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CIVIL RIGHTS FOR JUSTICE-INVOLVED AMERICANS

By Emma Jing

INTRODUCTION



Community-based reentry programs, provided to ex-felons as a means to support their successful reintegration into society, host a ranging group of social, financial, and educational services.

GEO Reentry Services

Justice-Involved Individuals – *individuals who have interactions with the criminal justice system as a defendant.*

Are civil rights truly unconditional? In recent years, reinstating civil rights and opportunities for currently and formerly incarcerated individuals has taken center stage in the debate over criminal justice reform in the United States. While the Constitution technically guarantees certain rights to all citizens, nominally including currently or formerly incarcerated Americans, the reality is that they individuals often face significant obstacles to accessing these rights and opportunities. The debate on civil rights for **justice-involved individuals** often turns into an ethical debate on the nature of crime and punishment. But from a purely policy-driven perspective, their civil rights pose a significant and pressing question of the function of our criminal justice system and our willingness to help these individuals reintegrate into society.

While many civil rights advocacy groups focus on civil rights for actively incarcerated individuals, the problem extends far beyond the period of incarceration itself and affects the process of reentry for many formerly incarcerated Americans. To promote their successful reentry into society, senators on the Senate Judiciary Committee must first address the question of restoring civil rights and removing the barriers that prevent these individuals from opportunities and social support. Restrictions on the public and private lives of these formerly incarcerated individuals include partial or total restrictions on voting, the inability to access certain public benefits, worse employment opportunities, and issues accessing fair housing. Through the process of restoring these rights and opportunities, reform advocates hope to give formerly incarcerated individuals a second chance and the ability to rebuild their lives.

Historical Development

Mass incarceration – refers to the unique state of the U.S. justice system that causes the U.S. to lead the world in incarceration rates.

The US federal prison system was established in the 19th century to serve as a more just and humane alternative to the severe punishments of the British legal system. While the incarcerated population remained largely steady for many years, there were often spikes in that number. For instance, incarceration spiked after the passage of the 13th Amendment, as “public anxiety” around emancipation led to the passage of strict “Black Codes” and a steep increase in arrests of Black Americans (Delaney et. al, 2016). By the 1970s, however, the prison population was rapidly increasing with the implementation of stricter policies that ushered in the current era of **mass incarceration** (Delaney et. al, 2016).

Spurred by public anxieties over an uptick in violent crime and inflammatory campaign rhetoric riddled with racial undertones, federal, state, and local leaders enacted strict crime policies that saw the national prison population more than double in just a decade. Ronald Reagan’s administration declared a “War on Drugs” in the early 1980s that targeted drug usage in urban centers, particularly drugs used disproportionately by Black Americans. This policy kicked off a decades-long legislative endeavor that emphasized adopting “tough on crime” law enforcement strategies, passing stricter sentencing laws, and overcrowding already under-resourced prisons (Delaney et. al, 2016). As a result, the criminal justice system disproportionately criminalized people of color in lower-income communities largely for non-violent, drug-related offenses.

Mandatory Minimums – legal requirements that offenders serve a predetermined minimum amount of time for certain crimes.

This disparity was exacerbated by the tougher sentencing laws enacted by the H.W. Bush and Clinton Administrations – harsher sentences for those convicted for drug offenses coupled with a decrease in investments in community rehabilitative services further escalated rates of incarceration. Federal legislation from this period focused on punishment rather than rehabilitation: the Sentencing Reform Act of 1984 reduced federal judge discretion over sentencing, the Anti-Drug Abuse Act of 1986 established harsh, **mandatory minimum** sentencing standards for crack cocaine and marijuana-related offenses, and the notorious Crime Bill of 1994 further criminalized populations and reduced opportunities for rehabilitation in correctional facilities (Ositelu, 2019).

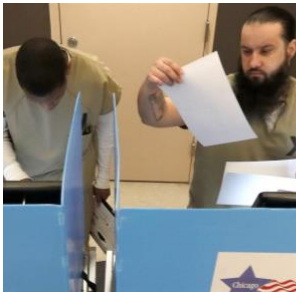
The United States incarcerates a greater number of people than any other country in the world.

Scope of the Problem

Today, the U.S. has the largest population of incarcerated individuals across the globe, accounting for roughly 22 percent of the world’s prison population despite the U.S. making up only 4 percent of the world’s population. With the highest imprisonment rate in the world, approximately 7 million adults are under supervision in the U.S. carceral system, which includes federal and state prisons as well as local jails, probation, and parole (Lopez, 2016). Due in part to

Re-entry – the transition of offenders from prison or jail back into the community.

Disenfranchisement – the act of depriving someone of their rights or privileges as a citizen, most often referring to their right to vote.



Pictured, two men incarcerated in Cook County Jail in Chicago voting during the primary in March of 2020. Last month, legislators in Illinois passed new legislation to encourage voting among currently incarcerated individuals in the state.

Charles Rex Arbogast /
The Associated Press

Recidivism – an individual’s relapse into criminal behavior, often despite corrective intervention or sanction.

factors like racial bias and policing practices, Black people are almost six times more likely to be incarcerated than their white counterparts. On average, Black prisoners also tend to serve longer sentences for committing to the same crime as white prisoners.

During the era of mass incarceration, federal funding for law enforcement agencies and punitive methods of policing and incarceration increased substantially. In contrast, the amount of funding apportioned to the federal or state-level agencies in charge of rehabilitation decreased significantly. Initiatives meant to tackle drug rehabilitation, drug abuse prevention, greater educational opportunities, and economic investment in overlooked communities were hobbled by this lack of federal support.

Many criminal justice reform advocates and policymakers see three main problems with the U.S. carceral system: (1) prevention, policing, and sentencing procedures that cause “unnecessary interactions” with the justice system, (2) exploitative practices and inhumane conditions for inmates, and (3) the inaccessibility of social services and economic opportunity for individuals following their release (Ositelu, 2019). While criminal justice reform efforts often focus on the judicial process and the treatment of incarcerated inmates, this briefing will focus on the civil rights of formerly incarcerated individuals.

Specifically, we will mainly focus on the problematic reality that many former inmates have restricted rights and limited access to socioeconomic resources during parole, probation, and even long after their interaction with the justice system.

The rates of **recidivism** in the U.S. fall among some of the highest in the world. Almost 44% of former inmates return to prison within their first year of release, and a notable 83% are re-arrested within a decade. Lawmakers are starting to recognize the severity and urgency of this multifaceted issue (National Institute of Justice).

Voting Disenfranchisement of Incarcerated Individuals

Felony disenfranchisement has been a contentious issue in the United States for many years now, raising questions among lawmakers and advocates about the intersection of criminal justice, democracy, and civil rights. Felon disenfranchisement specifically refers to the “suspension or withdrawal” of voting rights because of a felony or criminal offense conviction (Bowers & Preuhs, 2009). In many states, individuals who have been convicted of felonies are stripped of their voting rights, sometimes permanently, while other states may restore suffrage to individuals following their completion of parole or probation. This practice of disenfranchisement disproportionately affects communities of color, exacerbating existing racial disparities in the criminal justice system. Many historians argue that the adoption of felon voting bans starting in the 1860’s and 1870’s is linked with attempts to enact voting rights for

U.S. Department of Housing and Urban Development (HUD)
– the federal agency responsible for administering federal housing and laws surrounding urban development.



Correctional education and prison education programs aim to reduce recidivism, expand opportunities, and restore faith.

Amie Smith

Black citizens (Manza & Uggen, 2008). While felon voting rights are contested and sometimes restored on a state-by-state basis, opponents often critique the inconsistency of felon voting rights and the unfair punishment of individuals who committed minor crimes to be stripped of their right to vote.

According to the American Civil Liberties Union, as of 2023, most states have active laws that prohibit people in prison, on parole, or even on probation from accessing voting. 10 of those states limit certain felons from regaining the right to vote even following the completion of their sentence. As such, more than 5.1 million voting-age American citizens were disenfranchised and could not vote in the 2020 presidential election due to a felony conviction or a criminal record, which amounted to a shocking 1 in every 44 citizens (Sentencing Project). In some states, up to 11 percent of their electorates were prohibited and ineligible to vote. These felony disenfranchisement laws tend to compound racial disparities and disproportionately suppress the African American electorate in each state, which leaves almost 20 percent of Black voters in states like Virginia, Kentucky, Tennessee, and Florida unable to vote (Lopez, 2016).

The impact of disenfranchisement goes beyond the individual level and has broader societal implications. Through the denial of such a fundamental civil right to U.S. citizens, former inmates can often be left feeling disengaged and alienated from the civic process and democracy. Denying justice-involved persons the right to vote can perpetuate a cycle of marginalization and exclusion, which would then hinder successful reentry and their ability to fully reintegrate themselves back into their communities. Many proponents of felon voting rights reform point to research that suggests that the restoration of suffrage has substantial positive effects on reducing recidivism rates, promoting civic engagement, and encouraging a sense of responsibility and belonging within the broader society.

Housing Insecurity and Discrimination

While the housing crisis affects millions of Americans across the country, accessing affordable housing is particularly challenging for formerly incarcerated individuals upon their release. Individuals with prior convictions are more than 10 times likelier to experience homelessness than the general population (Couloute, 2018). People with criminal records face many systemic legal barriers to accessing stable or subsidized housing, hindering their successful reentry and quality of life. These policies range widely, but often include ineligibility for housing assistance or lengthy waiting periods for individuals with past convictions (Couloute, 2018). Some public housing authorities have blanket bans and restrictions imposed on individuals with criminal records. A lack of stable and affordable housing has a direct link to increased rates of re-arrest and

recidivism. The exclusionary nature of this approach creates a cycle of homelessness and instability that effectively works against keeping people away from the justice system.

The stigma associated with a criminal record compounds these obstacles to housing. Landlords and private housing providers often discriminate against individuals with criminal records. This contributes to housing insecurity and prevents formerly incarcerated individuals from accessing stable housing options. Stable housing, and the lack thereof, is also significantly tied to straining family dynamics and stress, social services, and access to employment (“Fair Housing for People with Criminal Records”). Individuals with criminal records are notably not considered a “protected class” under the Fair Housing Act of 1968, which prevents discrimination in the sale or rental of housing on the basis of a range of other features including race, religion, sex, and disability. Not just former inmates, but their families can be denied stable housing purely based on their relative’s criminal record (“Fair Housing for People with Criminal Records”).

Federally subsidized or publicly administered housing are integral parts of creating affordable housing opportunities for low-income individuals. But up until recently, federal policy dictated that people with certain felony convictions couldn’t access publicly subsidized housing for at least three years following their convictions for certain felonies including drug-related crimes (Lake, 2021). While HUD has issued guidance to private housing landlords to not act on bias against individuals with criminal records in the housing process, criminal justice reform advocates are asking for more clear, legal precedence to be established (Ruiz-Goirena, 2022). Advocates also point out that HUD often allows local public housing authorities (PHA’s) too much leeway over public housing protocol, allowing the local authorities to discriminate more freely against individuals with prior convictions, as is often the case.

Jobs and Economic Growth

One of the greatest challenges posed to the successful reentry and rehabilitation of former inmates is a lack of economic opportunity. Unemployment rates for formerly incarcerated individuals are five times higher than those of the general population (Couloute and Kopf, 2018). Formerly incarcerated individuals face several barriers in seeking employment and greater economic opportunity, including social stigma, limited work experience, and a lack of job skills or qualifications – unafforded to them while serving time. Recently released inmates tend to have a lack of employability or “soft” skills, making it harder for them to obtain and retain a job. Many inmates in state and federal prisons do not even have a high school diploma. A lack of educational opportunities makes it difficult for justice-involved persons to secure accessible employment, leading to

Occupational licensing – the process for entry into certain job fields that requires permission from the government, which often take factors like criminal background into consideration.

Halfway House – a carceral facility for people leaving prison or jail that, often as a condition of probation, they are required to live in before being “fully released” back into the community.

Federal Bureau of Prisons (BOP) – the federal law enforcement agency under the DOJ responsible for the “care, custody, and control” of incarcerated individuals who have committed federal crimes.

economic instability and insecurity and an increased risk of recidivism.

Individuals with felony records are typically unable to work in industries such as education, state and federal government jobs, security, and medical fields. What’s more, many meaningful employment opportunities are out of reach for these individuals, such as access to certain professions (e.g. real estate agent, barber, or accountant). These occupations require specific **occupational licenses**, which commonly have restrictions for those with criminal records. Often, the employment options available are only for low-paying, entry-level positions. Most employers conduct criminal background checks that often preclude formerly incarcerated candidates from the hiring process, and studies have shown that employers are far less likely to call back or hire an individual with a criminal background (Agan and Starr, 2018). Workforce discrimination against justice-involved persons is a pervasive phenomenon, as employers hesitate to employ them due to concerns about gaps in work experience, the chance of recidivism, and a general stigma surrounding the productivity of formerly incarcerated individuals.

The consequences of limited economic and job opportunities can extend beyond the individual level, impacting families and communities as well. According to the Bureau of Justice Statistics, approximately 60% of formerly incarcerated individuals struggle with unemployment following their release (Wang & Bertram, 2022). This is in comparison to the relatively low unemployment rate for the American public at 3.7% (U.S. Bureau of Labor Statistics, 2022). Without access to sustainable income and economic mobility, individuals released from prison may face challenges in meeting basic needs to support themselves and their families, securing housing, growing out of poverty, and therefore living a life away from illegal activities.

An Overlooked Path to Re-entry

Halfway houses, also known as transitional or reentry houses, can play a major role in supporting individuals as they transition from incarceration to full reintegration into society. While halfway homes can often differ in their purpose and function, with some being non-carceral community-based facilities, sober living homes, or carceral group homes, there are some similarities across the board. Notably, most halfway homes are privately run facilities, as opposed to state and publicly run carceral facilities. State corrections departments, parole offices, and the **Federal Bureau of Prisons (BOP)** will often contract out the operation of these facilities to private companies or nonprofits (Daniel & Sawyer, 2020). These contracts are often the primary source of funding for these halfway houses, or Residential Re-entry Centers (RRCs). As such, privately

operated halfway houses are less transparent than publicly run alternatives, meaning they can fall short of meaningfully supporting formerly incarcerated people without the public knowing.

There is a common misconception that halfway houses, as they stand today, are mostly non-carceral, rehabilitative, and community-organized programs. In reality, most RRCs in operation today are carceral facilities, with heavy surveillance, restrictions, and careful scrutiny from staff members (Daniel & Sawyer, 2020). While every year tens of thousands of former inmates spend (often mandated) time in halfway houses, there are very few comprehensive and standardized regulations or oversight of these programs from federal and state governments. This can lead to significant disparities in the quality and effectiveness of halfway house programs across different regions (Daniel & Sawyer, 2020). There are quite a few prominent problems with the operation of most RRCs today: namely, staff shortages, underfunding, and the lack of comprehensive support services like mental health counseling or substance abuse treatment. With audits or inspections of RRCs being few and far between, there is a systematic lack of oversight for these privately operated halfway houses. Poor federal data collection, specifically on the part of the Bureau of Justice Statistics, has made it harder to evaluate the success of these programs and hold them accountable for their failures. Consequently, conditions in halfway houses often involve abuse, violence, and neglect on the part of their operators (Daniel & Sawyer, 2020).



In December 2018, then Pres. Trump signed the First Step Act, meant to reduce recidivism and reform the criminal justice system, into law.

Jabin Botsford / The Washington Post

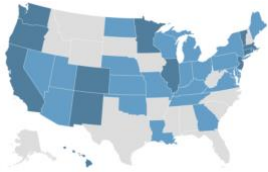
Congressional Action

Criminal justice reform has made its way onto the radar of congressional legislation in recent years. Notably, the First Step Act of 2018, a major reform bill, was passed under the Trump Administration. This bipartisan bill sought to remedy sentencing disparities created through previous legislation like the 1998 Crime Bill and reduce recidivism rates among inmates. Signed into law by then-President Trump, the First Step Act worked to reduce mandatory minimum sentencing for certain non-violent sentences, expand the presence of early release programs, and reform and build on recidivism reduction programming aimed at aiding inmates upon reentry (Sen. Sullivan, 2018). This legislation marked a shift in bipartisan priorities toward reforming the criminal justice system away from its more punitive past towards a more rehabilitative purpose.

The Second Chance Act, signed into law in 2008, is an example of legislation that focuses specifically on building opportunities for individuals following their release. The bill attempts to provide federal funding toward supporting a variety of programs and initiatives that support reentry. Passed with bipartisan support, the bill funded reentry programs to provide comprehensive and diverse

support services to formerly incarcerated individuals, including helping them transition back into their communities. It worked to provide access to education, job training, substance abuse treatment, housing support and mental health services. Its goal was to equip individuals with the soft and hard skills that can support successful reentry, reduce recidivism, and ultimately improve equity and public safety (Rep. Davis, 2008).

While a number of criminal justice reform-focused bills have received broad bipartisan support and public acclaim, there are quite a few bills on the docket and being introduced that have not received as much traction. Notably, there are a few legislative measures introduced that support expanding educational and vocational opportunities for incarcerated individuals within correctional facilities and following their sentence.



This map shows the prevalence of statewide “ban the box” legislation. The states in blue prevent the government from screening applicants based on criminal history and the dark blue states also prohibit private employers from doing so. The states in grey have neither legislation.

U.S. News

Other Policy Action

It is important to note the different jurisdictions of state and federal governments. The federal government, specifically the Bureau of Prisons, has jurisdiction over federal correctional facilities and oversight over federally operated or contracted reentry programs. While there are quite a few individuals incarcerated at the federal level, a majority of correctional facilities and programs are actually run at the state level. State and local governments and corrections agencies oversee these operations. As such, a lot of criminal justice policy reforms – which will be discussed in greater detail later in this briefing – are conducted and passed on a state-by-state basis, varying greatly depending on the representation and legislatures that govern each state. On the topic of felon voting rights, for example, there are only two states – Maine and Vermont – in which felons never lose their right to vote. In contrast, 23 states have felons lose their voting rights only while they’re incarcerated, 14 states revoke voting rights during incarceration and for a period of time after, and 11 states disenfranchise felons indefinitely (National Conference of State Legislatures). Other criminal justice reform efforts have come from the executive branch, as in 2015 when the Obama administration launched the Second Chance Pell Experiment that reinstated Pell Grant eligibility to incarcerated individuals (which had been revoked under the 1994 crime bill).

Criminal justice reform advocates and organizations have also been pushing for policy approaches that target rehabilitation and reducing recidivism rates. They’ve advocated for the implementation of “ban the box” legislation, which essentially disallows private and public employers from asking about an applicant’s criminal record in their initial job application. The hope is that, by delaying their inquiries into an applicant’s potential criminal history, individuals will have a greater opportunity to advocate for themselves and show their qualifications and skills before their criminal record taken into

consideration (National Conference of State Legislatures). Many advocates' aim is to create fairer hiring practices, reduce discrimination against criminal backgrounds in the workplace, and promote economic security for formerly incarcerated individuals, which in turn keeps recidivism rates down.

IDEOLOGICAL VIEWPOINTS

Conservative View

Criminal justice reform is one of those rare topics where there is a growing, bipartisan consensus on the need to take action. Many conservatives and liberals agree on the desire to address mass incarceration in our nation's carceral facilities and reduce recidivism. While much of the legislation being drafted, introduced, and passed by legislators in recent years has been bipartisan compromises, there are a few notable areas in which conservatives and liberals, or even politicians within the same parties, tend to disagree. Historically, most if not all conservatives have taken on a hardline, "law and order," and "tough on crime" attitude to policing and sentencing, pushing forward incarceration as an integral deterrent for criminal behavior and as a means of prioritizing public safety. Conservatives have often applauded the punitive nature of criminal justice in the U.S., as it highlights the need for personal accountability for the crimes an individual has committed.

In recent years, though, some members of the Republican party have become outspoken in their belief that criminal justice reform aligns itself with the staunch conservative ideals of small government and the preservation of individual liberties. Some conservative advocates object to imposing the carceral system on the lives and liberties of Americans or argue that the current incarceration model is overly and spreads law enforcement resources too thin (Hough, 2018). These conservatives often attribute decreasing crime rates since the 1990s to better policing practices and societal changes, even touting that certain red states have conducted criminal justice reform legislation before most blue states.

Even so, most conservatives are quite wary of too much reform, emphasizing the importance of prioritizing public safety and valuing victims as the "primary consumers" of the justice system (Hough, 2018). It's important to distinguish the difference between prisoners being held at the state level and federal prisoners. For conservatives who are more hesitant to embrace criminal justice reform, they point out that, while mainstream media attention tends to focus on the federal prison system and addressing the harms caused by the "War on Drugs," most incarcerated individuals are being held at the state level, and mostly for violent offenses. GOP lawmakers often express



This figure shows America's rapidly increasing incarcerated population, starting from the 1970's.

*Bureau of Justice
Statistics Prisoners
Series*

Penitentiary – a prison or carceral facility for those convicted of serious crimes.



A supporter of the NYC Fair Chance Housing Act rallies outside of NYC's City Hall in 2022. This NY City Council bill would make it illegal for landlords and realtors to use criminal background as a factor when considering a tenant.

John McCarten / NYC Council

School-to-prison pipeline – the tendency for a disproportionate number of minors from disadvantaged backgrounds in the U.S. to have interactions with the justice system because of overly punitive school policies.

their disdain for reform policies that attempt to cut back on the number of violent offenders in the prison system, as they believe that these reforms can potentially endanger public safety (Hough, 2018). While conservative perspectives and opinions on criminal justice reform can vary quite widely, there is a growing consensus among some conservatives that the criminal justice system be fair, efficient, and uphold a person's individual liberties, while still maintaining public order and safety.

Liberal View

For the most part, liberals almost entirely agree on the severity of problems and the necessity for reform within our current criminal justice reform, seeing carceral reform as a means of addressing systemic injustice. While “law and order” rhetoric from the end of the 20th century was taken up by both sides of the political spectrum, Democrats in the last few decades have supported legislation that aims to end mass incarceration and create a more rehabilitative justice system. As the discussion of racial injustice has come to the forefront of political discourse, liberals have advocated for restorative justice models and against punitive measures that have historically marginalized Black populations to a disproportionate degree. That being said, the extent to which any particular liberal politician supports carceral reform policies still largely depends on their constituencies. There may be a range in views, with some far-left liberals supporting radical solutions like prison abolition and the complete integration of community-based programming, while more centrist liberals concerned about crime and public safety may want more incremental changes.

Liberals often support rehabilitation programs at the federal and state level. Liberal politicians argue that providing access to more comprehensive social services, like job training, education, and mental health services, are essential in helping formerly incarcerated individuals reintegrate themselves back into society. Their policies tend to focus on preventative measures to crime, reforming phenomena like the **school-to-prison pipeline**, funding socioeconomic support programs in disadvantaged communities, and prioritizing rehabilitation in a flawed criminal justice system (Subramaniam, 2020).

More liberal members of the Democratic Party have even pushed for the complete overhaul of the criminal justice system as it stands and have argued that its current structure is outdated and obsolete. On the other hand, moderate members of the party have similar concerns to conservatives in the realm of public safety. In response, some liberals argue that American's perception of crime has remained the same despite the violent crime rate steadily dropping for more than 20 years now (Lopez, 2016). As this is an ongoing

dialogue, liberal lawmakers are navigating a tricky border between significant criminal justice reform and maintaining public safety.

AREAS OF DEBATE

As stated throughout this briefing, the issue of criminal justice reform, even specifically regarding reentry to society, is multifaceted and expansive. While the following policy solutions are by no means exhaustive (there are several interesting, substantive policy solutions that we didn't get a chance to cover in this briefing), we hope that it will help to provide a comprehensive overview of what kinds of legislative proposals are gaining traction and plausible. We still strongly encourage you to conduct your own research on the policy landscape that surrounds the issue of reentry and carceral reform, as there are tons of innovative solutions out there!

Protect & Expand Fair Housing for People with Convictions

The endeavor to secure affordable, stable housing is already challenging enough for the average American living through a housing crisis, but for those with criminal records, the task becomes immeasurably harder. As of right now, there is a shortage of 7.2 million affordable rental units for extremely low-income households, which makes competing for these units as a low-income, formerly incarcerated individual even more disadvantageous (“Fair Housing for People with Convictions”). With such high demand for housing and so few rental units available, landlords often conduct criminal background checks as a method of screening out applicants.

In 2016, HUD attempted to address this disparity by issuing guidance to landlords conducting housing-related transactions on how to apply the Fair Housing Act standards specifically to the use of criminal records screening. In 2022, HUD doubled down on this sentiment and released a memorandum which provides further guidance on this topic and recommends that private housing providers (i.e. landlords) remove the use of criminal history to screen tenants altogether (The White House, 2023). Many advocates, however, believe that this guidance is far from sufficient to address the biases against justice-involved persons that exists in the housing market. There have been calls to reform the Fair Housing Act (FHA) of 1968, urging Congress to pass an amendment to the landmark bill that would include “criminal records” as a protected class, thereby prohibiting housing discrimination (for the renting and sale of properties) based on criminal record screening (“Fair Housing for People with Convictions”). Critics, though, believe that the sweeping inclusion of “criminal records” as a protected class under the FHA

Public housing authorities (PHAs)

– a local housing authority is responsible for the management and operation of the local public housing program, which often grants them the discretion to accept or deny housing applicants.



The infamous Attica Prison Uprising in 1971 occurred when prisoners in upstate New York revolted on account of inhumane living conditions.

Showtime / Firelight

would leave too little discretion to private landlords and potentially endanger public safety (Hough).

Congress could also fund “testing” for discrimination on the basis of criminal backgrounds in housing, which entails having individuals apply for housing and collect data on their process. The idea here is to paint a more detailed, empirically backed picture of the extent to which landlords are discriminating against people with criminal backgrounds. Legislation can be passed to push HUD to employ individuals to serve as “testers” with criminal records that shouldn’t disqualify them as tenants (The White House, 2023).

Housing inaccessibility for people with criminal records extends into public housing and federally assisted housing. **Public housing authorities** and other owners of federally assisted housing have near-total discretion to screen applicants and deny them from rejoining their families in public housing. As such, another policy solution would be to reduce barriers to HUD and HUD-assisted housing programs for those with criminal backgrounds. Proponents of this policy argue that an individual’s criminal background should not automatically determine their eligibility for HUD housing (Lake, 2021). This can be done by either having HUD require “holistic, individualized assessments” for applicant screening and housing decisions or proposing that HUD conduct more frequent and comprehensive evaluations of local public housing authorities (The White House, 2023). Those who oppose these policies for public housing reform argue that public housing units are already few and far between, and individuals who haven’t been convicted of a crime shouldn’t be disadvantaged because of these policies.

Political Perspectives on this Solution

Liberals, the Biden administration, and the current leadership of HUD are generally in support of these policy reforms to provide more fair housing opportunities for justice-involved people, providing greater stability and therefore reducing recidivism. Conservatives, on the other hand, fear that these reforms are intruding too far into the private sector, hurting private homeowners and landlords, and potentially jeopardizing the safety of other tenants.

Expand Public & Incentivize Private Sector Hiring

In general, increasing jobs and lowering the unemployment rate are nonpartisan priorities and a point of consensus. With more than 600,000 individuals exiting prison every year in need of jobs, and approximately 87% of employers conducting criminal background checks that largely rule out hiring formerly incarcerated individuals, the time is now to act on workforce discrimination (U.S. Department of Human Services).

Federal Agency and Government Employment

There are several legislative pathways that the federal government can take to expand federal job opportunities for former inmates, creating a more effective path to reentry and employing an underutilized labor force. For one, Congress, in partnership with the executive office, employ qualified, formerly incarcerated individuals to advise inform federal agencies in their creation of criminal justice related policies. The Obama Administration first created the position of the “Second Chance Fellow” under the Department of Justice in 2015, arguing they could provide a unique, first-hand insight on the lived experiences of inmates during and following incarceration (The White House, 2022). A potential policy initiative would be to revamp and expand on this program, allowing the employment of a broader cohort of “second chance fellows” that can advise policymaking and reform across agencies and fields, like education and the juvenile and criminal justice systems. Expanding funding for the federal employment of former inmates in this unique way is generally a popular bipartisan endeavor, but more progressive liberals criticize that, while this program is meaningful in its intentions, its effects are not nearly expansive enough to really produce substantive criminal justice reform (Brown, 2013).

Congress could also pass legislation that enhances the recruiting, hiring, and retention of formerly incarcerated individuals in federal agencies. Specifically, a bill could focus on providing more support, resources, and funding to the Office of Personnel Management (OPM) – the federal office that works closely with all federal agencies in the recruitment, hiring, training, and retention of these qualified individuals with criminal records. Recently, the Biden administration has launched the Chief Diversity Officers Executive Council under the OPM, which will oversee the recruitment and hiring practices of different federal agencies (The White House, 2023). This council can become more established and expanded through federal legislation (e.g., appoint a permanent position(s) for a justice involved individual on the council). The expansion of funding towards these newly-founded initiatives will allow OPM, and, thus, federal agencies, to better expand federal employment opportunities for qualified individuals with criminal backgrounds and establish more formalized routes to “provide paths for individuals with criminal history records into federal employment” (The White House, 2023). Congress could also invest more in the dissemination of federal resources to justice-involved persons, ensuring that they have knowledge about and familiarity with federal job opportunities and the recruitment process.

87% of employers conduct criminal background checks that largely rule out hiring formerly incarcerated individuals altogether.

Private Sector Employment

With private sector employment, there is less the federal government can do to reform or overhaul existing hiring practices,

as private employers have the right to consider criminal record screenings in their hiring procedure — so long as it is applied equally across candidates. Still, Congress and the federal government can work on expanding job opportunities, encouraging fairer hiring practices, reforming existing protections, and funding workforce training programs for formerly incarcerated individuals.

For one, the federal government can support more partnerships between the Department of Corrections and the Department of Labor, as well as the Second Chance Business Coalition — a cross-sector coalition of firms committed to second chance hiring — to promote and highlight the economic benefits of expanding access to quality jobs for formerly incarcerated individuals. In addition, this partnership can work to recruit more firms into the Coalition’s commitment to hiring these marginalized potential workers (The White House, 2023). Specifically with small businesses, Congress can work with the Small Business Administration (SBA) to facilitate educational opportunities across the country for small business owners about hiring initiatives for justice-involved persons (“How Criminal Justice Reforms Could Benefit the Small Business Workforce”). There is general support for the provision of more insight to business-owners on the potential economic benefits of second chance hiring more informally. However, a smaller segment of advocates and policymakers believe that these solutions are not doing nearly enough to incentivize private sector hiring reform, and instead propose that financial incentives and rewards be given to large corporation and small-business owners to implement a hiring strategy that addresses and supports the hiring of justice-involved individuals.



Formerly incarcerated individuals in Massachusetts will receive on-the-job training through programs funded by \$1.68 million in funding from the state’s re-entry grants. In the Workforce Development Demonstration Program, 14 grants were awarded to organization to place these individuals in new occupations with training.

Mass.gov

Political Perspectives on this Solution

Generally, there is strong bipartisan support for the expansion of federal job opportunities for justice-involved individuals.

For the private sector, however, conservatives and some moderate liberals are wary of too much interference into the private sector and their hiring practices. As proponents of a “free market” economy, they argue that regulating and intervening in private sector hiring practices will privilege less qualified individuals with criminal records over more qualified candidates. They may worry that this policy would impede on the principle of private and public sector separation (Hough). Progressives, on the other hand, believe that simply enhancing federal job opportunities doesn’t get to the root of the employment disparity and lack of economic opportunity that affects justice-involved individuals, as only between 12-25% of the US workforce is employed by a state or federal government (Subramaniam, 2020). They argue that economic instability will only worsen the cycle of poverty many justice-involved persons are trapped in, and only increase recidivism. Progressives believe that

successful reentry requires economic stability through the implementation of supportive employment programs and the promotion of fair hiring practices to empower formerly incarcerated individuals in both the public and private sectors.

Financial Incentives – a monetary benefit given (in this case, by the government) to encourage certain behavior (i.e., private employers) that otherwise might not have happened.

Occupational Licensing Reform

With almost 27,000 occupational licensing restrictions in effect today, many individuals reentering society following incarceration are barred – often for life – from certain industries and occupations. Almost 25% of job opportunities in the economy are inaccessible to this population, even despite having the requisite training, experience, and qualifications. These restrictions not only inhibit the justice-involved person’s reentry process but prevent employers from hiring pool of applicants who are eager to work, further exacerbating challenges with labor recruitment (Sibilla, 2020).

The Department of Labor runs the Federal Bonding Program (FBP), which provides **financial incentives** for employers if they hire certain classifications of job seekers, including formerly incarcerated individuals (The White House, 2023). Congress can either expand on, reform, or create entirely new programs that encourages industries with occupational licensing restrictions to integrate second chance hiring into their existing hiring practices.

Another popular solution, which has gained bipartisan support, would be to fund and establish more programs that allow for incarcerated individuals to obtain occupational licenses while still serving time, allowing them to prepare for their job search and experience ahead of their release (Sibilla, 2020).

Political Perspectives on this Solution

While there is a great amount of bipartisan support for occupational licensing reform – especially in adopting policies that reduce barriers to licenses for ex-felons in an area with no relation to the original offense – conservatives and liberals tend to disagree on the jurisdiction (or lack thereof) of the federal government in the issue. Liberals consider financial incentives necessary to engender reform in private sector hiring practices and licensing restrictions.

For conservatives, these fiscal policies seem to again be an example of the federal government overreaching its bounds. Instead, many conservatives believe that it’s better to let each state establish programs that incentivize employers to hire formerly incarcerated individuals and eliminate restrictions to occupational licenses for certain jobs, unrelated to the individual’s initial offense (“Occupational Licensing Requirements”).

BUDGETARY CONSIDERATIONS

As the Senate Judiciary Committee, you must remain cognizant of budgetary constraints when implementing your policies. If your policy attempts to work directly with federal agencies, their annual budgetary allocations must be first taken into consideration. In FY2023, the Department of Justice had a budget appropriation of \$69.95 billion distributed among its 11 subcomponents. The U.S. Bureau of Prisons (BOP), which deals most directly with matters pertaining to the criminal justice system and incarceration under the DOJ, was allocated \$11.7 billion in budgetary resources —\$6.34 billion of which is already tied down in facility maintenance and other financial obligations (“Department of Justice Spending”). For the U.S. Department for Housing and Urban Development’s FY2024 budget request, they requested a \$73.3 billion overall budget, of which \$90 million will be allotted to help fund the agency’s Fair Housing programs, meant to help improve HUD staff capacity to “redress discriminatory housing practices” (“2024 Budget in Brief: U.S. Department for Housing and Urban Development”). Some of the potential policies you’ll come up with, especially those pertaining to financial incentives, increased budgetary allocations, and subsidies, will be more costly than others, so please keep that in mind as you go about your research and drafting.

CONCLUSION

As the topics of criminal justice and re-entry reform enter into mainstream discourse, it’s up to lawmakers to create actionable policies addressing the many disparities and obstacles faced by formerly incarcerated individuals attempting to rejoin society. From housing insecurity to limited civil rights to restricted economic prospects, comprehensive reforms are necessary in keeping communities safe and lowering recidivism rates.

Through public and private sector collaboration, as well as creating a bipartisan commitment to enacting change in this area, Congress could not only benefit the quality of life for these justice-involved persons and their families, but also the U.S. economy. As a largely untapped labor force, formerly incarcerated individuals want the chance to rebuild their lives, and employers need to fill in their labor shortages. Still, lawmakers must walk a fine line between abetting the wishes of their constituencies and protecting public safety, as well as restoring dignity and opportunity to ex-felons before, during, and after their incarceration.

Criminal justice reform as a whole is quite a multifaceted issue, but bipartisan collaboration and insight from (formerly)

incarcerated individuals themselves are essential in the fight for reform and to create a more just justice system in the U.S.

GUIDE TO FURTHER RESEARCH

During your research, I would recommend that you briefly read up on relevant, recent Congressional action in the areas of criminal justice reform and recidivism reduction (e.g. the First Step Act and the Second Chance Act). There's no need to get down every detail, but it'd be helpful to have a general grasp on the legislative landscape that surrounds efforts to create a more successful path to reentry for justice-involved individuals. You can find the original text of the bills on [Congress.gov](https://www.congress.gov).

The White House (under the current Biden-Harris administration – [whitehouse.gov](https://www.whitehouse.gov)) has also put out some comprehensive briefings on this subject, detailing federal actions that have been and are currently slotted to happen in criminal justice reform more broadly, but with a more specific focus on re-entry as well.

Lastly, I would suggest that you consider your respective constituencies in your research and the policies that your states have enacted in these fields to get a gage on what your senator believes or represents. The National Conference of State Legislatures (www.ncsl.org) does a great job of compiling recent action taken by state congresses on the matter, which might make it more convenient for you to find the relevant information. All in all, this is quite an expansive topic with tons of nuances in the positionality of each stakeholder and lawmaker. We don't expect you to be experts, but just try to get the best grasp you can on the topic. Please reach out to us if you have any questions at all, and happy researching!

GLOSSARY

Disenfranchisement – the act of the state depriving someone of their rights or privileges as a citizen, most often referring to their right to vote.

Federal Bureau of Prisons (BOP) – the federal law enforcement agency under the Department of Justice (DOJ) responsible for the “care, custody, and control” of incarcerated individuals who have committed federal crimes.

Financial Incentives – a monetary benefit given (in this case, by the government) to encourage certain behavior (i.e. private employers) that otherwise might not have happened.

Halfway house – a carceral facility for people leaving prison or jail that, often as a condition of probation or parole, they are required to live in before being “fully released” back into the community. Otherwise referred to as a “re-entry program.”

Justice-Involved Individuals – individuals who have interactions with the criminal justice system as a defendant.

Mandatory Minimums – legal requirements that offenders serve a predetermined minimum amount of time for certain crimes.

Mass incarceration – refers to the unique state of the U.S. justice system that causes the U.S. to lead the world in incarceration rates.

Occupational licensing – the process for entry into certain job fields & occupations that requires permission from the government, which often take factors like criminal history into account.

Penitentiary – a prison or carceral facility for those convicted of serious crimes.

Public housing authorities (PHAs) – a local housing authority is responsible for the management and operation of the local public housing program, which often grants them the discretion to accept or deny housing applicants.

Recidivism – an individual’s relapse into criminal behavior, often despite corrective intervention or sanction.

Reentry – the transition of offenders from prison or jail back into the community.

School-to-prison pipeline – the tendency for a disproportionate number of minors from disadvantaged backgrounds in the U.S. to have interactions with the justice system because of overly punitive school discipline measures and policies.

U.S. Department of Housing and Urban Development (HUD) – the federal agency responsible for administering federal housing and laws surrounding urban development.

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