

Submitter Information

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Bad Hands and Stacked Decks:

Barriers to Reentry and Collateral Consequences for Women of Color

After their release from prison, people face the collateral consequences of criminal convictions, the effects of which reach beyond the time they were sentenced to serve. These consequences present enormous barriers to reentering society on the “outside,” and just as incarceration rates are racially disparate, collateral consequences have substantially disparate impacts. This paper will address financial barriers to reentry, as well barriers to adequate housing, employment, family life, and citizenship, focusing on the experience of women of color.

As of 2005, people identified by the Bureau of Prisons as female comprised 7% of the total population in federal and state prisons (Bureau of Justice Statistics 2005). Between 1977 and 2004, the number of women serving sentences of more than a year grew 757 percent, nearly twice the rate of growth for the male prison population (Frost, Greene & Pranis 2006). African-Americans, Latinas or other members of non-white racial/ethnic groups make up almost two thirds of the population of women prisoners (Richie 2001). As with incarceration rates overall, drug offense sentences play a major role in the high incarceration rate of women. In fact, women are more likely than men to be serving sentences for drug offenses. In 2003, 29% of women prisoners were incarcerated for drug offenses in comparison to 19% of men (Sentencing Project, 2007). Between 1986 and 1996, nearly half the increase in the number of women incarcerated was accounted for by drug offenses (Mauer, Potler & Wolfe, 1999). African American and Latina women make up a disproportionate share of the women imprisoned for drug offenses (Diaz-Cotto 2005).

The disproportionate conviction rate of women for drug offenses is of particular importance because drug-related offenses have the most serious collateral consequences. Many policies restrict people with drug-related offenses from receiving public assistance. These include restrictions on welfare, food stamps, access to public housing, the Housing Choice Voucher program (formerly known as Section 8) and other federally assisted housing programs, as well as student loans.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which sought to reform welfare, contained a provision subjecting people convicted of felony drug offenses at either the state or federal level to a lifetime ban on receiving cash assistance or food stamps. States may opt out of or modify this provision, however, a significant number of states have remained opted in. The absence of transitional assistance provided by welfare and food stamps creates several massive barriers to reentry for low-income women. Furthermore, the increasingly well-documented racial disparity in enforcement of drug laws combined with the disproportionate representation of African-American and Latina women in the welfare system due to gender and race-based socioeconomic inequality coalesce to make the lifetime ban extremely painful for low-income women of color (Mauer, Potler & Wolfe, 1999). These programs previously supported women as they attempt to obtain employment, seek safe and affordable housing, and support their families, and without this transitional income recidivism, destitution and dissolution of families all become much more likely.

A lack of safe and affordable housing is one of the most commonly cited concerns about reentry expressed by incarcerated women, and some experts say that access to housing alone is a powerful predictor for recidivism (Ritchie 2001). People with criminal records face difficulties in

both the public and private sectors. This has led to a profound national problem of houselessness amongst parolees and former convicts (Oyama 2009).

Tenant screening based on criminal history has become an increasing common practice in for private housing providers. Background checks have become increasingly easy for landlords to perform, particularly for property management firms (Oyama 2009). Aside from the racial bias inherent in basing rental decisions on criminal records, landlords can use background checks to mask personal prejudices against potential tenants based on gender, nationality, race, ethnicity, perceived sexual orientation, or any other personal characteristic.

The public housing available is also contingent on criminal record. As of 2005, anyone convicted of a felony was ineligible for public housing for five years (Carey). Public Housing Authorities (PHAs) can screen potential and current tenants for eligibility or eviction. The “One Strike” clause added to the 1988 Anti-Drug Abuse Act in 1996 allowed PHAs to evict tenants for drug related activity, regardless of whether the activity took place on the premises (Carrey 2005). PHAs can deny HUD, public and otherwise federally-subsidized housing to anyone involved in violent or drug-related crimes no matter how long ago the crime took place. As Tonry argues elegantly, a crackdown on drugs means a crackdown on low-income minority neighborhoods – exactly the neighborhoods public housing is likely to be located in (1995). The ease of and emphasis on policing such neighborhoods makes drug arrests more likely, disqualifying people for tenancy if not simply sending them back to jail, only to be even less likely to find housing upon their release.

Harsh collateral consequences for people convicted of drug offenses also limit the availability of higher education. The Higher Education Act of 1998 suspends eligibility for any loan, grant or work assistance for students convicted of drug-related offenses. This ban lasts

anywhere from a year to an indefinite period (Bushway & Sweeten 2007). This effectively limits upper education to an opportunity for only the most privileged students who can afford to pay for their education in full, preventing others from attaining credentials that could help them get better jobs.

Finding legitimate employment is one of the most important elements in diminishing recidivism. However, criminal convictions create many difficulties for people who are job hunting. For many women released from incarceration, being seen as an “ex-con” only worsens already poor prospects for employment.

Explicit collateral consequences of criminal convictions include a ban on certain types of occupational licensure, even if the conviction is unrelated to the licensure sought. Licensing agencies have essentially unlimited discretion in denying licensures based on criminal records (Petersilla 2001). Ex-felons are barred from nearly 800 occupations in the United States due to laws against hiring or licensure (Bushway & Sweeten 2007).

One explicit consequence that affects employment opportunities less directly is restricting the ability to drive. Many states revoke or suspend a person’s driver’s license if they have been convicted of driving while intoxicated or a drug offense. Congress passed a law in 1991 withholding twenty percent of certain highway funding from states that did not do so (Love 2005).

Implicit barriers to employment also exist. Employers are very resistant to hiring people with criminal records. One study reported that 30-40% of employers check applicants’ criminal histories, and 65% of all employers would not knowingly hire someone with a criminal conviction (Holzer 1996). This has led to one of the most popular campaigns to promote ex-offender employment: “Ban the Box”. Spearheaded by Oakland-based advocacy group All of Us

or None, the goal is to eliminate the checkbox on job applications that asks whether the applicant has a criminal record (Henry & Jacobs 2007). This is particularly important given the difficulty of record expungement, and the ability of private employers to ask about criminal records and arrests, including sealed arrest records and arrests that did not lead to convictions.

What scant potential for rehabilitation in the form of increased employability prison can offer prisoners is less available to women. On one hand, women's correctional institutions offer vocational training at a similar rate to men's institutions. However, the vocational training offered to women tends to be in "pink collar" industries such as administrative and service occupations, rather than in traditionally male fields such as production, construction or building trades. These types of stereotypically female occupations tend to lead to unstable and underpaid jobs (Lahm 2000). This undercuts the vocational training's ability to assist women's reentry upon release, as they remain unable to find sufficient employment.

Reintegration into family life is a key aspect of reintegration into society after imprisonment. A desire to reunite with family, particularly children, is often addressed in discussion about the effects of imprisonment on women. Although this is no doubt partially due to stereotypical conceptions about womanhood, it has a factual basis. While approximately 80% of women prisoners are mothers, about half of men in prison are fathers (Petersilla 2001). Any imprisonment has the impact of separating a parent from their children, and this is exacerbated by the fact that since fewer women are incarcerated, there are fewer women's facilities and thus the facilities are more often more distant from the prisoner's family's residence, making family visits more difficult. Despite the fact that such a large proportion of women prisoners are mothers, and stable and sustainable family arrangements limit recidivism, very few services to address family reunification needs exist (Ritchie 2001).

In fact, parental rights are more often eroded by prison time. In contrast to men, women are at a higher risk for losing their children because most of them are single mothers. The Adoption and Safe Families Act (ASFA) of 1997 accelerates the termination of parental rights, requiring states to seek termination if a child has been in foster care for 15 of the previous 22 months (Jacobs 2001-02). In most cases, women charged with drug offenses receive 19 month sentences, thus placing them at risk of losing their children (Obas 2005). A sentence of at least 24 months is the reality facing more than 60% of mothers in prison (Mumola 2000). 12 months is also a very short time frame for a woman attempting to reestablish a stable family life after release, without employment, housing and/or a driver's license.

For former convicts who have established themselves and are looking to start a family, the barriers persist. The ASFA also mandates states run criminal background checks on all potential foster or adoptive parents. Fifteen states completely prohibit people with criminal records from being foster or adoptive parents (Bushway & Sweeten 2007).

The collateral consequences discussed above present profound barriers to reentry in terms of financial stability, securing housing, becoming employed, and maintaining a family life. All of these are hallmarks of having a meaningful position in society. But perhaps the most elusive element of reintegration into society is the effect of convictions on curtailing citizenship.

Citizenship can be seen as having three elements: the legal status of citizen, the rights and entitlements afforded to members of a state and citizenship as civic participation and engagement. Each of these is affected by imprisonment and subsequent criminal records. When interviewed, prisoners, particularly those with felony convictions, feel that their circumscribed citizenship is at odds with the goals of successful reentry and "pro-social" behavior patterns (Uggen, Manza & Behrens 2004).

Women who are lawful permanent residents of the United States, but not citizens, face the additional collateral consequence of deportation. Hundreds of people are deported annually, despite being lawful permanent resident aliens with “green cards” or legally admitted refugees (Hing 2005). The crimes with the strictest penalties regarding immigration are so-called “aggravated felonies” as defined in the Immigration and Nationality Act. If a non-citizen is convicted of one of these crimes, they are deemed an aggravated felon, and subject to being held without bail until deportation (Hing 2005). These crimes include some types of theft, alien smuggling, murder and drug offenses. For non-citizens, deportation can be a result of any drug violation other than possession of less than 30 grams of marijuana (Chin 2002). For lawful permanent resident aliens and refugee populations, the barriers to reentry are not only high, but also particularly crucial to overcome, as any deviation becomes a threat to residence in the United States. For women who have naturalized and have obtained legal United States citizen status, deportation is no longer a potential punishment.

Citizenship can also be defined as a collection of rights. As discussed above, many things commonly as perceived as rights can be revoked due to criminal history. Discrimination based on race or disability is a violation of the Fair Housing Act, but discrimination based on criminal records is acceptable. The right to bear arms is often affected by criminal records. Ex-convicts are no longer allowed equal protection under the law.

If citizenship is defined actively as a function of civic engagement and participation, there are even more ways in which a criminal record inhibits or precludes citizenship. Women of color are systematically underrepresented in the political and criminal justice processes, and their imprisonment furthers this trend. Criminal records can also exclude people from campaigning for political office and jury duty (Bushway & Sweeten 2007).

In 48 states, a felony conviction results in a lifelong ban on voting, and in some states misdemeanors can result in a ban as well (ACLU 2008). Often people on parole and/or probation are unable to vote. As of 2008, more than 5.3 million Americans were prevented from voting by their criminal records (ACLU). The laws surrounding when people with criminal records can vote are complex, and the process of re-enfranchisement is confusing. This leaves many ex-convicts unsure about their ability to vote. This is particularly true for people who do not speak English as a first language or who have limited literacy. Women in prison tend to be undereducated, with 44% of women in state prison lacking either a high school diploma or a GED (Harlow 2003).

Advocates for prisoners' rights argue that former prisoners must have *all* the rights and privileges associated with citizenship in society in order to re-enter society successfully. Social movements have mobilized around most, if not all, of the collateral consequences discussed above (Guilford 2010). Perhaps the most successful has been the push to restore voting rights to felons. Since 1997, twenty-three states have made some type of reform to their felony disenfranchisement practices (Mauer 2011). Major cities like Chicago, Boston and San Francisco have eliminated questions about criminal histories on job application forms (Henry 2008). There have also been less successful campaigns in various states to rescind the ban on felons receiving food stamps, mostly recently in Missouri (Ackerman 2012). These reforms are modest in comparison to the sum total of conviction's collateral consequences, and more symbolic than substantive.

Scholars and policy-makers are becoming aware of what former prisoners have known all along: the impact of criminal convictions extends far beyond the time "inside" (Chin 2002). Collateral consequences are far-reaching and devastating, interlocking to form oppressive

systems of mutually conflicting conditions that make reentry extremely difficult, and particularly for people who were in a disadvantaged social location before imprisonment. The number of women imprisoned in the United States continues to skyrocket, with women of color disproportionately affected. Upon release, these women will find it difficult, if not impossible, to find jobs, afford higher education, participate in civic society and more.

If the goal of imprisonment is to rehabilitate people who have committed crimes, punishment should end with the prison sentence. As a society, we should build on the efforts of Chicago, Boston and San Francisco at removing barriers to employment. We should encourage all states to reinstate voting rights and access to government assistance. As long as a prison stay relegates women to second-class citizenship, all sentences are life sentences.

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