

## **SMART ON CRIME: RECOMMENDATIONS FOR THE NEXT ADMINISTRATION AND CONGRESS**

More than twenty organizations and individuals collaborated to create “Smart on Crime: Recommendations for the Next Administration and Congress.” The Constitution Project coordinated the production of the report, which was released in November 2008.

“Smart on Crime” identifies 43 criminal justice priorities in 15 issue areas, makes recommendations for congressional and executive action, and provides in-depth background information on a broad array of subjects. It also includes lists of issue-based resources and experts. The report includes the following chapters:

- Overcriminalization of Conduct, Overfederalization of Criminal Law, and the Exercise of Enforcement Discretion
- Federal Law Enforcement Reform — Improve Investigative Techniques, Including Eyewitness Identification, Incentives to Testify, and Interrogation
- Forensic Science Reform — Federal Oversight and Standards
- Federal Grand Jury Reform
- Federal Sentencing Reform
- Asset Forfeiture Reform
- Innocence Issues
- Prison Reform
- Pardon Power/Executive Clemency— Breathe New Life into the Pardon Power
- Re-entry—Ensure Successful Reintegration After Incarceration
- Public Defense Reforms—Make our Communities Safer by Supporting Quality Public Defense System
- Death Penalty/Habeas Corpus Reform
- Juvenile Justice Reforms
- Fixing *Medellin*: Compliance with International Law and Protecting Consular Access
- Victim Issues and Restorative Justice

The full report is available online at <http://2009transition.org/criminaljustice/>, at [www.constitutionproject.org](http://www.constitutionproject.org), and on the websites of many members of the coalition.

Please note that organizations and individuals identified as “potential allies” have indicated that they support the general principles expressed in the policy proposals described in that chapter. The allies listed do not necessarily endorse the specific language in every proposal in that chapter, but they do agree that the proposals reflect the general principles that should govern policy in that area. A potential ally signing on to one chapter is only signing on to that chapter and does not necessarily support the principles expressed in other chapters. Furthermore, the decision of a group not to sign on as a potential ally does not necessarily indicate an opposition to the policies proposed.

For policy questions, please contact the individuals or organizations identified in the catalogue as experts. Please direct general questions to Daniel Schuman, Director of Communications and Counsel, the Constitution Project, at 202-580-6922.

## **CHAPTER TEN**

### **RE-ENTRY: ENSURE SUCCESSFUL REINTEGRATION AFTER INCARCERATION**

The Bureau of Justice Statistics estimates that more than two-thirds of the individuals released from prison will be rearrested within three years. This year nearly 700,000 people will leave prison and another 9 million will leave local jails. They return to communities lacking appropriate support services for substance addiction and mental illness, limited job prospects and few affordable housing options. Most have children who will depend on them for support, but these families are often impoverished. The prospects for successful reintegration are further compromised by the many collateral consequences of a criminal conviction -- often recently enacted policies that make reentry after incarceration enormously difficult. Persons who are not sentenced to prison are also affected by these legal barriers to reintegration, which are onerous and often permanent.

This section identifies seven obstacles to reentry and makes federal policy recommendations that would promote reintegration and reduce rates of recidivism. Each issue outlined is vitally important to a person's successful reentry because without a comprehensive strategy that incorporates employment, education, housing, civic engagement, treatment and health services, as well as welfare assistance, the chances of success diminish and the likelihood of recidivism grows.

The role the federal government plays in this policy area is critical because it is often federal laws and policies that have created reentry barriers, or that can eliminate them. In an effort to expedite government action, the top three priorities for reformers are listed first. These recommendations are:

- Fully fund the Second Chance Act and repurpose existing FY09 DOJ offender reentry funding to support this programming;
- Extend federal voting rights to people who are not incarcerated; and
- Eliminate the lifetime bans on financial assistance and food stamps for people convicted of drug offenses

#### **I. APPROPRIATE FULL FUNDING FOR SECOND CHANCE ACT AND REPURPOSE EXISTING FY09 DOJ OFFENDER REENTRY FUNDING TO SUPPORT THIS PROGRAMMING**

**Summary of the Problem:** In April 2008, President George W. Bush signed the Second Chance Act which authorizes \$330 million over two years to expand assistance for people currently incarcerated, those returning to their communities after incarceration, and children with parents in prison. The Second Chance Act seeks to promote public safety by reducing

recidivism. Presently, two-thirds of formerly incarcerated people are rearrested within three years after release. The services to be funded under the Second Chance Act include:

- mentoring programs for adults and juveniles leaving prison;
- drug treatment during and after incarceration, including family-based treatment for incarcerated parents;
- education and job training in prison;
- alternatives to incarceration for parents convicted of non-violent drug offenses;
- supportive programming for children of incarcerated parents; and
- early release for certain elderly prisoners convicted of non-violent offenses.

State and local governments burdened by the unprecedented growth in jail and prison populations need these important programs to ensure public safety. The sustained high rates of recidivism are a key reason prison populations continue to increase nationally. As of October 1, 2008, no money has been appropriated to carry out this Act.

### **Proposed Solutions:**

***Executive:*** Direct the Department of Justice to repurpose existing FY09 offender reentry funding (\$10 million) for Second Chance Act programming (P.L. 110-199).

***Legislative Appropriations (Solutions w/ Funding Requests):*** As Congress continues to work on the FY 2009 appropriations bills it should protect funding for the Second Chance Act (P.L. 110-199) and appropriate the total amount (\$165 million) authorized under the law.

### **Jurisdiction:**

***Executive Branch: Department of Justice***

***Legislative Branch:*** House and Senate Appropriations Committees, including subcommittees on Commerce, Justice, Science and Related Agencies

### **Background:**

***Executive Branch:*** The Second Chance Act (P.L. 110-199) was signed into law in April 2008. However, as newly authorized programming, it is at risk of spending one of its two critical years of authorization unfunded since Congress has not appropriated new funding for FY 2009. The 2008 Omnibus included \$10 million for an offender re-entry program, which was used for the third and final year of funding for the Prisoner Reentry Initiative (PRI) administered by the Department of Justice. Since PRI has expired, it would be possible to repurpose this allocation for Second Chance Act programming.

***Legislative Branch:*** In June, the Senate Appropriations Committee approved the Commerce, Justice, Science (CJS) 2009 appropriations bill, which allocated \$20 million for

programs under the Second Chance Act. In the House of Representatives, the Appropriations Committee reserved \$45 million for Second Chance Act funding. The totals not only fell short of the money authorized for the year, but were not appropriated by the start of Fiscal Year 2009.

### **Potential Allies, Potential Opposition, and Public Opinion:**

#### ***Potential Allies:***

- The bill received bipartisan support in both chambers of Congress in its passage, including Senators Biden (D-DE), Brownback (R-KS), Specter (R-PA), Leahy (D-VT), Kennedy (D-MA), Hatch (R-UT) and Representatives Davis (D-IL), Coble (R-NC), Cannon (R-UT), Conyers (D-MI), Scott (D-VA), Smith (R-TX), and Sensenbrenner (R-WI).
- Over 200 organizations supported passage and endorse funding of the Second Chance Act, including the National Sheriffs' Association, Fraternal Order of Police, American Correctional Association, the Council of State Governments, National Association of Counties, Prison Fellowship Ministries, the United Methodist Church, The Sentencing Project, American Bar Association, Open Society Policy Center, Academy of Criminal Justice Sciences, Center for Community Alternatives, Justice Policy Institute, National Alliance of Faith and Justice, Prison Legal News, International CURE, Virginia CURE, and the International Community Corrections Association.
- The Editorial Boards of the New York Times, Washington Times and many other newspapers have endorsed the Second Chance Act.

***Potential Opposition:*** Senator Coburn's (R-OK) opposition to enhanced federal expenditures made him a formidable opponent of the Second Chance Act. Ultimately the broad support for the bill created enough pressure on the Senator to lift his hold on the legislation. During the appropriations process he and other like-minded Members may pose a problem again. However, opponents who object to the cost of funding reentry programs for prisoners do not take into consideration the net saving achieved by supporting programs that ultimately reduce recidivism and crime.

***Public Opinion:*** In 2006, Zogby International conducted a poll for the National Council on Crime and Delinquency, entitled *Public Attitudes toward Rehabilitation and Reentry*. The poll found 80% of the American voting public believe job training and drug treatment is "very important" to a person's successful reintegration into society after incarceration. Strong majorities also believe mental health services, mentoring and housing are "very important." The Second Chance Act was supported by 78% of the voting public, according to the Zogby poll.

### **Experts:**

- Jessica Nickel, [Council of State Governments, Justice Center](#)
- Gene Guerrero, [Open Society Policy Center](#)
- Pat Nolan, [Prison Fellowship Ministries](#)
- Art Wallenstein, [Montgomery County, Maryland, Department of Corrections](#)

### **For Further Information:**

More resources on the Second Chance Act are available here:  
[http://www.reentrypolicy.org/government\\_affairs/second\\_chance\\_act](http://www.reentrypolicy.org/government_affairs/second_chance_act).

## **II. EXTEND FEDERAL VOTING RIGHTS TO PEOPLE RELEASED FROM PRISON**

**Summary of the Problem:** Although the right to vote forms the core of American democracy, one significant group of American citizens is still denied the right to the franchise: 5.3 million Americans are not allowed to vote because of a felony conviction. Four million of these people live, work, and raise families in our communities, but because of a conviction in their past they are still denied the right to vote. These laws serve no legitimate purpose, and in fact are deeply rooted in the Jim Crow era when they were designed to lock freed slaves out of the voting process. The disproportionate impact on people of color continues to this day. Nationwide, 13 percent of African-American men have lost the right to vote, a rate that is seven times the national average.

Since 2003, the Brennan Center and the ACLU, working with state allies, have conducted 25 surveys in 21 states documenting the failure of local election officials to comply with existing state restoration laws. These surveys present overwhelming evidence that election officials are confused and misinformed about existing eligibility rules and registration procedures. The findings range from misrepresenting the law to imposing illegal registration and documentation requirements on eligible voters. These surveys reveal that untold hundreds of thousands of *eligible* voters are de facto disenfranchised because of elections officials' failure to comply with current law.

The solution to this widespread disenfranchisement of American citizens is to automatically restore the right to vote upon release from prison. Under this system, citizens would be immediately eligible to vote while on probation and parole. In addition, these voting rights would not be contingent upon submission of special paperwork, or the payment of fees, fines, or restitution. Other remedies include giving notice to persons leaving prison that they will be eligible to vote upon release; making departments of correction, probation and parole responsible for voter registration; synchronizing state voter rolls to ensure accuracy; and educating eligible voters about their rights.

### **Proposed Solutions:**

***Executive:*** Appoint a commission to document the de facto disenfranchisement of eligible voters with felony convictions in each of the 50 states.

***Legislative Changes:*** Pass the Democracy Restoration Act  
➤ **H.R. 7136 and S. 3640 from the 110<sup>th</sup> Congress**

## **Jurisdiction:**

***Executive Branch:*** Department of Justice  
U.S. Election Assistance Commission

***Legislative Branch:*** Senate and House Judiciary Committees  
Senate Finance Committee  
House Ways and Means Committee

## **Background:**

***Legislative Branch:*** In September 2008, Senator Russ Feingold and Representative John Conyers introduced the Democracy Restoration Act. The bill seeks to restore the right to vote in federal elections to all persons with felony convictions who are not in prison. While similar bills introduced in past years have moved very little, there is general agreement among advocates and policy makers that 2009-2010 will provide a unique opportunity to restore voting rights at the federal level. First, there has been tremendous momentum built in the states. Over the last decade, 19 states have changed their laws to restore voting rights or ease the restoration process. Since 2005, Florida, Iowa, Maryland, Nebraska, Rhode Island, and Tennessee have all restored voting rights to substantial numbers of former offenders in their states.

Many of these changes occurred in states with Republican leadership. George W. Bush, as Governor of Texas, eliminated the state's two-year waiting period for restoration of voting rights. Florida Governor Charlie Crist, also a Republican, amended the clemency rules to simplify the restoration process for some people with non-violent convictions. And Louisiana Republican Governor Bobby Jindal signed a bill this year that requires the Department of Corrections to notify people coming off probation and parole about their voting rights and to provide them with a voter registration form.

## **Potential Allies, Potential Opposition, and Public Opinion:**

### ***Potential Allies:***

- Law enforcement, including organizations listed below, and state corrections directors Theodis Beck (SC), Christopher Epps (MS), Justice Jones (OK), and Ashbel T. Wall (RI)
- Faith-based organizations, including Prison Fellowship Ministries, the United Methodist Church, the Aleph Institute and the American Friends Service Committee
- Civil rights and justice reform organizations, including the Brennan Center for Justice, the American Civil Liberties Union, The Sentencing Project, Drug Policy Alliance, NAACP Legal Defense and Educational Fund, Center for Community Alternatives, International Community Corrections Association, Prison Legal News, StoptheDrugWar.org, International CURE, Virginia CURE, and American Bar Association

***Potential Opposition:***

- Roger Clegg, Center for Equal Opportunity
- Todd Gaziano, Heritage Foundation
- Sens. McConnell (R-KY) and Sessions (R-AL)

Like any election reform initiative, restoration of voting rights often falls along strict partisan lines. In an effort to pull this issue out of partisan battles and refocus the debate to one of democracy, not politics, the Brennan Center has built a substantial network of high level law enforcement and criminal justice leaders to support post-incarceration restoration of voting rights. The Brennan Center Law Enforcement and Criminal Justice Advisory Council stands ready to spread the message that restoration of voting rights is an important aspect of successful reentry and in fact works to protect public safety. The American Probation and Parole Association, the Association of Paroling Authorities International, and the National Black Police Association have all passed resolutions in favor of post-incarceration restoration. Organizing new allies will help build new, strong bipartisan support for reform.

***Public Opinion:*** The public supports voting rights, and this is evidenced by public opinion polls on the issue. A 2002 survey of 1,000 Americans, entitled [Public Attitudes towards Felon Disenfranchisement in the United States](#), found that substantial majorities (64% and 62%, respectively) supported allowing people on probation and parole to vote. In addition, a 2006 survey, entitled [Public Attitudes toward Rehabilitation and Reentry](#), found that 60% of Americans think the right to vote is an important factor in a person's successful reintegration into society after incarceration.

Moreover, several national organizations representing law enforcement officials and legal professionals recognize the fundamental unfairness of continuing to exclude people from the franchise when they re-enter the community. Organizations that support automatic post-incarceration of voting rights include:

- American Bar Association
- American Law Institute
- American Probation and Parole Association
- National Black Police Association
- National Organization of Black Law Enforcement Executives
- Association of Paroling Authorities International

**Experts:**

- Erika Wood, [Brennan Center for Justice at NYU School of Law](#)
- Marc Mauer, [The Sentencing Project](#)
- Christopher Uggen, [University of Minnesota, Department of Sociology](#)
- Jeff Manza, [New York University, Department of Sociology](#)

- Pat Nolan, [Prison Fellowship Ministries](#)

### **For Further Information:**

Read Restoring the Right to Vote,  
[http://www.brennancenter.org/content/resource/restoring\\_the\\_right\\_to\\_vote/](http://www.brennancenter.org/content/resource/restoring_the_right_to_vote/), and

Felony Disenfranchisement Laws in the United States,  
<http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=335>.

## **III. RESTORE WELFARE AND FOOD STAMP BENEFITS FOR INDIVIDUALS WITH DRUG FELONY CONVICTIONS**

**Summary of the Problem:** Food stamps and cash support are essential to the health and stability of families. Individuals with criminal convictions face considerable barriers, often needing transitional services and support to improve their ability to acquire gainful employment and transition after incarceration. The Personal Responsibility and Work Opportunity Reconciliation Act prohibits anyone convicted of a drug-related felony from receiving both federally-funded cash assistance through the Temporary Assistance for Needy Families (TANF) program and food stamps, unless states opt out of or modify the ban. Under the ban, which only applies to drug felonies, individuals are barred for life from obtaining cash assistance and food stamps even after completing their sentence, and overcoming an addiction. Currently, 22 states have imposed the ban in part and 14 states completely enforce the ban. The ban is an additional barrier to addressing addiction and to reintegrating individuals with criminal histories into the community because it makes it more difficult for them to obtain treatment, food and to secure employment. Numerous other collateral consequences are mandated or encouraged by federal law that should be analyzed to determine which ones are reasonably necessary to public safety, and which should be eliminated or revised.

### **Proposed Solutions:**

***Legislative Changes:*** Eliminate the lifetime ban on TANF and food stamp eligibility for people with drug felony convictions.

- **Repeal Section 115(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (21 U.S.C. 862a(a)).**

### **Jurisdiction:**

***Legislative Branch:*** Senate Finance Committee and House Ways and Means oversee TANF and the House and Senate Committees on Agriculture oversee the food stamps program, now Supplemental Nutrition Assistance Program.

### **Background:**

**Legislative Branch:** In April 2008, Rep. Barbara Lee introduced H.R. 5802, the Food Assistance to Improve Reintegration Act of 2008 (FAIR Act). The bill amends the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to repeal the denial of food stamp eligibility for a person convicted of a drug felony offense. The bill has 55 Democratic cosponsors in the House. No hearing has been held on the bill. During the 109<sup>th</sup> Congress, Rep. John Conyers introduced H.R. 4202, the Reentry Enhancement Act, which contained a provision to substitute the exclusions from TANF and food stamps for people with drug felonies with bars on assistance and benefits for welfare fraud convictions. The overall bill had six cosponsors. No hearing was held on the bill during the 109<sup>th</sup> Congress.

### **Potential Allies, Potential Opposition and Public Opinion:**

#### ***Potential Allies:***

- Legal Action Center, National Association of Social Workers, The Sentencing Project, Drug Policy Alliance, Rebecca Project for Human Rights, American Bar Association, Center for Community Alternatives, International Community Corrections Association, Justice Policy Institute, Prison Legal News, StoptheDrugWar.org, International CURE, Virginia CURE
- Representatives Conyers (D-MI), Scott (D-VA), Lee (D-CA), Jackson Lee (D-TX)

***Potential Opposition:*** Opponents of the expansion of welfare programming.

***Public Opinion:*** In 2006, Zogby conducted a poll for the National Council on Crime and Delinquency, entitled [\*Public Attitudes toward Rehabilitation and Reentry\*](#). It found that 90% of respondents thought help for families was an important service that should be made available to people reentering society after being incarcerated. The poll also asked participants the major causes contributing to high rates of people returning to prison after release. Nearly two in three said that when people leave prison, they have no more life skills than they had before they entered prison (66%) and people returning to society from prison experience too many obstacles to living a crime-free life (57%).

#### **Experts:**

- Malika Saada Saar, [Rebecca Project for Human Rights](#)
- Amy Hirsch, [Community Legal Services of Philadelphia](#)

#### **For Further Information:**

The most recent information on state eligibility requirements for the food stamp program is available from the Department of Agriculture at:

[http://www.fns.usda.gov/fsp/rules/Memo/Support/State\\_Options/7-State\\_Options.pdf#xml=http://65.216.150.153/taxis/search/pdfhi.txt?query=drug+felony&pr=FN](http://www.fns.usda.gov/fsp/rules/Memo/Support/State_Options/7-State_Options.pdf#xml=http://65.216.150.153/taxis/search/pdfhi.txt?query=drug+felony&pr=FN)

[S&order=r&cq=&id=4823852611](http://www.drugpolicy.org/docUploads/LS_Full_Letter.pdf). For an example of reform initiatives, go to:  
[http://www.drugpolicy.org/docUploads/LS\\_Full\\_Letter.pdf](http://www.drugpolicy.org/docUploads/LS_Full_Letter.pdf).

#### **IV. REPEAL THE FINANCIAL AID BAN FOR STUDENTS WITH DRUG CONVICTIONS**

**Summary of the Problem:** In 1998, Congress reauthorized the Higher Education Act (HEA), which funds educational financial aid for students. During consideration of the HEA, Congress approved an amendment to the legislation that delayed or denied federal financial aid for students convicted of a drug offense. Students applying for federal financial aid are asked on the FAFSA (Free Application for Federal Student Aid) form whether they have ever been convicted of “possessing or selling illegal drugs.” If an applicant answers anything other than “no,” the applicant is required to fill out a worksheet to determine if and when the applicant will resume eligibility for federal student financial aid. It is estimated that over 128,000 students applying for federal financial aid have been denied assistance because of this provision.

In February of 2006, legislation signed into law by President Bush that partially addresses this student aid provision. Public Law 109-171 partially repeals the ban on student federal financial aid for persons convicted of drug crimes so that only students who are convicted of a drug offense while they are in school and receiving federal financial assistance will be affected by the ban. By continuing to cut off necessary financial assistance, this provision decreases the number of people completing college, thus diminishing their employment prospects and potential contributions to the economy. For individuals who are eligible for aid since their conviction was previous to their enrollment, the question about drug convictions remains on the FAFSA form and potentially discourages thousands of these individuals from applying for financial aid because of the uncertainty about their eligibility.

Access to education is essential if individuals are to participate successfully in society and the economy. The ban on financial aid for individuals with certain drug convictions should be completely repealed to remove these barriers.

#### **Proposed Solutions:**

***Legislative Changes:*** Pass legislation to fully repeal the aid elimination penalty from the Higher Education Act.

- **Repeal 20 U.S.C. § 1091(r)**

#### **Jurisdiction:**

***Legislative Branch:*** House Education and Labor Committee and the Senate Health Education, Labor and Pensions Committee

#### **Background:**

**Legislative Branch:** Congress reauthorized the Higher Education Act in August 2008 but failed to fully repeal the aid elimination penalty for drug offenses in the bill. The bill did contain a provision that makes it slightly easier for students to get their aid back more quickly once they have lost it. Students can get aid back early by passing two unannounced drug tests administered by an approved rehabilitation program. Students will not necessarily have to complete a full, expensive treatment program as previously required. The new HEA bill also requires institutions of higher education to notify their students, upon enrollment, that the financial aid penalty exists for drug offenses. Moreover, schools must notify those students who lose their aid how they can go about getting it back.

### **Potential Allies, Potential Opposition and Public Opinion:**

#### ***Potential Allies:***

- Students for Sensible Drug Policy, Legal Action Center, Drug Policy Alliance, NAACP Legal Defense and Educational Fund, StoptheDrugWar.org, Center for Community Alternatives, International Community Corrections Association, Justice Policy Institute, Prison Legal News, International CURE, Virginia CURE, and American Bar Association
- Reps. Miller (D-CA), Scott (D-VA) and Sens. Kennedy (D-MA), Dodd (D-CT)
- Higher education organizations
- Re-entry-focused organizations

**Potential Opposition:** “Tough on crime” lawmakers who do not understand the intersection between education and reduced rates of recidivism.

**Public Opinion:** In 2006, Zogby International conducted a poll for the National Council on Crime and Delinquency, entitled [\*Public Attitudes toward Rehabilitation and Reentry\*](#). According to that poll, 83% of Americans believe access to student loans is important to a person’s successful reintegration back into society after incarceration.

#### **Experts:**

- Tom Angell, Law Enforcement Against Prohibition
- Bill Piper, Drug Policy Alliance
- Kris Krane, Students for Sensible Drug Policy
- Jenny Collier, independent consultant (formerly at Legal Action Center)

#### **For Further Information:**

Visit the Students for Sensible Drug Policy website at: <http://ssdp.org/campaigns/hea/>.

## V. REMOVE UNFAIR BARRIERS TO HOUSING

**Summary of the Problem:** Individuals with criminal records face many challenges upon re-integrating back into society, but frequently their most immediate need is securing safe and affordable housing. While the lack of affordable housing is often a problem for individuals who lack financial resources, this problem is compounded for persons with conviction records. They often find that a conviction record is the main stumbling block in obtaining housing, whether in the private sector or in public and Section 8 supported housing.

Many of the policies that housing authorities or private landlords use to exclude people with conviction records are overly restrictive, effectively denying housing to people who pose no threat to the public, tenants or property. Oftentimes the policies are based on a misunderstanding of federal law, or on the landlord placing a premium on ease of administration, believing that it is easier to reject all people with conviction records than to perform individualized analyses of their applications. These policies should be changed to increase access to urgently needed housing. Public housing authorities and private landlords should adopt policies that, rather than barring any applicants who have criminal records, and their families, instead individually assess each applicant based on the:

- Seriousness and nature of his or her conviction
- Relevance of that conviction to the tenancy
- Length of time that has passed since the conviction, and
- Evidence of rehabilitation.

Additionally, neither public agencies nor private landlords should base a decision on an arrest that never led to conviction.

### **Proposed Solutions:**

#### *Legislative Changes:*

1. Pass the No One Strike Eviction Act, H.R. 6785 from 110<sup>th</sup> Congress
  - **Amend 42 U.S.C. 1437d(k)**
2. Pass the Public Safety Ex-Offender Self Sufficiency Act, H.R. 6206 from 109<sup>th</sup> Congress
  - **Amend Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986**

### **Jurisdiction:**

*Legislative Branch:* Senate Committee on Financial Services and House Ways and Means

## **Background:**

**Legislative Branch:** In November 2005, Rep. John Conyers introduced H.R. 4202, the Reentry Enhancement Act, which contained a provision amending public housing restrictions for people with criminal records. The bill required consideration of mitigating circumstances and the impact of eviction or denial of tenancy on a person subject to a denial by a public housing agency because of a criminal conviction. Moreover, tenants could not be denied tenancy based solely upon the familial relationship of a tenant to a person convicted of a criminal offense and required intent or knowledge of a crime committed by a family member or guest before eviction or denial of public housing. In August 2008, Rep. Sheila Jackson Lee introduced this provision as a stand alone bill, H.R. 6785 - No One Strike Eviction Act of 2008. The bill has four cosponsors.

In previous Congresses Rep. Danny Davis also introduced legislation to expand supportive housing opportunities for people with criminal records. Last introduced in the 109<sup>th</sup> Congress, H.R. 6205 - Public Safety Ex-Offender Self-Sufficiency Act of 2006 “amends the Internal Revenue Code to allow a business related tax credit for investment in residential housing units for certain low-income individuals who were convicted of a crime punishable under state or federal law by a prison term of six months or longer [] and who participate in a program of support services, including job and entrepreneurial training, designed to make such ex-offenders self sufficient.” In the past the bill had bipartisan support, including Rep. Mark Souder (R-IN) and former Rep. and HUD Secretary Jack Kemp.

## **Potential Allies, Potential Opposition, and Public Opinion:**

### ***Potential Allies:***

- Justice reform organizations, including Legal Action Center, The Sentencing Project, Open Society Policy Center, Center for Community Alternatives, International Community Corrections Association, Justice Policy Institute, Prison Legal News, StoptheDrugWar.org, International CURE, Virginia CURE
- Reps. John Conyers (D- MI), Danny Davis (D-IL), Sheila Jackson Lee (D-TX)

**Potential Opposition:** “Tough on crime” lawmakers who do not understand the intersection between public assistance and reduce rates of recidivism.

**Public Opinion:** According to the Zogby poll conducted for the National Council on Crime and Delinquency, entitled [\*Public Attitudes toward Rehabilitation and Reentry\*](#), 82% of Americans believe access to public housing is important (53% very important) to a person’s successful reintegration after incarceration.

## **Experts:**

- [Legal Action Center](#)
- Human Rights Watch

## **For Further Information:**

See Human Rights Watch's pages *Federal "One-Strike" Legislation*, <http://www.hrw.org/reports/2004/usa1104/5.htm> and *Screening People Out: "Felons Need Not Apply"* <http://www.hrw.org/reports/2004/usa1104/9.htm>.

## **VI. EXPAND EMPLOYMENT OPPORTUNITIES FOR PEOPLE WITH CRIMINAL RECORDS**

**Summary of the Problem:** More and more, employers are conducting criminal background checks on job applicants, which can make it much more difficult for the millions of Americans with criminal records to find employment and become productive, law-abiding members of society. Most states allow employers to refuse to hire people with criminal records; not only individuals who have been convicted – even if they have paid their debt to society and demonstrated their ability to work without risk to the public – but also those who were arrested and never convicted. Although no one questions the legitimate concerns of employers who do not want to hire someone with a conviction record who clearly demonstrates a threat to public safety or who otherwise has a conviction history directly related to a specific job, policies that encourage employers to adopt broad sweeping exclusions (i.e. not hiring or considering anyone with any type of criminal history) simply lock out and eliminate many qualified, rehabilitated individuals from the job market.

Criminal record policies that bar applicants with criminal histories from employment should be amended to not only include a requirement for individualized determinations but may include a graduated period of consideration of the criminal record based upon the severity of the individual's criminal record history. Consideration of a criminal record should not be permitted beyond 7 years. In the study, *Scarlet Letter and Recidivism: Does an Old Criminal Record Predict Future Offending* (2007), researchers note that their findings "suggest that after a given period of remaining crime free it may be prudent to wash away the brand of 'offender' and open up more legitimate opportunities to this population."

### **Proposed Solutions:**

***Executive:*** Change regulations and guidance from the Departments of Education and Labor to ensure that state and federal in-prison educational and training programs are tied to high growth labor markets and industries.

Job training programs should be developed and matched to promote skills for jobs that are available in the regional labor market and those that are in high growth sectors. Conducting labor market analysis that includes a review of statutory barriers is cost-effective and is an efficient use of job training resources. For example, a correctional facility may train people in horticulture despite the fact that the majority of the individuals may return to urban metropolitan

areas where there are a limited number of jobs available in floral design and landscaping. A facility may also train incarcerated individuals in barbering or cosmetology and the state's licensing law may prohibit someone with a felony from being licensed. Additionally, in some states, people in prison may be trained for work in industries that may be nonexistent in their region. Labor forecasting and legal barrier analysis is a cost effective and sensible practice to ensure incarcerated individuals are prepared to compete in the labor market, are employable, and are less likely to recidivate.

### ***Legislative Changes:***

1. Amend the Higher Education Act to restore Pell Grant eligibility to incarcerated people
  - Amend the Higher Education Act (most recently reauthorized in August 2008, now PL 110-315) to allow incarcerated persons to apply for Pell Grants. In 1994, Congress eliminated Pell Grant eligibility for people who are incarcerated. Most post-secondary higher education programs in prisons closed as a result. Education is one of the best deterrents to re-offending. In a study conducted for the U.S. Department of Education, researchers found that participation in state correctional education programs lowers the likelihood of re-incarceration by 29 percent. In addition, this study concluded that for every dollar spent on education, more than two dollars in reduced prison costs would be returned to taxpayers.
2. Codify Current EEOC Guidance on Hiring People with Criminal Records
  - Create a federal standard based on the Equal Employment Opportunity Commission (EEOC) policy guidance on the use of criminal background checks for employment purposes when screening for arrest and conviction. This guidance currently asks employers to consider the relationship between the offense and the job position, how long ago the offense occurred, the severity of the offense, and any evidence of rehabilitation.
  - Criminal record policies that bar applicants with criminal record histories from employment should be amended to not only include a requirement for individualized determinations but may include a graduated period of consideration of the criminal record based upon the severity of the individual's criminal history. Consideration of a criminal record should not be permitted beyond seven years.
3. Strengthen the Work Opportunity Tax Credit
  - Amend the Work Opportunity Tax Credit (WOTC), authorized by the Small Business Job Protection Act of 1996 (Public Law 104-188). Currently, under the WOTC program, employers who hire low-income individuals with criminal records can reduce their federal income tax liability by up to \$2,400 per qualified new worker. Congress should increase the WOTC tax credit for individuals with criminal records to match the tax credit available for

individuals who qualify as Long-term Family Assistance recipients. There is a \$6600 difference between the two credits.

4. Reauthorize the Workforce Investment Act
  - Any reauthorization of the Workforce Investment Act (Public Law 105-220) should include provisions for hard to serve populations, including those individuals with criminal histories, through the WIA one-stop system.
5. Pass the “Fairness & Accuracy in Employment Background Checks Act”
  - Approve the “Fairness & Accuracy in Employment Background Checks Act” bi-partisan legislation introduced in the House at the end of the 110<sup>th</sup> Congress (H.R. 7033); this legislation seeks to provide critical safeguards when the FBI conducts criminal background checks for employment purposes.

***Legislative Appropriations (Solutions w/ Funding Requests):*** Increase funding for WIA programming aimed at serving harder-to-serve individuals, including those with criminal records.

**Jurisdiction:**

***Executive Branch:*** Department of Labor (Employment and Training Administration), Department of Education

***Legislative Branch:*** House and Senate Judiciary Committees, House Education and Labor Committee, Senate Health, Education, Labor and Pensions (HELP) Committee

**Background:**

***Legislative Branch:*** During the 110<sup>th</sup> Congress, there was some significant discussion about the barriers to employment that people with criminal records face. The House Judiciary Subcommittee on Crime and Drugs held a hearing to examine practices related to FBI criminal background checks being used for employment purposes. During this hearing, Members heard witness testimony about the advent of background checks being used for employment purposes and the great number of inaccuracies and instances of incomplete records in the FBI database. In addition, Subcommittee Members heard testimony about the lack of guidance given to employers about how to consider criminal history in making employment decisions.

In addition, the House Government Oversight and Reform Subcommittee on the Federal Workforce held a hearing on employment policies and practices within the federal government for people with criminal records.

In the second half of the 110<sup>th</sup> Congress, a number of organizations, including the National Employment Law Project and the National HIRE Network, began working with Congressional staff to develop legislation aimed at requiring the FBI to clean up the criminal

history database. Democratic and Republican Members of the House have agreed to sign onto this legislation as original co-sponsors. Senate Democratic Members have also agreed to sponsor the legislation, but Republican Senate sponsorship has not yet been found.

**Potential Allies, Potential Opposition, and Public Opinion:** There are a number of organizations from various fields who support expanding employment opportunities for people with criminal records, including many of the organizations that participated in the Reentry Working Group which advocated for passage of the Second Chance Act.

***Potential Allies:***

- Legal Action Center
- National H.I.R.E. Network
- National Employment Law Project
- The Sentencing Project
- Open Society Policy Center
- International Community Corrections Association
- NAACP Legal Defense and Educational Fund
- American Bar Association
- Center for Community Alternatives
- Justice Policy Institute
- Prison Legal News
- International CURE
- Virginia CURE

***Public Opinion:*** In 2006, Zogby International conducted a poll for the National Council on Crime and Delinquency, entitled *Public Attitudes toward Rehabilitation and Reentry*. The poll found 80% of the American voting public believe job training is “very important” to a person’s successful reintegration into society after incarceration.

**Experts:**

- Roberta Meyers-Peebles, [National H.I.R.E. Network](#)
- Maurice Emsellem, [National Employment Law Project](#)

**For Further Information:**

National HIRE Network, [www.hirenetwork.org](http://www.hirenetwork.org)

## **VII. EXPAND ACCESS TO DRUG AND ALCOHOL TREATMENT**

**Summary of the Problem:** Between 60 and 80 percent of individuals under supervision of the criminal justice system in the U.S. were either under the influence of alcohol or other drugs when they committed an offense, committed the offense to support a drug addiction, were charged with

a drug-related crime, or were using drugs or alcohol regularly. There is a wide gap between the need for treatment services and the provision of them. Of the 22.3 million Americans with alcohol or drug problems in 2007, only 2.4 million—roughly one in ten—received treatment at a specialty treatment facility, leaving 21.1 million untreated.

Many individuals under the supervision of the criminal justice system need publicly-funded, community-based drug and alcohol treatment programs. Increasing support for the largest federal source of funding for these services, the Substance Abuse Prevention and Treatment (SAPT) Block Grant, administered by the Substance Abuse and Mental Health Services Administration (SAMHSA), would expand access to drug and alcohol treatment and prevention services nationwide. The SAPT Block Grant is funded now at approximately \$1.8 billion.

The Substance Abuse Prevention and Treatment (SAPT) Block Grant is the backbone of the publicly supported prevention and treatment system in the U.S. SAMHSA's most recent data indicate that the SAPT Block Grant serves nearly two million individuals every year and provides roughly half of all public funding for treatment services. Over 10,500 community-based organizations receive federal Block Grant funding, which is passed on to them by their state governments. States receiving SAPT Block Grant funds also are required to contribute state funding for treatment, and many local governments do the same.

### **Proposed Solutions:**

***Executive:*** Include a request for increased funding in the President's annual budget request.

***Legislative Appropriations (Solutions w/ Funding Requests):*** Increase funding for the federal Substance Abuse Prevention and Treatment Block Grant through the annual appropriations process.

### **Jurisdiction:**

***Executive Branch:*** Center for Substance Abuse Treatment at the Substance Abuse and Mental Health Services Administration (SAMHSA) within the Department of Health and Human Services

The White House Office of National Drug Control Policy (ONDCP)

***Legislative Branch:*** Committees of jurisdiction over the authorization of SAMHSA programming including the SAPT Block Grant: House Energy and Commerce Committee (Health Subcommittee), Senate Health, Education, Labor and Pensions (HELP) Committee

Committees of jurisdiction over appropriations for the SAPT Block Grant: House and Senate Appropriations Committees (Subcommittees with jurisdiction over funding in the Departments of Labor, Health and Human Services, and Education)

**Background:**

***Executive Branch:*** Over the past number of years, the Bush Administration has requested level funding or small increases for the SAPT Block Grant program. The Administration did support a Presidential initiative which focused on expanding access to addiction treatment and recovery support services, the Access to Recovery initiative, which was a key priority for SAMHSA. However, there is recognition within SAMHSA and the Department of Health and Human Services more broadly of the importance of the SAPT Block Grant program to ensuring that people with addiction histories receive the care they need.

***Legislative Branch:*** The SAPT Block Grant program received level funding or small funding increases from Congress over the past number of years. While there are a number of Members of the House and Senate Appropriations Committees who have championed this program [including Congressman Patrick Kennedy (D-RI) and Senator Arlen Specter (R-PA)], the Block Grant program is not even keeping up with the pace of inflation due to low budget requests and an increasingly challenging funding environment.

**Potential Allies, Potential Opposition, and Public Opinion:**

***Potential Allies:*** A broad cross-section of national groups supports increasing funding for the SAPT Block Grant.

- Organizations from the addiction prevention, treatment and recovery community (Legal Action Center, National Association of State Alcohol and Drug Abuse Directors, Community Anti Drug Coalitions of America, National Association of Drug Court Professionals, Faces & Voices of Recovery, International CURE, Virginia CURE)
- Healthcare and child welfare communities (AIDS Action, Alliance for Children and Families, American Counseling Association, American Psychiatric Association, Child Welfare League of America, National Alliance on Mental Illness, National Alliance to End Homelessness)
- Law enforcement, corrections and government groups (National Association of Counties, National Association of State Directors of Developmental Disabilities Services, National Association of State Mental Health Program Directors, National Narcotics Officers Associations' Coalition, American Jail Association, American Probation and Parole Association).
- Center for Community Alternatives, International Community Corrections Association, Justice Policy Institute, Prison Legal News

***Potential Opposition:*** Competing programs in the appropriations process

**Public Opinion:** In 2006, Zogby International conducted a poll for the National Council on Crime and Delinquency, entitled *Public Attitudes toward Rehabilitation and Reentry*. The poll found 80% of the American voting public believed drug treatment is “very important” to a person’s successful reintegration into society after incarceration.

Additionally, 2004 poll conducted for Faces and Voices of Recovery by Peter Hart & Associates found that in examining a number of approaches that society could take to address the problem of addiction to alcohol and other drugs, the highest percentage of survey respondents (91 percent) answered that making more addiction treatment and recovery support services available so people who decide they need help can get the care they need was an important way to address addiction. (70 percent of respondents said it was very important and 21 percent said it was fairly important.)

75 percent of those surveyed said they would be more likely to vote for a candidate for Congress who supported an increase in federal government funding for programs to prevent and treat addiction and support recovery, as well as fund scientific research on the causes of addiction (44 percent they would be much more likely and 31 percent said they would be somewhat more likely to vote for a candidate supporting that position.)

81 percent of those surveyed said they would be more likely to vote for a candidate for Congress who supported reallocating dollars to place a greater emphasis on drug prevention, education, treatment and recovery support programming (48 percent they would be much more likely and 33 percent said they would be somewhat more likely to vote for a candidate supporting that position.)

### **Experts:**

- Jenny Collier, independent consultant and an advocate and policy expert on this program
- Rob Morrison, [National Association of State Alcohol and Drug Abuse Directors](#) (NASADAD) - the organization whose members administer the SAPT Block Grant
- Sue Thau, [Community Anti-Drug Coalitions of America](#)
- Paul Samuels, Legal Action Center

### **For Further Information:**

- Legal Action Center, “Stopping the Revolving Prison Door: How Addiction Treatment Can Prevent Drug Use and Crime, Promote Successful Reentry into Society and Save Lives,” [www.lac.org/nida](http://www.lac.org/nida)
- Robert Wood Johnson Report, “Substance Abuse: The Nation’s Number One Health Problem,” <http://www.rwjf.org/files/publications/other/SubstanceAbuseChartbook.pdf>
- Substance Abuse and Mental Health Services Administration, [www.samhsa.gov](http://www.samhsa.gov)

- National Institute on Drug Abuse, [www.nida.nih.gov](http://www.nida.nih.gov)
- American Bar Association, Commission on Effective Criminal Sanctions, “Second Chances in the Criminal Justice System: Alternatives to Incarceration and Reentry Strategies,” [www.abanet.org/cccs](http://www.abanet.org/cccs).