate the consequences that have followed in its wake, we do believe that they are necessary steps toward resetting America's criminal justice systems onto fairer, more cost-effective, and less harmful paths.

Toward that end, we offer the following recommendations.

There are a number of federal laws and policies that can help prevent the cycle of incarceration. These

include:

- The Second Chance Act.
- The Democracy Restoration Act.
- Pell Grant access for incarcerated individuals.
- The Fairness and Accuracy in Employment Background Checks Act.
- The Work Opportunity Tax Credit, an incentive for employers to hire suitably qualified formerly incarcerated workers.

The federal government has an important role to play in decreasing barriers to re-entry. The administration and executive branch agencies should:

- Improve educational opportunities and outcomes for incarcerated youth, or those being held in residential juvenile facilities. This should become a priority of the Department of Education's Office of Elementary and Secondary Education, Office of Special Education and Rehabilitative Services, Office of English Language Acquisition, and Office for Civil Rights.
- Establish an office of corrections education and staff it with experts on the educational needs of and effective programs for incarcerated and formerly incarcerated youth and adults. The work of this office should be guided by an advisory committee representing diverse stakeholders, including formerly incarcerated individuals.
- Fund more pilot programs, making both high school equivalency and higher education more widely available in prisons, utilizing local educational agencies, community colleges, and online learning models. The Department of Education, state education associations and local education associations, in collaboration with local government agencies, community and youth-serving organizations, should establish pathways, programs and supports for re-

entering juveniles and youth to enable them return to an appropriate educational setting and to complete their secondary education and earn a diploma.

- Adopt fair hiring policies regulating federal employment and contracting that serve as a model for all employers.
- Implement the recommendations of the 2001 report of the National Commission on Federal Election Reform, chaired by former Presidents Carter and Ford, which recommended that all states restore voting rights to citizens who have fully served their sentences.
- Commission an independent report to study the impact of felony disenfranchisement laws on minority populations.
- Fully implement the attorney general's recent "Smart on Crime" initiative, so that collateral consequences that serve as barriers to re-entry are thoroughly reviewed and re-evaluated in a way that reduces recidivism. U.S. attorneys should work with state attorneys general to encourage them to review collateral consequences at the state level and make recommendations for changes where they are found to be both burdensome and do not further public safety interests.
- Create incentives for the states to encourage automatic restoration of voting rights upon release from prison; provide appropriate notice to criminal defendants of the impact of prison on their voting rights; and make the Department of Corrections, as well as probation and parole authorities, responsible for assisting with voluntary voter registration.

Finally, the federal government has a critical role to play in providing a powerful impetus for state reform. The Federal Communications Commission has taken an important step in capping interstate phone rates. State regulatory bodies with authority over local telephone rates should follow this lead, in order to improve the situation at every level.

Endnotes

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 2. Despite extremely high state and local incarceration rates, California’s recidivism rate—the rate at which people released from prison are returned to prison—was among the highest in the nation, at 67.5 percent. California Department of Corrections and Rehabilitation, “2010 Adult Institutions Outcome Evaluation Report” at Pg. 11. October 11, 2010. http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/ARB_FY0506_Outcome_Evaluation_Report.pdf.
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Notes

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