

**APPENDIX MATERIALS: SUBCOMMITTEE ON BARRIERS TO PRIVATE  
EMPLOYMENT**

## LEGISLATIVE TASK FORCE ON EMPLOYMENT OF PERSONS WITH PAST CRIMINAL CONVICTIONS

### Subcommittee on Barriers to Private Employment Senator Kimberly A. Lightford, Chair

Round Table Discussion  
*Thursday, October 16, 2008 at 1:30 p.m.*  
*Thompson Center, 100 West Randolph, Room 16-504*

It is a “win-win” situation to help people with criminal records secure employment. How can people with criminal records make themselves more attractive to employers? And how can employers be more open to employing people with criminal records?

To explore these questions, participants in the round table discussion brought up the following issues:

#### **Issue 1: State tax credit for employers who hire people with criminal records**

The bill creating this state tax credit was sponsored by Sen. Lightford as an initiative of the Illinois Black Legislative Caucus. Reports from the Illinois Department of Revenue show that the state tax credit is barely being utilized.

A representative from the Department of Revenue talked about how this is only the first full year (ending with the filing on 4/15/08), and it takes some time for tax credits to catch on. The Dept. of Revenue has marketed the tax credit on its web site and in all of its publications, and has mentioned the credits in trainings. The problem is that few companies qualify for the credit primarily because the criteria are so restrictive.

There was a discussion of the federal tax credit, WOTC, which is similar. Companies can apply for both credits with the Department of Revenue. IDES prequalifies people for the federal tax credit but not for the state one.

#### Recommendations:

- Strengthen the state law so that more offenders are eligible. The argument is that data show that the state tax credit is not doing what it was supposed to do.
- Increase the ease of applying for the state tax credit in conjunction with the federal tax credit by streamlining the process and reducing paperwork.
- Better market the state tax credit to companies by targeting CEOs and CFOs rather than strictly human resources personnel.
- Inform prisoners and ex-offenders about the state tax credit so that they can use it as they market themselves to prospective employers.
- Upon discharge, provide inmates with document showing eligibility for tax credit, duration of eligibility and description of tax credit program.

## **Issue 2: Bonding and other employer protections**

Employers are not always aware of the protections that may be in place as incentives for them to hire people with criminal records. More can be done to publicize these protections not only to employers directly but also to people with criminal records so that they can mention it to employers when they interview.

### Recommendations:

- Per the request of Illinois Retail Merchants Association, prepare a one-pager be developed that briefly describes the state tax credit, the WOTC, bonding, and other employer incentives and protections.
- Change negligent hiring legislation to provide immunity or prevent evidence from being entered into any negligent hiring lawsuits if person's record is over 10 years old. (Review research about likelihood of rearrest based on prior record.)
- Upon discharge, provide inmates with document showing eligibility for bond duration of eligibility and description of bonding program.

## **Issue 3: Aligning in-prison training with job market needs**

This issue was raised by the employers. Sometimes people may come out of prison with several different certifications, none of which will be helpful in finding them a job. This may be because in-prison training is outdated or it reflects the job market near the prison but not in the home communities of those leaving prison.

### Recommendations:

- Provide more training dollars to companies willing to hire ex-offenders.
- Find out if there is a way to access federal training dollars through DCEO

## **Issue 4: Providing incentives through the procurement process**

The representative from the Midway Moving Company remarked that there is zero consideration in the city contract bidding process for companies' willingness to employ people with criminal records. The focus is strictly on which bid is lowest. If it is truly a priority of the city or state that people with criminal records find gainful employment so that they don't commit more crimes (a public safety issue), then companies who are willing to hire ex-offenders should receive points to improve the status of their bid.

### Recommendations:

- Include incentives in the procurement process for companies that hire formerly incarcerated.

## **Issue 5: "Ban the Box" on employment applications**

A policy has been adopted by the City of Chicago which removes from the initial employment application any question about prior convictions. This information is gathered later on in the

interviewing process once the person's qualifications have been considered. Initial data show that, based solely on their qualifications, many of the people with criminal records who applied for city jobs were advanced to an interview at which their record could be discussed as a factor.

Recommendations:

- Try again with state legislation? Or look for administrative remedies?

### **Issue 6: Expansion of Certificates**

Currently, people with criminal records can apply for Certificates of Relief from Disability and Certificates of Good Conduct to demonstrate to an employer that they have been rehabilitated and should not be barred from employment. Recent legislation sought to:

(1) Protect employers from negligent liability if they hire people with certificates, except in cases of wanton misconduct (pending).

2) Expands eligibility pool for criminal convictions to anyone with a record, except those who must register (sex offenders, arsonists, child murderers) and those with convictions for first degree murder.

### **Issue 7: Review/implementation/expansion of national models**

National H.I.R.E. presented about the different model programs that exist to promote the employment of people with criminal records including:

- Transitional jobs
- Apprenticeship programs
- Social ventures
- Entrepreneurship support

H.I.R.E. also submitted written testimony.

### **Issue 8: Marketing and outreach strategy to promote hiring people with criminal records**

Recommendations:

- Create legislation stating that it is state policy to encourage the employment and licensure of people with criminal records
- Cultivate relationships with industry sectors that hire people with criminal records.
- Include people with criminal records with those protected under fair hiring practices.
- Connect employers with community organizations that can provide support in terms of teaching soft skills, providing drug testing and treatment, etc.

There is still a lack of information coming from employers who will not hire people with criminal records as to their exact reasons why. One way by which to get this information would be to ask IRMA to survey its members.

### **Issue 9: Enact a state statute, modeled after New York law, which prohibits discrimination on the basis of a criminal record which are unrelated to the positions sought**

Or a consideration should be given to a bill modeled after a New York statute which addresses this issue. The New York law has proven workable in a large industrial state, with an economically diverse urban population. The statute provides:

No application for ... employment ... shall be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses, unless: (1) there is a direct relationship between one or more of the previous criminal offenses and the specific ... employment sought or held by the individual; or (2) ... the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.<sup>1</sup>

This legislation lists eight factors that employers are to consider when making an employment determination.

In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors: (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses. (b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person. (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities. (d) The time which has elapsed since the occurrence of the criminal offense or offenses. (e) The age of the person at the time of occurrence of the criminal offense or offenses. (f) The seriousness of the offense or offenses. (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct. (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public<sup>2</sup>.

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<sup>1</sup> N.Y. Correct. Law § 752

<sup>2</sup> N.Y. Correct. Law § 753(1)

**List of Licenses Available with CRD (27)** – as of August 1, 2006

**1. Athletic trainer**

- Athletic Trainer
- Athletic Trainer CE sponsor

**2. Barber, cosmetologist, esthetician, and nail technician**

- Barber
- Barber Teacher
- Barber School
- Cosmetologist
- Cosmetology Teacher and Clinic Teacher
- Cosmetology School, private and state-owned Salon/Shop Registration
- Esthetician
- Esthetician Teacher and Clinic Teacher
- School of Esthetics
- Nail Technician
- Nail Technician Teacher and Clinic Teacher
- Nail Technology School
- B.C.E.N.T. (Barber, Cosmetology, Esthetics, and Nail Technology) CE Sponsor

**3. Professional boxer**

- Boxer
- Judge
- Boxing Manager
- Boxing Promoter
- Referee
- Second
- Timekeeper

**4. Certified shorthand reporter**

- Restricted Shorthand Reporter
- Certified Shorthand Reporter
- Shorthand Reporter CE Sponsor

**5. Interior designer**

- Interior Designer
- Residential Interior Designer

**6. Professional land surveyor**

- Land Surveyor
- Land Surveyor in Training
- Land Survey Professional Corporation
- Professional Design Firm

- 7. Landscape architect**
  - Professional Landscape Architecture
- 8. Marriage and family therapist**
  - Marriage and Family Therapist
  - Marriage and Family Therapist CE Sponsor
  - Associate Marriage and Family Therapist
- 9. Professional counselor/clinical professional counselor**
  - Professional Counselor
  - Clinical Professional Counselor
  - Professional Counselor and Clinical Professional CE Sponsor
- 10. Real estate agent**
  - Real Estate Sales
  - Real Estate Agent
  - Real Estate Broker
- 11. Roofer**
  - Roofing Contractor
- 12. Professional engineering**
  - Professional Engineer
  - Professional Engineer in Training
  - Professional Design Firm
- 13. Electrologist**
  - Electrologist
- 14. Animal welfare inspector**
- 15. Boiler and pressure vessel repairer**
- 16. Farm labor contractor**
- 17. Employment agency counselor**
- 18. Water well and pump installation contractor**
- 19. Auction License**
- 20. Architecture practice**
- 21. Dietetic and Nutrition Services**

**22. Environmental Health Practitioner**

**23. Funeral Directing and Embalming**

**24. Land Sales**

**25. Professional Geology**

**26. Public Accountant**

**27. Structural Engineering**

(<http://www.ides.state.il.us/ExOffenders/bans.shtml>)



## Licenses with Absolute Barrier

### Absolute Bar for Any Crime under Any Condition

- Absolute bar to employment for a person convicted of any crime that is a felony or misdemeanor, which has an essential element of dishonesty or any crime that is directly related to the practice of the profession
- **Clinical Psychologist**
- **Nursing Home Administrator**
- **Optometric Practice**
- **Respiratory Care Practice**

### Absolute Bar in General

- Absolute bar to employment for an individual convicted of any felony, however, it is possible for a license to be provided upon the proof of sufficient rehabilitation to warrant public trust.
- **Speech-Language Pathology and Audiology Practice**
- **Hazardous Waste Crane and Hoisting Equipment Operator**
- **Hazardous Waste Laborers**
- **Child Care Provider**
- **Foster Parent/Home Operator**

### Absolute Bar Under Certain Conditions

- **Pharmacist**
  - Absolute bar to any person who has been convicted of felony more than twice.
- **Private Detective, Private Alarm, Private Security, and Locksmith**
  - Absolute bar to any conviction within the last 10 years
- **Horse Meat Dealer**
  - Absolute bar to any person who has been convicted of felony/crime against the decency or morality
- **Doctor (Medical Practice)**
  - Absolute bar to any person who has engaged in conducts that cause actual harm to any member of the public, conduct that is reasonably likely to cause harm to any member of the public in the future
    - ▲ Activities include, but not limited to being convicted of crimes listed below: larceny, embezzlement, obtaining money, property, or credit by false pretenses, or by means of a confidence game, dishonesty, fraud, misstatement or moral turpitude.
- **Commercial Relocation of Trespassing Vehicles**

- Absolute bar to any person who has been convicted, during the proceeding 5 years, of any of the following criminal offense and does not make a compelling showing that he is nevertheless fit to hold an operators licensure: bodily injury or attempt to inflict bodily injury to another; theft or attempted theft of property; or sexual assault or attempted sexual assault of any kind.
- **School Bus Driver**
  - Absolute bar to any person who has been convicted of more than 2 serious traffic offenses within a year.
- **Religious Organization Driver**
  - Absolute bar to any person who has been convicted within 4 years of leaving the scene of an accident; Driving under the influence; Reckless driving; Drag racing; Manslaughter; Reckless homicide; or reckless conduct arising from the use of motor vehicle.
- **Senior Citizen Driver**
  - Absolute bar to any person who has been convicted within 3 years of leaving the scene of an accident; Driving under the influence; Reckless driving; drag racing; manslaughter; reckless homicide; or reckless conduct arising from the use of motor vehicle.
- **Profit Ride Sharing Driver**
  - Absolute bar to any person convicted of the following offenses within the previous 3 years; Driving under the influence; Reckless driving; Drag racing; Manslaughter; reckless homicide; or Reckless conduct arising from the use of a motor vehicle.
- **River Boat Gaming Occupations**
  - Absolute bar to any person who has been convicted of any crime that is a felony or a misdemeanor which has an essential element of dishonesty
- **Safety Deposit Box**
  - Absolute bar to any person who has been convicted of any crime that is a felony.
- **Business with State**
  - Absolute bar to any person who has completed the sentence for any convicted felony in less than 5 years, unless otherwise provided.
- **Wholesale Drug Distribution**
  - Absolute bar to any person who has been convicted twice of any felony under the Illinois Controlled Substance Act, or convicted twice of committing a class 1 felony under § 8A-3 and 8A-6 of the Illinois Public Aid Code.

### **“Ex-Offender” as an Evaluation Criteria**

- These acts allow the department to refuse to issue or renew a license where an applicant has been convicted of a felony, a misdemeanor of which an essential element of is dishonesty, or any crime that is directly related to the practice of the profession
  - **Acupuncture Practice**
  - **Occupational Therapist**
  - **Collection Agency**
  - **Clinical Social Work and Social Work Practice**
  - **Dentist (Dental Practice)**
  - **Hearing Instrument Consumer Protection**
  - **Naprapathic Practice**
  - **Nursing Practice**
  - **Dead Animal Disposal**
  - **Feeder Swine Dealer**
  - **Horse Racing**
  - **Physical Therapist**
  - **Veterinary Medicine and Surgery**
  - **Fire Equipment Distributor**
  - **Animal Welfare**
  - **Livestock Dealer**
  - **Slaughter Livestock Dealer**
  - **Liquor Dealing Practice**
  - **Child Protection and Child Welfare**
  - **Farm Labor Contractor**

### **Good Moral Character as an Evaluation Criteria**

- These acts require an applicant to be of Good Moral Character and provides that a person shall be qualified for a licensee, among other things, if the applicant is of “good moral character”.
- In determining “good moral character” under this section, the Department may take into consideration any felony conviction of the applicant, but such conviction shall not act as a complete bar to licensure.
  - **Podiatric Medical Practice**
  - **Industrial Hygienist**
  - **Explosives**
  - **Detection of Deception Examiners**
  - **Attorney**

**What occupation can I apply for with a certificate of Rehabilitation?**

**Barber/Cosmetology/Esthetics/Nail Technology**

- ✓ Barber
- ✓ Barber Teacher
- ✓ Barber School
- ✓ Cosmetologist
- ✓ Cosmetology Teacher and Clinic Teacher
- ✓ Cosmetology School, private and state-owned
- ✓ Salon/Shop Registration
- ✓ Esthetician
- ✓ Esthetician Teacher and Clinic Teacher
- ✓ School of Esthetics
- ✓ Nail Technician
- ✓ Nail Technician Teacher and Clinic Teacher
- ✓ Nail Technology School
- ✓ Barber, Cosmetology, Esthetics, and Nail Technology Continuing Education Sponsor

**Boiler/Pressure Vessel Repairer** *(overseen by the State Fire Marshall)*

- ✓ Engineer

**Landscape Architecture**

- ✓ Professional Landscape Architecture

**Interior Design**

- ✓ Interior Designer
- ✓ Residential Interior Designer

**Athletic Training**

- ✓ Athletic Trainer
- ✓ Athletic Trainer Continuing Education Sponsor

**Professional Boxing**

- ✓ Boxer
- ✓ Judge
- ✓ Boxing Manager
- ✓ Boxing Promoter
- ✓ Referee
- ✓ Second
- ✓ Timekeeper

**Shorthand Reporters**

- ✓ Restricted Shorthand Reporter
- ✓ Certified Shorthand Reporter
- ✓ Shorthand Reporter Continuing Education Sponsor

**Land Surveyor**

- ✓ Land Surveyor
- ✓ Land Surveyor in Training
- ✓ Land Survey Professional Corporation
- ✓ Professional Design Firm

**Marriage and Family Therapy**

- ✓ Marriage and Family Therapist
- ✓ Marriage and Family Therapist Continuing Education Sponsor
- ✓ Associate Marriage and Family Therapist

**Roofing Industry**

- ✓ Roofing Contractor

**Professional Counselor and Clinical Professional Counselor**

- ✓ Professional Counselor
- ✓ Clinical Professional Counselor
- ✓ Professional Counselor and Clinical Professional Continuing Education Sponsor

**Real Estate**

- ✓ Real Estate Sales
- ✓ Real Estate Agent
- ✓ Real Estate Broker

**Engineering**

- ✓ Professional Engineer
- ✓ Professional Engineer In Training
- ✓ Professional Design Firm

**Electrologist**

- ✓ Electrologist

**Water Well and Pump Installation Contractor**

Contact the Illinois Department of Public Health at <http://www.idph.state.il.us/rulesregs/rules-indexbytopic.htm>

**The Private Employment Agency Act**

Contact the Illinois Department of Labor at <http://www.state.il.us/agency/idol/>

**Animal Welfare**

- ✓ Pet Shop Operator
- ✓ Cattery Operator
- ✓ Dog Dealer
- ✓ Kennel Operator
- ✓ Animal Control Facility
- ✓ Animal Shelter
- ✓ Guard Dog Service
- ✓ Foster Home"

Contact the Illinois Department of Agriculture at <http://www.agr.state.il.us/>

**Farm Labor Contractor**

Contact the Illinois Department of Labor at <http://www.state.il.us/agency/idol/>



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Edwin A. Burnette § Public Defender

Honorable Kimberly A. Lightford  
10001 West Roosevelt Road Ste. # 202  
Westchester, IL 60154

Subcommittee on barriers which  
prevent persons with criminal  
records from entering the private  
labor market

Dear Senator Lightford,

I commend you and other members of your subcommittee for taking time to explore what the state might do to lift the barriers placed in the paths of ex-offenders seeking employment in the private sector. I understand that your subcommittee will be conducting a hearing on October 16. Due to a long-term commitment, I will not be able to attend. I ask that you consider the proposal set out in my letter.

The problem is challenging. For example, in 2002, researchers at the Urban Institute launched a longitudinal study of men being released from state correctional institutions in Illinois and returning to Chicago. When interviewed six months after their release, less than 30 percent were employed, and only a half (49 percent) reported having worked at least one month since their release<sup>1</sup>. I have attached a copy of the report of that study. The researchers made the following observation:

Although two-thirds of former prisoners report that they held a job just prior to their incarceration, most prisoners experience great difficulties finding jobs after their release. During the time they spend in prison, individuals lose work skills, forfeit the opportunity to gain work experience, and sever interpersonal connections and social contacts that could lead to legal employment opportunities upon release. And, while the period of incarceration could be viewed as an opportunity to build skills and prepare for placement at a future job, the evaluation literature provides mixed support for the effectiveness of in-prison job training programs.. After release,

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<sup>1</sup> Kachnowski, Employment And Prison Reentry, Urban Institute, Justice Center (2005)

the stigma of their ex-prisoner status makes the job search even more difficult: a recent survey of 3,000 employers in four major metropolitan areas revealed that two-thirds of the employers would not knowingly hire an ex-prisoner<sup>2</sup>.

What can be done to assist those released from prison who wishes to go straight, in an environment where two thirds of employers are unwilling to even consider employment of an ex-offender?

A viable proposal was recently generated by a panel of experts who sat on a task force convened by the Mayor of the City Chicago to look into the employment barriers faced by this population. The product of their research and expertise is set out in the report, *Rebuilding Lives, Restoring Hope, and Strengthening Communities*, prepared by the Mayoral Policy Caucus on Prisoner Reentry. At page 37, the task force made the following recommendation:

Along the same lines as the EEOC guidelines, a number of states have enacted statutes or issued guidance to prohibit employment discrimination against qualified people with criminal histories. Thirty-three states, in fact, have laws that prohibit denial of a job or license, solely on grounds of a criminal conviction. Such state anti-discrimination laws encourage the employment of people with criminal records by ensuring that qualified people with criminal records are given fair and equitable opportunities to obtain gainful employment, while simultaneously promoting public safety. These laws do not require employers to hire people with criminal histories. Although the laws vary in the states, most require employers to consider whether a conviction is, reasonably related to the particular occupation before termination or refusal to hire is permitted. The City should advocate for state legislation modeled after these existing statutes. Employers should be required to make individualized determinations about a job applicant's specific qualifications and criminal history, and should be prohibited from imposing categorical bans on qualified people with a criminal record.

I urge the Task Force to include in its recommendations to the General Assembly a proposal for enactment of a state statute prohibiting unreasonable employment discrimination on the basis of criminal records.

I have also attached to this letter, a memorandum prepared by my staff, summarizing the laws of Hawaii, Kansas, New York, Pennsylvania, and Wisconsin. These states have enacted statutes which prohibit unreasonable employment discrimination on the basis of prior convictions. The statutes cover

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<sup>2</sup> Id at page 1

both public and private employment. That memorandum also includes the full text of the statutes.

Enactment of a bill modeled after any one of these statutes would open doors to qualified job applicants and end blanket employment policies barring consideration of any job applicant with a criminal record.

I would urge special consideration be given to the New York statute. It has proven workable in a large industrial state, with an economically diverse urban population. The statute provides:

No application for ... employment ... shall be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses, unless: (1) there is a direct relationship between one or more of the previous criminal offenses and the specific ... employment sought or held by the individual; or (2) ... the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public..<sup>3</sup>

This legislation lists eight factors that employers are to consider when making an employment determination.

In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors: (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses. (b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person. (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities. (d) The time which has elapsed since the occurrence of the criminal offense or offenses. (e) The age of the person at the time of occurrence of the criminal offense or offenses. (f) The seriousness of the offense or offenses. (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct. (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public<sup>4</sup>.

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<sup>3</sup> N.Y. Correct. Law § 752

<sup>4</sup> N.Y. Correct. Law § 753(1)



The New York statute is enforced by a state agency comparable to our Human Rights Commission. It was enacted more than two decades ago. Obviously, it would have been repealed, if it jeopardized public safety, or placed an unreasonable burden on employers.

I manage a law office, which does not like to see return customers. Employment has proven to be the most effective tool to reduce recidivism. This tool will not be fully utilized, unless employers are deterred from adopting blanket employment denial policies.

Yours truly,

Edwin A. Burnette  
Cook County Public Defender



Law Office of the  
COOK COUNTY PUBLIC DEFENDER

69 W. WASHINGTON § 16<sup>TH</sup> FLOOR § CHICAGO, IL 60602 § (312) 603-0600

Edwin A. Burnette § Public Defender

**October 14, 2008**

**OVERVIEW OF STATE LAWS THAT BAN DISCRIMINATION ON THE BASIS OF CRIMINAL RECORDS**

**Hawaii** - Haw. Rev. Stat. § 378-2.5

Hawaii prohibits employment discrimination by all non-federal employers, even those with only one employee, based on applicants' criminal records. Employers may consider applicants' convictions insofar as they are *rationally related* to the employment. Hawaii is unique in forbidding employers in most fields from inquiring about applicants' criminal records until they have extended a conditional offer of employment, and in only allowing employers to consider convictions that occurred within the past ten years.

**Kansas** - Kan. Stat. Ann. § 22-4710(f).

Kansas law provides that for an employer to refuse to hire an applicant, his or her criminal history must *reasonably bear* on his or her trustworthiness or the safety or well-being of the employer's employees or customers. The statute applies to both public and private employers. In addition, the statute limits liability for employers regarding the employment decision, as long as the applicable standard is followed.

**New York** - N.Y. Exec. Law § 296; N.Y. Correct. Law §§ 750 to 754.

The New York State Human Rights Law states that an applicant may not be denied employment or licensure because of his or her conviction record unless there is a *direct relationship* between the offense and the job or license sought, or unless hiring or licensure would create an unreasonable risk to property or to public or individual safety. This law applies to employers with ten or more employees. A person with a criminal record who is denied employment is entitled to a statement of the reasons for such denial. Factors to consider in analyzing whether employment may be denied are found in N.Y. Corrections Law, Article 23-A. In addition, an employer may not inquire about nor act upon an arrest that was terminated or determined in favor of the individual.

Upon request and within thirty days, the applicant must be given a written statement of the reasons why employment was denied. The provisions of this law do not apply to the licensing activities of governing bodies in relation to the regulation of firearms, or an application for employment as a police officer or peace officer.

**Pennsylvania** 18 Pa. Cons. Stat. § 9124

Employers in Pennsylvania may only consider a job applicant's felony or misdemeanor convictions if they relate to the applicant's suitability for employment. Occupational licensing agencies may

consider any felony, but only *job related* misdemeanor convictions. The applicant is entitled to a written explanation if he or she is denied employment based upon a criminal history, or licensure based upon a conviction.

**Wisconsin** - Wis. Stat. § 111.335.

Wisconsin prohibits discrimination based on arrest or conviction records in the same manner it prohibits discrimination against members of other protected classes. The statutes apply to employers, labor organizations, employment agencies and licensing agencies. Several types of employers are exempted from the statute and in many cases licensing agencies are not covered.

Employers cannot ask applicants about an arrest record, unless a charge is pending. If an applicant's arrest is pending, employers can refuse to consider hiring him or her if the arrest *substantially relates* to the employment. Employers can only consider convictions insofar as they *substantially relate* to the employment or affect applicants' bondability.

# STATE STATUTES THAT BAN EMPLOYMENT DISCRIMINATION BY PUBLIC AND PRIVATE EMPLOYERS

1 of 5 DOCUMENTS

MICHIE'S HAWAII REVISED STATUTES ANNOTATED  
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\*\*\* ANNOTATIONS CURRENT THROUGH JULY 1, 2008. \*\*\*

DIVISION 1. GOVERNMENT  
TITLE 21 Labor And Industrial Relations  
CHAPTER 378 Employment Practices  
PART I. Discriminatory Practices

**Go to the Hawaii Code Archive Directory**

HRS § 378-2 (2008)

## **§ 378-2. Discriminatory practices made unlawful; offenses defined.**

It shall be an unlawful discriminatory practice:

(1) Because of race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, or arrest and court record:

(A) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment;

(B) For any employment agency to fail or refuse to refer for employment, or to classify or otherwise to discriminate against, any individual;

(C) For any employer or employment agency to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination;

(D) For any labor organization to exclude or expel from its membership any individual or to discriminate in any way against any of its members, employer, or employees; or

(E) For any employer or labor organization to refuse to enter into an apprenticeship agreement as defined in section 372-2: provided that no apprentice shall be younger than sixteen years of age;

(2) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any individual because the individual has opposed any practice forbidden by this part or has filed a complaint, testified, or assisted in any proceeding respecting the discriminatory practices prohibited under this part;

(3) For any person whether an employer, employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the discriminatory practices forbidden by this part, or to attempt to do so;

(4) For any employer to violate the provisions of section 121-43 relating to nonforfeiture for absence by members of the national guard;

## HRS § 378-2

(5) For any employer to refuse to hire or employ or to bar or discharge from employment, any individual because of assignment of income for the purpose of satisfying the individual's child support obligations as provided for under section 571-52:

(6) For any employer, labor organization, or employment agency to exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association; or

(7) For any employer or labor organization to refuse to hire or employ, or to bar or discharge from employment, or withhold pay, demote, or penalize a lactating employee because an employee breastfeeds or expresses milk at the workplace. For purposes of this paragraph, the term "breastfeeds" means the feeding of a child directly from the breast.

2 of 5 DOCUMENTS

MICHIE'S HAWAII REVISED STATUTES ANNOTATED

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CHAPTER 378 Employment Practices  
PART I. Discriminatory Practices

**Go to the Hawaii Code Archive Directory**

HRS § 378-2.5 (2008)

**§ 378-2.5. Employer inquiries into conviction record.**

(a) Subject to subsection (b), an employer may inquire about and consider an individual's criminal conviction record concerning hiring, termination, or the terms, conditions, or privileges of employment; provided that the conviction record bears a rational relationship to the duties and responsibilities of the position.

(b) Inquiry into and consideration of conviction records for prospective employees shall take place only after the prospective employee has received a conditional offer of employment which may be withdrawn if the prospective employee has a conviction record that bears a rational relationship to the duties and responsibilities of the position.

(c) For purposes of this section, "conviction" means an adjudication by a court of competent jurisdiction that the defendant committed a crime, not including final judgments required to be confidential pursuant to section 571-84; provided that the employer may consider the employee's conviction record falling within a period that shall not exceed the most recent ten years, excluding periods of incarceration. If the employee or prospective employee claims that the period of incarceration was less than what is shown on the employee's or prospective employee's conviction record, an employer shall provide the employee or prospective employee with an opportunity to present documentary evidence of a date of release to establish a period of incarceration that is shorter than the sentence imposed for the employee's or prospective employee's conviction.

(d) Notwithstanding subsections (b) and (c), the requirement that inquiry into and consideration of a prospective employee's conviction record may take place only after the individual has received a conditional job offer, and the limitation to the most recent ten-year period, excluding the period of incarceration, shall not apply to employers who are expressly permitted to inquire into an individual's criminal history for employment purposes pursuant to any federal or state law other than subsection (a), including:

## HRS § 378-2.5

- (1) The State or any of its branches, political subdivisions, or agencies pursuant to sections 78-2.7 and 831-3.1;
- (2) The department of education pursuant to section 302A-601.5;
- (3) The department of health with respect to employees, providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services pursuant to section 321-171.5;
- (4) The judiciary pursuant to section 571-34;
- (5) The counties pursuant to section 846-2.7;
- (6) Armed security services pursuant to section 261-17(b);
- (7) Providers of a developmental disabilities domiciliary home pursuant to section 333F-22;
- (8) Private schools pursuant to sections 302C-1 and 378-3(8);
- (9) Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution pursuant to section 378-3(9);
- (10) Detective agencies and security guard agencies pursuant to sections 463-6(b) and 463-8(b);
- (11) Employers in the business of insurance pursuant to section 431:2-201.3;
- (12) Employers of individuals or supervisors of individuals responsible for screening passengers or property under 49 U.S.C. "§44901 or individuals with unescorted access to an aircraft of an air carrier or foreign carrier or in a secured area of an airport in the United States pursuant to 49 U.S.C. §44936(a);
- (13) The department of human services pursuant to sections 346-97 and 352-5.5;
- (14) The public library system pursuant to section 302A-601.5;
- (15) The department of public safety pursuant to section 353C-5;
- (16) The board of directors of a cooperative housing corporation or the manager of a cooperative housing project pursuant to section 421I-12;
- (17) The board of directors of an association of owners under chapter 514A or 514B, or the manager of a condominium project pursuant to section 514A-82.1 or 514B-133; and
- (18) The department of health pursuant to section 321-15.2.

3 of 5 DOCUMENTS

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**\*\*\* ANNOTATIONS CURRENT THROUGH JULY 1, 2008. \*\*\***

DIVISION 1. GOVERNMENT  
 TITLE 21 Labor And Industrial Relations  
 CHAPTER 378 Employment Practices  
 PART I. Discriminatory Practices

**Go to the Hawaii Code Archive Directory**

HRS § 378-3 (2008)

**§ 378-3. Exceptions.**

Nothing in this part shall be deemed to:

- (1) Repeal or affect any law, ordinance, or government rule having the force and effect of law;
- (2) Prohibit or prevent the establishment and maintenance of bona fide occupational qualifications reasonably necessary to the normal operation of a particular business or enterprise, and that have a substantial relationship to the functions and responsibilities of prospective or continued employment;
- (3) Prohibit or prevent an employer, employment agency, or labor organization from refusing to hire, refer, or discharge any individual for reasons relating to the ability of the individual to perform the work in question;
- (4) Affect the operation of the terms or conditions of any bona fide retirement, pension, employee benefit, or insurance plan that is not intended to evade the purpose of this chapter; provided that this exception shall not be construed to permit any employee plan to set a maximum age requirement for hiring or a mandatory retirement age;
- (5) Prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised, or controlled by or in connection with a religious organization, from giving preference to individuals of the same religion or denomination or from making a selection calculated to promote the religious principles for which the organization is established or maintained;
- (6) Conflict with or affect the application of security regulations or rules in employment established by the United States or the State;
- (7) Require the employer to execute unreasonable structural changes or expensive equipment alterations to accommodate the employment of a person with a disability;
- (8) Prohibit or prevent the department of education or private schools from considering criminal convictions in determining whether a prospective employee is suited to working in close proximity to children;
- (9) Prohibit or prevent any financial institution in which deposits are insured by a federal agency having jurisdiction over the financial institution from denying employment to or discharging from employment any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, unless it has the prior written consent of the federal agency having jurisdiction over the financial institution to hire or retain the person;
- (10) Preclude any employee from bringing a civil action for sexual harassment or sexual assault and infliction of emotional distress or invasion of privacy related thereto; provided that notwithstanding section 368-12, the commission shall issue a right to sue on a complaint filed with the commission if it determines that a civil action alleging similar facts has been filed in circuit court; or
- (11) Require the employer to accommodate the needs of a nondisabled person associated with or related to a person with a disability in any way not required by Title I of the Americans with Disabilities Act.

4 of 5 DOCUMENTS

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DIVISION 1. GOVERNMENT  
 TITLE 21 Labor And Industrial Relations

HRS § 378-4

CHAPTER 378 Employment Practices  
PART I. Discriminatory Practices

**Go to the Hawaii Code Archive Directory**

HRS § 378-4 (2008)

**§ 378-4. Enforcement jurisdiction.**

The commission shall have jurisdiction over the subject of discriminatory practices made unlawful by this part. Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice may file with the commission a complaint in accordance with the procedure established under chapter 368.

5 of 5 DOCUMENTS

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DIVISION 1. GOVERNMENT  
TITLE 21 Labor And Industrial Relations  
CHAPTER 378 Employment Practices  
PART I. Discriminatory Practices

**Go to the Hawaii Code Archive Directory**

HRS § 378-5 (2008)

**§ 378-5. Remedies.**

(a) The commission may order appropriate affirmative action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, restoration to membership in any respondent labor organization, or other remedies as provided under chapter 368, which in the judgment of the commission, will effectuate the purpose of this part, including a requirement for reporting on the manner of compliance.

(b) In any civil action brought under this part, if the court finds that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this part, the court may enjoin the respondent from engaging in such unlawful discriminatory practice and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement, hiring, or upgrading of employees, with or without backpay, or restoration of membership in any respondent labor organization, or any other equitable relief the court deems appropriate. Backpay liability shall not accrue from a date more than two years prior to the filing of the complaint with the commission.

(c) In any action brought under this part, the court, in addition to any judgment awarded to the plaintiff or plaintiffs, shall allow costs of action, including costs of fees of any nature and reasonable attorney's fees, to be paid by the defendant.



1 of 1 DOCUMENT

9 of 17 DOCUMENTS

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EXECUTIVE LAW  
ARTICLE 15. HUMAN RIGHTS LAW

**Go to the New York Code Archive Directory**

NY CLS Exec § 296 (2008)

§ 296. Unlawful discriminatory practices

1. It shall be an unlawful discriminatory practice:

(a) For an employer or licensing agency, because of the age, race, creed, color, national origin, sexual orientation, military status, sex, disability, [fig 1] predisposing genetic characteristics, or marital status of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

(b) For an employment agency to discriminate against any individual because of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, [fig 1] predisposing genetic characteristics, or marital status, in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or employers.

(c) For a labor organization, because of the age, race, creed, color, national origin, sexual orientation, military status, sex, disability, [fig 1] predisposing genetic characteristics, or marital status of any individual, to exclude or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color, national origin, sexual orientation, military status, sex, disability, [fig 1] predisposing genetic characteristics, or marital status, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification; provided, however, that neither this paragraph nor any provision of this chapter or other law shall be construed to prohibit the department of civil service or the department of personnel of any city containing more than one county from requesting information from applicants for civil service examinations concerning any of the aforementioned characteristics, other than sexual orientation, for the purpose of conducting studies to identify and resolve possible problems in recruitment and testing of members of minority groups to insure the fairest possible and equal opportunities for employment in the civil service for all persons, regardless of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, [fig 2] predisposing genetic characteristics, or marital status.

(e) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he or she has opposed any practices forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article.

(f) Nothing in this subdivision shall affect any restrictions upon the activities of persons licensed by the state liquor authority with respect to persons under twenty-one years of age.

(g) For an employer to compel an employee who is pregnant to take a leave of absence, unless the employee is prevented by such pregnancy from performing the activities involved in the job or occupation in a reasonable manner.

1-a. It shall be an unlawful discriminatory practice for an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs:

(a) To select persons for an apprentice training program registered with the state of New York on any basis other than their qualifications, as determined by objective criteria which permit review;

(b) To deny to or withhold from any person because of race, creed, color, national origin, sexual orientation, military status, sex, age, disability, or marital status, the right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, executive training program, or other occupational training or retraining program;

(c) To discriminate against any person in his or her pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs because of race, creed, color, national origin, sexual orientation, military status, sex, age, disability or marital status;

(d) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for such programs or to make any inquiry in connection with such program which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sexual orientation, military status, sex, age, disability or marital status, or any intention to make any such limitation, specification or discrimination, unless based on a bona fide occupational qualification.

2. (a) It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the race, creed, color, national origin, sexual orientation, military status, sex, or disability or marital status of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, including the extension of credit, or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, creed, color, national origin, sexual orientation, military status, sex, or disability or marital status, or that the patronage or custom thereof of any person of or purporting to be of any particular race, creed, color, national origin, sexual orientation, military status, sex or marital status, or having a disability is unwelcome, objectionable or not acceptable, desired or solicited.

(b) Nothing in this subdivision shall be construed to prevent the barring of any person, because of the sex of such person, from places of public [fig 1] accommodation, resort or amusement if the division grants an exemption based on bona fide considerations of public policy; nor shall this subdivision apply to the rental of rooms in a housing accommodation which restricts such rental to individuals of one sex.

(c) For the purposes of paragraph (a) of this subdivision, "discriminatory practice" includes:

(i) a refusal to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford facilities, privileges, advantages or accommodations to individuals with disabilities, unless such person can demonstrate that making such modifications would fundamentally alter the nature of such facilities, privileges, advantages or accommodations;

(ii) a refusal to take such steps as may be necessary to ensure that no individual with a disability is excluded or denied services because of the absence of auxiliary aids and services, unless such person can demonstrate that taking such steps would fundamentally alter the nature of the facility, privilege, advantage or accommodation being offered or would result in an undue burden;

(iii) a refusal to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(iv) where such person can demonstrate that the removal of a barrier under subparagraph (iii) of this paragraph is not readily achievable, a failure to make such facilities, privileges, advantages or accommodations available through alternative methods if such methods are readily achievable.

(d) For the purposes of this subdivision:

(i) "Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense.

In determining whether an action is readily achievable, factors to be considered include:

(A) the nature and cost of the action needed under this subdivision;

(B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the place of public accommodation, resort or amusement; the overall size of the business of such a place with respect to the number of its employees; the number, type and location of its facilities; and

(D) the type of operation or operations of the place of public accommodation, resort or amusement, including the composition, structure and functions of the workforce of such place; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to such place.

(ii) "Auxiliary aids and services" include:

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(iii) "Undue burden" means significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered shall include:

(A) The nature and cost of the action needed under this article;

(B) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(C) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

(D) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

(E) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

(e) Paragraphs (c) and (d) of this subdivision do not apply to any air carrier, the National Railroad Passenger Corporation, or public transportation facilities, vehicles or services owned, leased or operated by the state, a county, city, town or village, or any agency thereof, or by any public benefit corporation or authority.

2-a. It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of publicly-assisted housing accommodations or other person having the right of ownership or possession of or the right to rent or lease such accommodations:

(a) To refuse to sell, rent or lease or otherwise to deny to or withhold from any person or group of persons such housing accommodations because of the race, creed, color, disability, national origin, sexual orientation, military status, age, sex, marital status, or familial status of such person or persons, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available.

(b) To discriminate against any person because of his or her race, creed, color, disability, national origin, sexual orientation, military status, age, sex, marital status, or familial status in the terms, conditions or privileges of any publicly-assisted housing accommodations or in the furnishing of facilities or services in connection therewith.

(c) To cause to be made any written or oral inquiry or record concerning the race, creed, color, disability, national origin, sexual orientation, membership in the reserve armed forces of the United States or in the organized militia of the state, age, sex, marital status, or familial status of a person seeking to rent or lease any publicly-assisted housing

accommodation; provided, however, that nothing in this subdivision shall prohibit a member of the reserve armed forces of the United States or in the organized militia of the state from voluntarily disclosing such membership.

(c-1) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such housing accommodation or to make any record or inquiry in connection with the prospective purchase, rental or lease of such a housing accommodation which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status, or any intent to make any such limitation, specification or discrimination.

(d)

(1) To refuse to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the said person, if the modifications may be necessary to afford the said person full enjoyment of the premises, in conformity with the provisions of the New York state uniform fire prevention and building code, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(2) To refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling or

(3) In connection with the design and construction of covered multi-family dwellings for first occupancy after March thirteenth, nineteen hundred ninety-one, a failure to design and construct dwellings in accordance with the accessibility requirements of the New York state uniform fire prevention and building code, to provide that:

(i) The public use and common use portions of the dwellings are readily accessible to and usable by disabled persons with disabilities;

(ii) All the doors are designed in accordance with the New York state uniform fire prevention and building code to allow passage into and within all premises and are sufficiently wide to allow passage by persons in wheelchairs; and

(iii) All premises within covered multi-family dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space, in conformity with the New York state uniform fire prevention and building code.

(e) Nothing in this subdivision shall restrict the consideration of age in the rental of publicly-assisted housing accommodations if the division grants an exemption based on bona fide considerations of public policy for the purpose of providing for the special needs of a particular age group without the intent of prejudicing other age groups.

(f) Nothing in this subdivision shall be deemed to restrict the rental of rooms in school or college dormitories to individuals of the same sex.

3. (a) It shall be an unlawful discriminatory practice for an employer, licensing agency, employment agency or labor organization to refuse to provide reasonable accommodations to the known disabilities of an employee, prospective employee or member in connection with a job or occupation sought or held or participation in a training program.

(b) Nothing contained in this subdivision shall be construed to require provision of accommodations which can be demonstrated to impose an undue hardship on the operation of an employer's, licensing agency's, employment agency's or labor organization's business, program or enterprise.

In making such a demonstration with regard to undue hardship the factors to be considered include:

(i) The overall size of the business, program or enterprise with respect to the number of employees, number and type of facilities, and size of budget;

(ii) The type of operation which the business, program or enterprise is engaged in, including the composition and structure of the workforce; and

(iii) The nature and cost of the accommodation needed.

3-a. It shall be an unlawful discriminatory practice:

(a) For an employer or licensing agency [fig 1] to refuse to hire or employ or license or to bar or to terminate from employment an individual eighteen years of age or older, or to discriminate against such individual in promotion, compensation or in terms, conditions, or privileges of employment, because of such individual's age.

(b) For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination on account of age respecting individuals eighteen years of age or older, or any intent to make any such limitation, specification, or discrimination.

(c) For any employer, licensing agency or employment agency to discharge or otherwise discriminate against any person because he or she has opposed any practices forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article.

(d) Notwithstanding any other provision of law, no employee shall be subject to termination or retirement from employment on the basis of age, except where age is a bona fide occupational qualification reasonably necessary to the normal operation of a particular business, where the differentiation is based on reasonable factors other than age, or as otherwise specified in paragraphs (e) and (f) of this subdivision or in article fourteen-A of the retirement and social security law.

(e) Nothing contained in this subdivision or in subdivision one of this section shall be construed to prevent the compulsory retirement of any employee who has attained sixty-five years of age, and who, for a two-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals, in the aggregate, at least forty-four thousand dollars; provided that for the purposes of this paragraph only, the term "employer" includes any employer as otherwise defined in this article but does not include (i) the state of New York, (ii) a county, city, town, village or any other political subdivision or civil division of the state, (iii) a school district or any other governmental entity operating a public school, college or university, (iv) a public improvement or special district, (v) a public authority, commission or public benefit corporation, or (vi) any other public corporation, agency, instrumentality or unit of government which exercises governmental power under the laws of the state. In applying the retirement benefit test of this paragraph, if any such retirement benefit is in a form other than a straight life annuity with no ancillary benefits, or if employees contribute to any such plan or make rollover contributions, such benefit shall be adjusted in accordance with rules and regulations promulgated by the division, after an opportunity for public hearing, so that the benefit is the equivalent of a straight life annuity with no ancillary benefits under a plan to which employees do not contribute and under which no rollover contributions are made.

(f) Nothing contained in this subdivision, in subdivision one of this section or in article fourteen-A of the retirement and social security law shall be construed to prevent the compulsory retirement of any employee who has attained seventy years of age and is serving under a contract for unlimited tenure, or a similar arrangement providing for unlimited tenure, at a nonpublic institution of higher education. For purposes of such subdivisions or article, the term "institution of higher education" means an educational institution which [fig 1] (i) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, [fig 2] (ii) is lawfully authorized to provide a program of education beyond secondary education, and [fig 3] (iii) provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree.

(g) In the event of a conflict between the provisions of this subdivision and the provisions of article fourteen-A of the retirement and social security law, the provisions of article fourteen-A of such law shall be controlling.

But nothing contained in this subdivision, in subdivision one of this section or in article fourteen-A of the retirement and social security law shall be construed to prevent the termination of the employment of any person who, even upon the provision of reasonable accommodations, is physically unable to perform his or her duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of said subdivisions or said article; nor shall anything in [fig 1] such subdivisions or [fig 2] such article be deemed to preclude the varying of insurance coverages according to an employee's age.

The provisions of this subdivision shall not affect any restriction upon the activities of persons licensed by the state liquor authority with respect to persons under twenty-one years of age.

3-b. It shall be an unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent thereof or any other individual, corporation, partnership or organization for the purpose of inducing a real estate

transaction from which any such person or any of its stockholders or members may benefit financially, to represent that a change has occurred or will or may occur in the composition with respect to race, creed, color, national origin, sexual orientation, military status, sex, disability, marital status, or familial status of the owners or occupants in the block, neighborhood or area in which the real property is located, and to represent, directly or indirectly, that this change will or may result in undesirable consequences in the block, neighborhood or area in which the real property is located, including but not limited to the lowering of property values, an increase in criminal or anti-social behavior, or a decline in the quality of schools or other facilities.

4. It shall be an unlawful discriminatory practice for an education corporation or association which holds itself out to the public to be non-sectarian and exempt from taxation pursuant to the provisions of article four of the real property tax law to deny the use of its facilities to any person otherwise qualified, or to permit the harassment of any student or applicant, by reason of his race, color, religion, disability, national origin, sexual orientation, military status, sex, age or marital status, except that any such institution which establishes or maintains a policy of educating persons of one sex exclusively may admit students of only one sex.

5. (a) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof:

(1) To refuse to sell, rent, lease or otherwise to deny to or withhold from any person or group of persons such a housing accommodation because of the race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status of such person or persons, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available.

(2) To discriminate against any person because of race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith.

(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such housing accommodation or to make any record or inquiry in connection with the prospective purchase, rental or lease of such a housing accommodation which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status, or any intent to make any such limitation, specification or discrimination.

The provisions of this paragraph (a) shall not apply (1) to the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner resides in one of such housing accommodations, (2) to the restriction of the rental of all rooms in a housing accommodation to individuals of the same sex or (3) to the rental of a room or rooms in a housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and the owner resides in such housing accommodation or (4) solely with respect to age and familial status to the restriction of the sale, rental or lease of housing accommodations exclusively to persons sixty-two years of age or older and the spouse of any such person, or for housing intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing is intended and operated for occupancy by persons fifty-five years of age or older, Sec. 807(b) (2) (c) (42 U.S.C. 3607 (b) (2) (c)) of the federal Fair Housing Act of 1988, as amended, shall apply.

(b) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent or lease, land or commercial space:

(1) To refuse to sell, rent, lease or otherwise deny to or withhold from any person or group of persons land or commercial space because of the race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status of such person or persons, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available;

(2) To discriminate against any person because of race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status in the terms, conditions or privileges of the sale, rental or lease of any such land or commercial space; or in the furnishing of facilities or services in connection therewith;

(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of such land or commercial space which expresses,

directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status; or any intent to make any such limitation, specification or discrimination.

(4) With respect to age and familial status, the provisions of this paragraph shall not apply to the restriction of the sale, rental or lease of land or commercial space exclusively to persons fifty-five years of age or older and the spouse of any such person, or to the restriction of the sale, rental or lease of land to be used for the construction, or location of housing accommodations exclusively for persons sixty-two years of age or older, or intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing is intended and operated for occupancy by persons fifty-five years of age or older, Sec. 807(b) (2) (c) (42 U.S.C. 3607(b) (2) (c)) of the federal Fair Housing Act of 1988, as amended, shall apply.

(c) It shall be an unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent thereof:

(1) To refuse to sell, rent or lease any housing accommodation, land or commercial space to any person or group of persons or to refuse to negotiate for the sale, rental or lease, of any housing accommodation, land or commercial space to any person or group of persons because of the race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status of such person or persons, or to represent that any housing accommodation, land or commercial space is not available for inspection, sale, rental or lease when in fact it is so available, or otherwise to deny or withhold any housing accommodation, land or commercial space or any facilities of any housing accommodation, land or commercial space from any person or group of persons because of the race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status of such person or persons.

(2) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of any housing accommodation, land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of any housing accommodation, land or commercial space which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status; or any intent to make any such limitation, specification or discrimination.

(3) With respect to age and familial status, the provisions of this paragraph shall not apply to the restriction of the sale, rental or lease of any land or commercial space exclusively to persons fifty-five years of age or older and the spouse of any such person, or to the restriction of the sale, rental or lease of any housing accommodation or land to be used for the construction or location of housing accommodations for persons sixty-two years of age or older, or intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing is intended and operated for occupancy by persons fifty-five years of age or older, Sec. 807 (b) (2) (c) (42 U.S.C. 3607 (b) (2) (c)) of the federal Fair Housing Act of 1988, as amended, shall apply.

(d) It shall be an unlawful discriminatory practice for any real estate board, because of the race, creed, color, national origin, sexual orientation, military status, age, sex, disability, marital status, or familial status of any individual who is otherwise qualified for membership, to exclude or expel such individual from membership, or to discriminate against such individual in the terms, conditions and privileges of membership in such board.

(e) It shall be an unlawful discriminatory practice for the owner, proprietor or managing agent of, or other person having the right to provide care and services in, a private proprietary nursing home, convalescent home, or home for adults, or an intermediate care facility, as defined in section two of the social services law, heretofore constructed, or to be constructed, or any agent or employee thereof, to refuse to provide services and care in such home or facility to any individual or to discriminate against any individual in the terms, conditions, and privileges of such services and care solely because such individual is a blind person. For purposes of this paragraph, a "blind person" shall mean a person who is registered as a blind person with the commission for the visually handicapped and who meets the definition of a "blind person" pursuant to section three of chapter four hundred fifteen of the laws of nineteen hundred thirteen entitled "An act to establish a state commission for improving the condition of the blind of the state of New York, and making an appropriation therefor".

(f) The provisions of this subdivision, as they relate to age, shall not apply to persons under the age of eighteen years.

(g) It shall be an unlawful discriminatory practice for any person offering or providing housing accommodations, land or commercial space as described in paragraphs (a), (b), and (c) of this subdivision to make or cause to be made any written or oral inquiry or record concerning membership of any person in the state organized militia in relation to

the purchase, rental or lease of such housing accommodation, land, or commercial space, provided, however, that nothing in this subdivision shall prohibit a member of the state organized militia from voluntarily disclosing such membership.

6. It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or to attempt to do so.

7. It shall be an unlawful discriminatory practice for any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he or she has opposed any practices forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article.

8. It shall be an unlawful discriminatory practice for any party to a conciliation agreement made pursuant to section two hundred ninety-seven of this article to violate the terms of such agreement.

9. (a) It shall be an unlawful discriminatory practice for any fire department or fire company therein, through any member or members thereof, officers, board of fire commissioners or other body or office having power of appointment of volunteer firefighters, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, to deny to any individual membership in any volunteer fire department or fire company therein, or to expel or discriminate against any volunteer member of a fire department or fire company therein, because of the race, creed, color, national origin, sexual orientation, military status, sex or marital status of such individual.

(b) Upon a complaint to the division, as provided for under subdivision one of section two hundred ninety-seven of this article, and in the event the commissioner finds that an unlawful discriminatory practice has been engaged in, the board of fire commissioners or other body or office having power of appointment of volunteer [fig 1] firefighters shall be served with any order required, under subdivision four of section two hundred ninety-seven of this article, to be served on any or all respondents requiring such respondent or respondents to cease and desist from such unlawful discriminatory practice and to take affirmative action. Such board shall have the duty and power to appoint as a volunteer [fig 2] firefighter, notwithstanding any other statute or provision of law or by-law of any volunteer fire company, any individual whom the commissioner has determined to be the subject of an unlawful discriminatory practice under this subdivision. Unless such board has been found to have engaged in an unlawful discriminatory practice, service upon such board of such order shall not constitute such board or its members as a respondent nor constitute a finding of an unlawful discriminatory practice against such board or its members.

10. (a) It shall be an unlawful discriminatory practice for any employer [fig 1] , or an employee or agent thereof, to impose upon a person as a condition of obtaining or retaining employment, including opportunities for promotion, advancement or transfers, any terms or conditions that would require such person to violate or forego a sincerely held practice of his or her religion, including but not limited to the observance of any particular day or days or any portion thereof as a sabbath or other holy day in accordance with the requirements of his or her religion, unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's or prospective employee's sincerely held religious observance or practice without undue hardship on the conduct of the employer's business. Notwithstanding any other provision of law to the contrary, an employee shall not be entitled to premium wages or premium benefits for work performed during hours to which such premium wages or premium benefits would ordinarily be applicable, if the employee is working during such hours only as an accommodation to his or her sincerely held religious requirements. Nothing in this paragraph or paragraph (b) of this subdivision shall alter or abridge the rights granted to an employee concerning the payment of wages or privileges of seniority accruing to that employee.

(b) Except [fig 1] where it would cause an employer to incur an undue hardship, no person shall be required to remain at his or her place of employment during any day or days or portion thereof that, as a requirement of his or her religion, he or she observes as his or her sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between his or her place of employment and his or her home, provided however, that any such absence from work shall, wherever practicable in the reasonable judgment of the employer, be made up by an equivalent amount of time and work at some other mutually convenient time, or shall be charged against any leave with pay ordinarily granted, other than sick leave, provided further, however, that any such absence not so made up or charged, may be treated by the employer of such person as leave taken without pay.



(c) It shall be an unlawful discriminatory practice for an employer to refuse to permit an employee to utilize leave, as provided in paragraph (b) of this subdivision, solely because the leave will be used for absence from work to accommodate the employee's sincerely held religious observance or practice.

(d) As used in this subdivision:

(1) "undue hardship" shall mean an accommodation requiring significant expense or difficulty (including a significant interference with the safe or efficient operation of the workplace or a violation of a bona fide seniority system). Factors to be considered in determining whether the accommodation constitutes an undue economic hardship shall include, but not be limited to:

(i) the identifiable cost of the accommodation, including the costs of loss of productivity and of retaining or hiring employees or transferring employees from one facility to another, in relation to the size and operating cost of the employer;

(ii) the number of individuals who will need the particular accommodation to a sincerely held religious observance or practice; and

(iii) for an employer with multiple facilities, the degree to which the geographic separateness or administrative or fiscal relationship of the facilities will make the accommodation more difficult or expensive.

Provided, however, an accommodation shall be considered to constitute an undue hardship if it will result in the inability of an employee to perform the essential functions of the position in which he or she is employed.

(2) "premium wages" shall include overtime pay and compensatory time off, and additional remuneration for night, weekend or holiday work, or for standby or irregular duty.

(3) "premium benefit" shall mean an employment benefit, such as seniority, group life insurance, health insurance, disability insurance, sick leave, annual leave, or an educational or pension benefit that is greater than the employment benefit due the employee for an equivalent period of work performed during the regular work schedule of the employee.

In the case of any employer other than the state, any of its political subdivisions or any school district, this subdivision shall not apply where the uniform application of terms and conditions of attendance to employees is essential to prevent undue economic hardship to the employer. In any proceeding in which the applicability of this subdivision is in issue, the burden of proof shall be upon the employer. If any question shall arise whether a particular position or class of positions is excepted from this subdivision by this paragraph, such question may be referred in writing by any party claimed to be aggrieved, in the case of any position of employment by the state or any of its political subdivisions, except by any school district, to the civil service commission, in the case of any position of employment by any school district, to the commissioner of education, who shall determine such question and in the case of any other employer, a party claiming to be aggrieved may file a complaint with the division pursuant to this article. Any such determination by the civil service commission shall be reviewable in the manner provided by article seventy-eight of the civil practice law and rules and any such determination by the commissioner of education shall be reviewable in the manner and to the same extent as other determinations of the commissioner under section three hundred ten of the education law.

11. Nothing contained in this section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting employment or sales or rental of housing accommodations or admission to or giving preference to persons of the same religion or denomination or from taking such action as is calculated by such organization to promote the religious principles for which it is established or maintained.

12. Notwithstanding the provisions of subdivisions one, one-a and three-a of this section, it shall not be an unlawful discriminatory practice for an employer, employment agency, labor organization or joint labor-management committee to carry out a plan, approved by the division, to increase the employment of members of a minority group (as may be defined pursuant to the regulations of the division) which has a state-wide unemployment rate that is disproportionately high in comparison with the state-wide unemployment rate of the general population. Any plan approved under this subdivision shall be in writing and the division's approval thereof shall be for a limited period and may be rescinded at any time by the division.

13. It shall be an unlawful discriminatory practice (i) for any person to discriminate against, boycott or blacklist, or to refuse to buy from, sell to or trade with, any person, because of the race, creed, color, national origin, sexual orientation, military status or sex of such person, or of such person's partners, members, stockholders, directors, officers, managers,

superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person wilfully to do any act or refrain from doing any act which enables any such person to take such action. This subdivision shall not apply to:

- (a) Boycotts connected with labor disputes; or
- (b) Boycotts to protest unlawful discriminatory practices.

14. It shall be an unlawful discriminatory practice for any person engaged in any activity covered by this section to discriminate against a blind person, a hearing impaired person [fig 1] or a person with a disability on the basis of his or her use of a guide dog, hearing dog or service dog.

15. It shall be an unlawful discriminatory practice for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to deny any license or employment to any individual by reason of his or her having been convicted of one or more criminal offenses, or by reason of a finding of a lack of "good moral character" which is based upon his or her having been convicted of one or more criminal offenses, when such denial is in violation of the provisions of article twenty-three-A of the correction law. Further, there shall be a rebuttable presumption in favor of excluding from evidence the prior incarceration or conviction of any person, in a case alleging that the employer has been negligent in hiring or retaining an applicant or employee, or supervising a hiring manager, if after learning about an applicant or employee's past criminal conviction history, such employer has evaluated the factors set forth in section seven hundred fifty-two of the correction law, and made a reasonable, good faith determination that such factors militate in favor of hire or retention of that applicant or employee.

16. It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law in connection with the licensing, employment or providing of credit or insurance to such individual; provided, however, that the provisions hereof shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law; provided further that the provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or criminal accusation which was followed by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law.

17. Nothing in this section shall prohibit the offer and acceptance of a discount to a person sixty-five years of age or older for housing accommodations.

18. It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right of ownership of or possession of or the right to rent or lease housing accommodations:

(1) To refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied or to be occupied by the said person, if the modifications may be necessary to afford the said person full enjoyment of the premises, in conformity with the provisions of the New York state uniform fire prevention and building code except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(2) To refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford said person with a disability equal opportunity to use and enjoy a dwelling or

(3) In connection with the design and construction of covered multi-family dwellings for first occupancy after March thirteenth, nineteen hundred ninety-one, a failure to design and construct dwellings in accordance with the

accessibility requirements [fig 1] for multi-family dwellings found in the New York state uniform fire prevention and building code to provide that:

(i) The public use and common use portions of the dwellings are readily accessible to and usable by persons with disabilities:

(ii) All the doors are designed in accordance with the New York state uniform fire prevention and building code to allow passage into and within all premises and are sufficiently wide to allow passage by persons in wheelchairs; and

(iii) All premises within covered multi-family dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space, in conformity with the New York state uniform fire prevention and building code.

19. (a) Except as provided in paragraph (b) of this subdivision, it shall be an unlawful discriminatory practice of any employer, labor organization, employment agency, licensing agency, or its employees, agents, or members:

(1) to directly or indirectly solicit, require, or administer a genetic test to a person, or solicit or require information from which a predisposing genetic characteristic can be inferred as a condition of employment, preemployment application, labor organization membership, or licensure; or

(2) to buy or otherwise acquire the results or interpretation of an individual's genetic test results or information from which a predisposing genetic characteristic can be inferred or to make an agreement with an individual to take a genetic test or provide genetic test results or such information.

(b) An employer may require a specified genetic test as a condition of employment where such a test is shown to be directly related to the occupational environment, such that the employee or applicant with a particular genetic anomaly might be at an increased risk of disease as a result of working in said environment.

(c) Nothing in this section shall prohibit the genetic testing of an employee who requests a genetic test and who provides written and informed consent to taking a genetic test for any of the following purposes:

(1) pursuant to a workers' compensation claim;

(2) pursuant to civil litigation; or

(3) to determine the employee's susceptibility to potentially carcinogenic, toxic, or otherwise hazardous chemicals or substances found in the workplace environment only if the employer does not terminate the employee or take any other action that adversely affects any term, condition or privilege of employment pursuant to the genetic test results.

(d) If an employee consents to genetic testing for any of the aforementioned allowable reasons, he or she must be given and sign an authorization of consent form which explicitly states the specific purpose, uses and limitations of the genetic tests and the specific traits or characteristics to be tested.

20. Nothing in this section shall prohibit the offer and acceptance of a discount for housing accommodations to a person with a disability, as defined in subdivision twenty-one of section two hundred ninety-two of this article.

447 of 499 DOCUMENTS

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**CORRECTION LAW**  
ARTICLE 23-A. LICENSURE AND EMPLOYMENT OF PERSONS PREVIOUSLY CONVICTED OF ONE OR MORE CRIMINAL OFFENSES

**Go to the New York Code Archive Directory**

NY CLS Correc § 750 (2008)

## § 750. Definitions

For the purposes of this article, the following terms shall have the following meanings:

(1) "Public agency" means the state or any local subdivision thereof, or any state or local department, agency, board or commission.

(2) "Private employer" means any person, company, corporation, labor organization or association which employs ten or more persons.

(3) "Direct relationship" means that the nature of criminal conduct for which the person was convicted has a direct bearing on his fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license [fig 1], opportunity, or job in question.

(4) "License" means any certificate, license, permit or grant of permission required by the laws of this state, its political subdivisions or instrumentalities as a condition for the lawful practice of any occupation, employment, trade, vocation, business, or profession. Provided, however, that "license" shall not, for the purposes of this article, include any license or permit to own, possess, carry, or fire any explosive, pistol, handgun, rifle, shotgun, or other firearm.

(5) "Employment" means any occupation, vocation or employment, or any form of vocational or educational training. Provided, however, that "employment" shall not, for the purposes of this article, include membership in any law enforcement agency.

448 of 499 DOCUMENTS

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**CORRECTION LAW**  
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NY CLS Correc § 751 (2008)

## § 751. Applicability

The provisions of this article shall apply to any application by any person for a license or employment at any public or private employer, who has previously been convicted of one or more criminal offenses [fig 1] in this state or in any other jurisdiction, [fig 2] and to any license or employment held by any person whose conviction of one or more criminal offenses in this state or in any other jurisdiction preceded such employment or granting of a license, except where a mandatory forfeiture, disability or bar to employment is imposed by law, and has not been removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct. Nothing in this article shall be construed to affect any right an employer may have with respect to an intentional misrepresentation in connection with an application for employment made by a prospective employee or previously made by a current employee.

449 of 499 DOCUMENTS

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NY CLS Correc § 752 (2008)

§ 752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited

No application for any license or employment, and no employment or license held by an individual, to which the provisions of this article are applicable, shall be denied or acted upon adversely by reason of the [fig 1] individual's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the [fig 2] individual has previously been convicted of one or more criminal offenses, unless:

- (1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual; or
- (2) the issuance or continuation of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

450 of 499 DOCUMENTS

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NY CLS Correc § 753 (2008)

§ 753. Factors to be considered concerning a previous criminal conviction; presumption

1. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors:

- (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.

## NY CLS Correc § 753

- (b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (e) The age of the person at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.

451 of 499 DOCUMENTS

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NY CLS Correc § 754 (2008)

§ 754. Written statement upon denial of license or employment

At the request of any person previously convicted of one or more criminal offenses who has been denied a license or employment, a public agency or private employer shall provide, within thirty days of a request, a written statement setting forth the reasons for such denial.

452 of 499 DOCUMENTS

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NY CLS Correc § 755 (2008)

§ 755. Enforcement

1. In relation to actions by public agencies, the provisions of this article shall be enforceable by a proceeding brought pursuant to article seventy-eight of the civil practice law and rules.

2. In relation to actions by private employers, the provisions of this article shall be enforceable by the division of human rights pursuant to the powers and procedures set forth in article fifteen of the executive law, and, concurrently, by the New York city commission on human rights.

1 of 2 DOCUMENTS

LEXISNEXIS (R) WISCONSIN ANNOTATED STATUTES

\*\*\* THIS DOCUMENT IS CURRENT THROUGH 2007 WIS. ACT 41: DECEMBER 18, 2007 \*\*\*  
\*\*\* THE MOST CURRENT ANNOTATION IS DATED MARCH 13, 2008 \*\*\*

REGULATION OF INDUSTRY  
CHAPTER 111. EMPLOYMENT RELATIONS

FAIR EMPLOYMENT  
CROSS REFERENCE: SEE ALSO CH. DWD 218, WIS. ADM. CODE.

**Go to the Wisconsin Code Archive Directory**

Wis. Stat. § 111.322 (2007)

111.322. Discriminatory actions prohibited.

Subject to ss. 111.33 to 111.36, it is an act of employment discrimination to do any of the following:

(1) To refuse to hire, employ, admit or license any individual, to bar or terminate from employment or labor organization membership any individual, or to discriminate against any individual in promotion, compensation or in terms, conditions or privileges of employment or labor organization membership because of any basis enumerated in s. 111.321

(2) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which implies or expresses any limitation, specification or discrimination with respect to an individual or any intent to make such limitation, specification or discrimination because of any basis enumerated in s. 111.321

(2m) To discharge or otherwise discriminate against any individual because of any of the following:

(a) The individual files a complaint or attempts to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12, 109.03, 109.07, 109.075 or 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82

(b) The individual testifies or assists in any action or proceeding held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12, 109.03, 109.07, 109.075 or 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82

(c) The individual files a complaint or attempts to enforce a right under s. 66.0903, 103.49 or 229.8275 or testifies or assists in any action or proceeding under s. 66.0903, 103.49 or 229.8275

(d) The individual's employer believes that the individual engaged or may engage in any activity described in pars. (a) to (c)

(3) To discharge or otherwise discriminate against any individual because he or she has opposed any discriminatory practice under this subchapter or because he or she has made a complaint, testified or assisted in any proceeding under this subchapter.



Wis. Stat. § 111.325

2 of 2 DOCUMENTS

LEXISNEXIS (R) WISCONSIN ANNOTATED STATUTES

\*\*\* THIS DOCUMENT IS CURRENT THROUGH 2007 WIS. ACT 41: DECEMBER 18, 2007 \*\*\*  
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**Go to the Wisconsin Code Archive Directory**

Wis. Stat. § 111.325 (2007)

111.325. Unlawful to discriminate.

It is unlawful for any employer, labor organization, licensing agency or person to discriminate against any employee or any applicant for employment or licensing.

# City of Philadelphia Department of Revenue

## EMPLOYER APPLICATION TO PARTICIPATE IN THE PHILADELPHIA RE-ENTRY EMPLOYMENT PROGRAM

<b>FOR DEPARTMENT USE ONLY</b>	
Application No. _____	_____
Date Received _____	_____
Time Received _____	_____

**PLEASE PRINT**

APPLICANT'S NAME \_\_\_\_\_

BUSINESS ADDRESS \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PHILADELPHIA ADDRESS (If different from Business Address) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CONTACT PERSON \_\_\_\_\_

CITY ACCOUNT NUMBER

□ □ □ □ □ □ □ □

FEDERAL IDENTIFICATION NUMBER

□ □ - □ □ □ □ □ □ □ □

SOCIAL SECURITY NUMBER

□ □ □ □ - □ □ - □ □ □ □ □ □

TELEPHONE NUMBER

□ □ □ □ - □ □ □ □ - □ □ □ □ □ □

DATE BUSINESS BEGAN IN PHILADELPHIA

□ □ - □ □ - □ □ □ □ □ □

E-MAIL ADDRESS \_\_\_\_\_

**TYPE OF BUSINESS**

- |                                    |                                      |
|------------------------------------|--------------------------------------|
| <input type="checkbox"/> RETAIL    | <input type="checkbox"/> MANUFACTURE |
| <input type="checkbox"/> WHOLESALE | <input type="checkbox"/> SERVICE     |

GROSS RECEIPTS SUBJECT TO PHILADELPHIA  
BUSINESS PRIVILEGE TAX FOR THE FOUR YEARS  
PRIOR TO THE START DATE

YEAR	GROSS RECEIPTS
□ □ □ □	\$ □ □ , □ □ □ □ , □ □ □ □ . 0 0
□ □ □ □	\$ □ □ , □ □ □ □ , □ □ □ □ . 0 0
□ □ □ □	\$ □ □ , □ □ □ □ , □ □ □ □ . 0 0
□ □ □ □	\$ □ □ , □ □ □ □ , □ □ □ □ . 0 0

NET INCOME SUBJECT TO THE PHILADELPHIA  
BUSINESS PRIVILEGE TAX FOR THE FOUR YEARS  
PRIOR TO THE START DATE

YEAR	NET INCOME
□ □ □ □	\$ □ □ , □ □ □ □ , □ □ □ □ . 0 0
□ □ □ □	\$ □ □ , □ □ □ □ , □ □ □ □ . 0 0
□ □ □ □	\$ □ □ , □ □ □ □ , □ □ □ □ . 0 0
□ □ □ □	\$ □ □ , □ □ □ □ , □ □ □ □ . 0 0

**TYPE OF ENTITY**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> SOLE PROPRIETORSHIP | <input type="checkbox"/> PARTNERSHIP   | <input type="checkbox"/> OTHER (SPECIFY) _____ |
| <input type="checkbox"/> S CORPORATION       | <input type="checkbox"/> C CORPORATION |  |

Provide a brief description of the nature of the applicant's business activity.

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Description of the project that will create the new jobs.

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**Certification: To be signed by an authorized company representative.**

*I hereby certify that all information contained in this document and attachments are true and correct to the best of my knowledge.*

**Signature:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_ **Representing:** \_\_\_\_\_

**Address:** \_\_\_\_\_

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**Mail Completed Application To:**  
  
**Revenue Commissioner  
City of Philadelphia  
Municipal Services Building  
Room 630  
1401 John F. Kennedy  
Boulevard  
Philadelphia, PA 19102**

## Section I - General

### A. Introduction

- (1) The Philadelphia Re-Entry Employment Program (PREP) was established for the purpose of securing job creating economic development opportunities for ex-offenders through the expansion of existing businesses and the attraction of economic development prospects for the City of Philadelphia.
- (2) Beginning in tax year 2008, an employer who hires an ex-offender can elect to claim a PREP tax credit against their Business Privilege Tax. A business could receive up to \$10,000 tax credit each year for three years for each ex-offender hired for at least six months. The maximum amount of tax credit a business may receive for any one Qualifying Employee over all tax years is \$30,000.
- (3) A Qualifying Employee is an ex-offender who is employed for the tax year in a full time job with an hourly rate, excluding benefits, of at least 150% of the federal minimum wage and who receives an employment package that includes the same benefits as are provided to other full time employees and tuition support for GED, Community College or other post-secondary education.
- (4) An ex-offender is a person previously convicted of a felony, or who was incarcerated for any conviction, or who is currently on probation or parole for any conviction or who is currently in a work release program or programmed for work release.

### B. Eligibility

In order to be eligible to receive PREP Tax Credits, a business must first execute a PREP Tax Credit Agreement with the Revenue Department that contains:

- (1) Details all the terms and conditions of the PREP Tax Credit Program.
- (2) Business' agreement to notify the Revenue Department within one week after any Qualifying Employee is no longer employed by the business, which notification shall include an explanation as to why the Qualifying Employee's employment terminated.
- (3) Business' agreement to withhold from wages of any Qualifying Employee and remit to the City the payments the Qualifying Employee must make to the City under Section 19-2604 (8) (e) (iii) of the Philadelphia Code.
- (4) Business' commitment to maintain its operation in the City of Philadelphia for five years from the date of the agreement, and the business' agreement to repay any tax credits it receives if it violates such commitment, as required by Section 19-2604 (8) (e) (iii) of the Philadelphia Code.

## Section II - The Application Process

### A. Application Submission and Approval Procedure

- (1) The completed application should be returned to the Department of Revenue at the address listed on the application.
- (2) In addition to the application, business must provide financial statements (i.e. Income Statement, Balance Sheet, and Cash Flow) for the last three years.
- (3) Upon approval of an application, the Department of Revenue will prepare a PREP Tax Credit Agreement, which will be mailed to the applicant.
- (4) Upon acceptance of the conditions listed in the PREP Tax Credit Agreement, the business must sign the agreement and return it to the Department of Revenue within 30 days of the date of the cover letter.
- (5) After a business has executed a PREP Tax Credit Agreement, it shall make application to the Revenue Department, on a form required by the Department, for each employee to be certified by the Department of Revenue as a Qualifying Employee.

Section III - Penalties

- A. **Failure to maintain operations.** An applicant that receives PREP Tax Credits and fails to substantially maintain existing operations and the operations related to the tax credits in the City of Philadelphia for a period of five (5) years from the date the business executes a PREP Tax Credit Agreement shall be required to refund to the City of Philadelphia the total amount of credit or credits granted.
- B. **Waiver.** The Department may waive the penalties outlined in subsection (A) above if it is determined that an applicant's operations were not maintained because of circumstances beyond its control. Such circumstances include natural disasters, acts of terrorism, unforeseen industry trends, or a loss of a major supplier or market.

Section IV - Contact Information

- A. Program inquiries should be directed to:

**Department of Revenue  
Technical Staff  
Phone: 215-686-6434**

- B. Regulations can be accessed on-line at [www.phila.gov/revenue](http://www.phila.gov/revenue). Select What's New.

Offered by Councillors **CHUCK TURNER, STEPHEN J. MURPHY, FELIX D. ARROYO, CHARLES C. YANCEY, MAURA A. HENNIGAN, MICHAEL F. FLAHERTY, and MICHAEL P. ROSS**



**CITY OF BOSTON**

IN THE YEAR TWO THOUSAND FIVE

**AN ORDINANCE REGARDING CORI**

*WHEREAS,* The City of Boston has focused on developing a system of screening for those with criminal backgrounds that is fair to all concerned; and

*WHEREAS,* The cornerstone of the system developed by the Human Resources Department is screening for the criminal background of applicants for positions which bring the prospective employee into unsupervised contact with youth or the elderly; and

*WHEREAS,* The City contracts for goods and services with thousands of vendors; and

*WHEREAS,* These vendors employ hundreds of thousands employees; and

*WHEREAS,* The City has a responsibility to ensure that its vendors have fair policies relating to the screening and identification of persons with criminal backgrounds. *NOW THEREFORE,*

***Be it ordained by the City Council of Boston, as follows:***

CBC Chapter IV is hereby amended by appending CBC 4-7 as follows:

**4-7 CORI Screening by Vendors of the City of Boston**

**4-7.1 Purpose.**

These sections are intended to ensure that the persons and businesses supplying goods and/or services to the City of Boston deploy fair policies relating to the screening and identification of persons with criminal backgrounds through the CORI system.

**4-7.2 Definitions.**

Unless specifically indicated otherwise, these definitions shall apply and control in CBC 4-7.

(a) *Applicant* means any current or prospective employee, licensee, or volunteer and includes all persons included in 803 CMR 2.03.

(b) *Awarding Authority* means any department, agency, or office of the City of Boston that purchases goods and/or services from a Vendor.

(c) *CHSB* means the Criminal History Systems Board defined in M.G.L. c. 6 and 803 CMR 2.00.

(d) *City* means the City of Boston or department, agency, or office thereof.

(e) *Otherwise Qualified* means any Applicant that meets all other criteria for a position or consideration for a position.

(f) *Vendor* means any vendor, contractor, or supplier of goods and/or services to the City of Boston.

#### 4-7.3 CORI-Related Standards of the City of Boston.

The City of Boston will do business only with Vendors that have adopted and employ CORI-related policies, practices, and standards that are consistent with City standards.

The City of Boston employs CORI-related policies and practices that are fair to all persons involved and seeks to do business with Vendors that have substantially similar policies and practices. The Awarding Authority shall review all Vendors' CORI policies for consistency with City standards. The Awarding Authority shall consider all Vendors' CORI standards as part of the criteria to be evaluated in the awarding of a contract and will consider a Vendor's execution of the CORI standards to be evaluated among the performance criteria of a contract. The Awarding Authority shall consider any Vendor's deviation from the CORI standards as grounds for rejection, rescission, revocation, or any other termination of the contract.

The CORI-related policies and practices of the City include, but are not limited to:

(a) The City does not conduct a CORI check on an Applicant unless a CORI check is required by law or the City has made a good faith determination that the relevant position is of such sensitivity that a CORI report is warranted.

(b) The City reviews the qualifications of an Applicant and determines that an Applicant is Otherwise Qualified for the relevant position before the City conducts a CORI check. The City does not conduct a CORI check for an Applicant that is not Otherwise Qualified for a relevant position.

(c) If the City has been authorized by the CHSB to receive CORI reports consisting solely of conviction and case-pending information and the CORI report received by the City contains other information (i.e. cases disposed favorably for the Applicant such as Not Guilty, Dismissal) then the City informs the Applicant and provides the Applicant with a copy of CHSB's information for the Applicant to pursue correction.

(d) When the City receives a proper CORI report of an Applicant that contains only

the CORI information that the City is authorized to receive and the City is inclined to refuse, rescind, or revoke the offer of a position to an Applicant then the City fully complies with 803 CMR 6.11 by, including, but not limited to, notifying the Applicant of the potential adverse employment action, providing the Applicant with a photocopy of the CORI report received by the City, informing the Applicant of the specific parts of the CORI report that concern the City, providing an opportunity for the Applicant to discuss the CORI report with the City including an opportunity for the Applicant to present information rebutting the accuracy and/or relevance of the CORI report, reviewing any information and documentation received from the Applicant, and documenting all steps taken to comply with 803 CMR 6.11.

(e) The City makes final employment-related decisions based on all of the information available to the City, including the seriousness of the crime(s), the relevance of the crime(s), the number of crime(s), the age of the crime(s), and the occurrences in the life of the Applicant since the crime(s). If the final decision of the City is adverse to the Applicant and results in the refusal, rescission, or revocation of a position with the City then the City promptly notifies the Applicant of the decision and the specific reason(s) therefor.

#### 4-7.4 Waiver.

Under exigent circumstances, an Awarding Authority, by its highest ranking member, may grant a waiver of CBC 4-7.3 on a contract-by-contract basis and shall submit a written record of the waiver to the Office of Civil Rights and to the Boston City Council's Staff Director who shall provide a copy to each and every City Councillor. The written record shall include, but not be limited to, (a) a summary of the terms of the contract, (b) the details of the Vendor's failure or refusal to conform with the City's CORI-related standards, and (c) a brief analysis of the exigency causing the grant of waiver.

No waiver may be considered perfected unless the Awarding Authority fully complies with the provisions of this sub-section.

#### 4-7.5 Data Collection and Report.

Any Awarding Authority, Vendor, Applicant, or other interested party may contact the Office of Civil Rights to report any problems, concerns, or suggestions regarding the implementation, compliance, and impacts of these sections, and the Office of Civil Rights shall log every comment received with a summary of the comment and shall keep on file any written comments. Subsequent to logging any comment, the Office of Civil Rights may refer a complaint to the CHSB and shall notify the relevant Awarding Authority. The Office of Civil Rights shall prepare a written report including, but not limited to, a summary of the granted waivers, a summary of any feedback regarding CORI-related policies and/or practices, and any other information or analysis deemed noteworthy by the Director of the Office of Civil Rights. The Office of Civil Rights shall file the report with the Boston City Council via the Boston City Clerk every six (6) months from the implementation date of these sections.

#### 4-7.6 Applicability.

If any provision of these sections imposes greater restrictions or obligations than those imposed by any other general law, special law, regulation, rule, ordinance, order, or policy then the provisions of these sections shall control.



4-7.7 Regulatory Authority.

The Office of Civil Rights shall have the authority to promulgate rules and regulations necessary to implement and enforce these sections and may promulgate a form of the Affidavit.

4-7.8 Severability.

If any provision of these sections shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

4-7.9 Implementation.

The provisions of these sections shall be effective on July 1, 2006.

**Ordinance #113.04 as introduced on January 28, 2004 (withdrawn)  
By Council Members Coats, Lewis and Jackson.**

**An ordinance to supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Chapter 187A relating to prohibition against ex-offender discrimination.**

Whereas, the Council of the City of Cleveland believes strongly in employment opportunities for all people; and

Whereas, many people who have previous criminal convictions possess the skills and training required for work in a variety of jobs; and

Whereas, despite, the expenditure of millions of dollars in the City of Cleveland on projects recently completed or currently underway, few of the employment opportunities arising from those projects have gone to people who have previous criminal convictions; and

Whereas, persons with previous criminal convictions have served their debt to society and should be permitted to become contributing citizens to our society; and

Whereas, the Council of Cleveland has a genuine interest in preventing persons with previous criminal convictions from repeating criminal offenses; and

Whereas, prevention of employment discrimination against persons with previous criminal convictions will further the interests of the City of Cleveland; and all its residents; now, therefore,

Be it ordained by the Council of the City of Cleveland:

**Section 1.** That, notwithstanding and as an exception to any provision of the Codified Ordinances of the City of Cleveland, Ohio, 1976, to the contrary, the Codified Ordinances of Cleveland, Ohio, 1976, are hereby supplemented by enacting new Chapter 187A, to read as follows:

## **Chapter 187A Prohibition Against Ex-Offender Discrimination**

### **Section 187A.01 Definitions**

For purposes of this chapter, the following words, phrases and terms are defined as follows:

- (a) "City" means the City of Cleveland, Ohio.
- (b) "Contract" means any agreement whereby the City either grants a privilege, including tax abatement, or is committed to expend or does expend its funds or other resources, or federal grant opportunities, including without limitation, Community Development Block Grants, Urban Development Action Grants and Economic Development Administration Grants in any amount for any purpose.
- (c) "Contractor" means any person or company receiving a Contract from the City of Cleveland, any subdivision of the City, or any individual legally authorized to bind the City pursuant to said contract.
- (d) "Director" means the Director of the Office of Equal Opportunity.
- (e) "Ex-Offender" means a person or persons who have been convicted of or plead guilty to a previous criminal offense or offenses.
- (f) "Subcontractor(s)" means any person or company that assumes by secondary contract some or all of the obligations of the Contractor.

### **Section 187A.02 Contractor and Subcontractor, Employment of Ex-Offenders**

- (a) Where not otherwise prohibited by federal, state or local law or as terms of federal or state grants; it shall be an unlawful discriminatory practice for any Contractor and/or Subcontractor to deny employment to any Ex-offender because of that person's previous conviction of one or more criminal offenses.
- (b) Notwithstanding any other provision of this section, it shall not be an unlawful employment practice to refuse to hire an Ex-offender where the job applied for has a relationship between one or more of the previous criminal offenses and the specific employment sought.
- (c) It is not employment discrimination to request an applicant for employment or employee on an application form or otherwise to supply information regarding any previous or pending arrest record or conviction record of the individual.
- (d) It is not employment discrimination to request an applicant for employment or an employee to supply information regarding any arrest record or previous criminal conviction when employment depends on the bond ability of the individual under a standard fidelity bond or when an equivalent bond is required by state or federal law, administrative regulation or established business practice of the employer, and the individual may not be bondable due to an arrest record or conviction.
- (e) It is not employment discrimination to refuse to employ any individual who is subject to a pending criminal charge if the pending charge or circumstances related thereto reasonably relates to the duties of the particular job sought.

#### **Section 187A.03 Standards, Procedures and Monitoring**

- (a) The Director, consistent with the provisions of this Chapter, shall establish standards and procedures, as the Director deems proper and necessary, to effectively administer the intent and purpose of this Chapter. In creating these standards and procedures and in creating any subsequent modifications thereof, the Director shall work with the Chairperson of the Employment, Affirmative Action and Training Committee. The standards and exceptions shall be effective thirty (30) days after publication in the City Record. However, at least ten (10) days prior to publication in the City Record, the Director shall provide the President of City Council and the Chairperson of the Employment, Affirmative Action and Training Committee with a copy of the proposed standards and procedures.
- (b) The Director may require affidavits and other supporting documentation from a Contractor and/or Subcontractor(s) to verify or clarify that an applicant for employment and/or an employee was not discriminated against because of said applicant or employees Ex-offender status.
- (c) The Director shall monitor Contractors and Subcontractors regarding progress made in hiring Ex-Offenders and report said results to City Council on a quarterly basis.

#### **Section 187A.04 Violation and Penalty**

- (a) Failure to comply with the requirements of Section 187A.02(a) above shall empower the Director to request the Law Department to recover all or any part of the contract price from the Contractor and/or any involved Subcontractor and/or terminate the Contract.
- (b) Any retainage to cover contract performance related to the Contract may be held by the City pending the determination by the Director of whether a violation of this Chapter 187A has occurred.
- (c) The imposition of any penalty or fine under this section shall not preclude the City from exercising any other rights or remedies to which it is entitled.

**Section 187A.05 Effective Date**

This chapter shall be effective and be in force upon its passage and approval as of \_\_\_\_\_.

**Section 2.** Within sixty (60) days of the passage date of this ordinance, the Director shall finalize the initial standards and procedures in accordance with Section 187A.03 and provide a copy to the Chairperson of the Employment, Affirmative Action and Training Committee. The Director shall ensure that the standards and procedures authorized under Section 187A.03 are created and published so that they are effective prior to \_\_\_\_\_.

**Section 3.** That this ordinance shall take effect and be in force from and after the earliest period allowed by law. Referred to Directors of Office of Equal Opportunity, Finance, Law; Committees on Employment, Affirmative Action and Training, Legislation, Finance.

**LEGISLATIVE TASK FORCE ON EMPLOYMENT OF PERSONS WITH PAST CRIMINAL CONVICTIONS**  
**Subcommittees on Barriers to Public and Private Employment**  
**Chaired by Senators Dan Rutherford and Kimberly Lightford**

Purpose of the Taskforce:

The authorizing resolutions (House Joint Resolution 107, Senate Joint Resolution 6, and House Joint Resolution 8) charge the Taskforce to conduct **“a thorough examination of the employment barriers for people with criminal convictions and a thorough study of ways in which such barriers could be lowered or eliminated without exposing employers, individuals, the general public, or property to unreasonable risk.”**

Purpose of Subcommittees:

The subcommittees looking at barriers to employment – public and private – focus on the challenges prisoners face upon reentry in finding and securing employment. Formerly incarcerated individuals who maintain employment are three times less likely to recidivate than the unemployed.<sup>1</sup> Yet by law, those with criminal records are barred from numerous types of employment and where statutory barriers don't exist, a reluctance to hire anyone with a criminal record persists. Improving job skills through vocational training, diminishing licensing barriers, and creating standards in criminal background checks will all expand opportunities for employment for the formerly incarcerated.

The subcommittees are reviewing the following recommendations, which resulted from the hard work and careful research done by the previous Mayoral Policy Caucus on Prisoner Reentry (2004-2005, report released 1/06) and the Governor's Community Safety and Reentry Commission (2005-2006, report released 5/08):

1. Expanding Vocational and Job Training Access:

GED Waiver

- Expand access to GED waivers that allow individuals who have not obtained a GED to qualify for specific vocational and job training courses (MPC, p. 20)
- Specific programs like Illinois Correctional Industries has had success in reducing recidivism (participants had a 20% lower recidivism rate than prisoners overall). Access to this program could be expanded by eliminating the requirement to have obtained a GED prior to participation. (MPC, p.21)

Transitional Jobs Programs and Centers

- The creation of Lifeskills and Reentry Centers to give parolees the tools they need to address personal challenges and barriers to employment. (GSCRC, p. 66)
- Illinois workNet<sup>®</sup> Resources and Information Portals should be made available in Reentry Centers. These serve to match skills with opportunity, and social service needs to resources. (GSCRC, p. 66)

2. Licensing Barriers

Improve Access to Certificates of Good Conduct

- Certificates of Good Conduct and Certificates of Relief from Disabilities are available to qualifying individuals, and help to bypass some of the licensing barriers by providing proof of eligibility for employment. The Certificate Implementation Advisory Group should keep its focus on expanding access to and completion of certificates. (MPC, 23)
- The applicability of certificates should be expanded to as many licensing barriers as possible. (MPC, 23)

3. Standards in Criminal Background Checks

Internal Guidelines

- Many individuals are unnecessarily barred from employment due to employers' limited understanding of information from a rap sheet. A standardized way to provide employees with the information they are requesting would reduce the number of “false positives”, or reduce the number of individuals who been arrested without conviction, but still remain on record, from being wrongfully barred from employment. (MPC, 26)
- The United States Equal Employment Opportunity Commission (EEOC) implemented policy guidelines for employers regarding employment of previously incarcerated individuals. The guidelines discourage employers from banning those with records unless there is a notable “business necessity” for doing so. The city should adopt EEOC guidelines and promote the fact that they have done so. (MPC, 27)

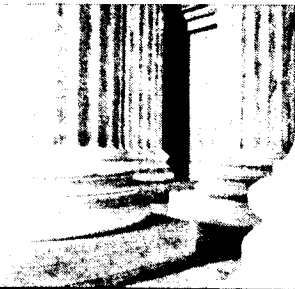
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<sup>1</sup> Get from MPC, internet version won't go that far to find source

MPC – Mayoral Policy Caucus on Prisoner Reentry report, “Rebuilding Lives. Restoring Hope. Strengthening Communities. Breaking the Cycle of Incarceration and Building Better Futures in Chicago.” January 2006.

GCSRC – Governor's Community Safety and Reentry Commission report, “Inside Out: A Plan to Reduce Recidivism and Improve Public Safety.” May 2008.

**SUPPORTING INFORMATION: SUBCOMMITTEE ON POST-DISCHARGE  
COMMUNITY SUPPORT SYSTEMS**



# Illinois Prisoners' Reentry Success Three Years after Release

URBAN INSTITUTE  
Justice Policy Center

Research Brief  
August 2008

Jennifer Yahner  
Christy Visher

## KEY FINDINGS

- Three years after release, 59 percent of former Illinois prisoners in the sample were reincarcerated—up from 34 percent at 16 months out.
- Those successful at reentry (at avoiding reincarceration three years out) were older first-time releases. They also reported no illegal income or family violence prior to prison.
- Postprison predictors of reentry success included finding employment and housing after release, reintegrating into a new and less disorganized neighborhood, avoiding antisocial peers, and having a physical and/or mental health condition (which may have restricted activity outside the home).

*This study was funded by the generous support of the John D. and Catherine T. MacArthur Foundation, the Woods Fund of Chicago, the Illinois Criminal Justice Information Authority, the Annie E. Casey Foundation, and the Rockefeller Foundation. Any opinions expressed are those of the authors and do not necessarily reflect the views of the Urban Institute, its board, or its sponsors.*

*To learn more about *Returning Home* and prisoner reentry, please visit our web site: [www.urban.org/justice](http://www.urban.org/justice).*

Every year, more than 600,000 offenders are released from prisons nationwide.<sup>1</sup> Most are men and many have extensive criminal backgrounds. However difficult their chances in life before incarceration, they are even more difficult after release. Many will struggle to find employment and housing, avoid substance use and criminal activity, and reintegrate into their communities.

Yet despite great odds, some former prisoners—nearly a third according to Bureau of Justice Statistics data—successfully avoid rearrest, reconviction, and reincarceration for at least three years following their release from prison.<sup>2</sup> Who are these men? What helped them to succeed? And, how can knowledge of their life stories help others in similar predicaments?

These questions are the focus of this brief, which documents the lives of 145 men released from Illinois prisons from 2002 to 2003 and tracked for three years afterwards—through personal interviews and official reincarceration records as part of the multistate longitudinal study *Returning Home: Understanding the Challenges of Prisoner Reentry* (see sidebar, next page).<sup>3</sup> The sample may be small and state-specific, but the challenges the men report facing are not new; rather, they parallel those found in other states, such as Maryland, Ohio, and Texas.<sup>4</sup> The difference in the *Returning Home Illinois* study is the extensive length of time over which men were followed: reincarceration records cover three years after prison while interviews were conducted 30 days before release and 2, 7, and 16 months after release. This longitudinal accounting of prisoners' reentry experiences allows us to examine, for the first time, what factors distinguish individuals who succeed three years out of prison from those who do not.

## ORGANIZATION OF THE BRIEF

This research brief uses graphs to tell the stories of former prisoners in Illinois. Some show percentages of men experiencing different issues, such as employment success, substance use relapse, and involvement in family relationships. Others show scores across all men on scales measuring domains such as self-esteem and control over life, family relationship quality, and reintegration difficulties. Wherever interview data are available—before release or 2, 7, or 16 months after release—those numbers are presented. Graph by graph, we tell a story of Illinois prisoners' experiences just before and up to three years after their release from incarceration.

We also highlight throughout the brief factors we found to be predictive of reentry success based on the results of multivariate regression analyses predicting who successfully avoided reincarceration three years out. We focus on distinguishing the characteristics and experiences of men who avoided reincarceration, both for the first 16 months out and for all three years after release, from those of men who did not. Lastly, we identify several policy implications of the study.

## THE RETURNING HOME STUDY

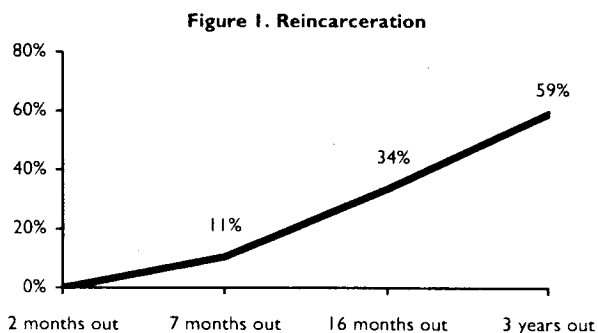
Launched in 2001 and completed in June 2006, the multistate *Returning Home* study explored the pathways of prisoner reintegration, examining which factors contributed to successful (or unsuccessful) reentry and identifying how those factors could inform policy. The study targeted male prisoners serving at least one year in state prisons<sup>5</sup> and returning to the areas of Chicago, Illinois; Cleveland, Ohio; and Houston, Texas. The data collected included measures of both reintegration (e.g., family support, employment, substance use) and recidivism (e.g., reincarceration).

In Illinois, study samples were recruited from 2002 to 2003 through the use of a preexisting prerelease program in which groups of prisoners were already convened. During these sessions, *Returning Home* interviewers held orientations explaining the study and distributed self-administered surveys to those willing to participate. These prerelease questionnaires were designed to capture respondents' experiences immediately before and during their incarceration. After release, three in-person interviews captured respondents' postrelease experiences approximately 2, 7, and 16 months following release.

Of the 400 respondents who completed the prerelease interview, 36 percent (N=145) completed all three post-release interviews. These 145 men are the focus of this brief. Inverse probability weighting (IPW) was used to statistically correct for attrition bias. Increasingly popular among economists and statisticians, IPW methods provide an intuitive approach to correcting for non-representation by weighting sample members by the inverse probability of their being selected. In this way, IPW methods can be used to correct general forms of sample selection, attrition, and stratification problems.<sup>6</sup> For more on study recruitment and participation, see La Vigne, Nancy G., Christy Visher, and Jennifer Castro. (2004). *Chicago Prisoners' Experiences Returning Home*. Washington, DC: The Urban Institute.

## REENTRY SUCCESS THREE YEARS OUT

Three years after release from prison, Illinois Department of Corrections records indicate that 4 out of 10 men in the sample had successfully avoided reincarceration (figure 1). Conversely, 59 percent had been reincarcerated for a new crime conviction or parole violation within three years of their release.<sup>7</sup>



Reincarceration rates increased fairly rapidly the first year and a half after release, slowing slightly afterward. One-tenth (11 percent) of the men had been reincarcerated by 7 months out, a share that had tripled only 9 months later. By 16 months out, 34 percent of the men had been returned to an Illinois state prison.

Using reincarceration (un-)likelihood as the marker of reentry success, we identified several factors predictive of reentry success at 16 months and three years after release. Significant ( $p < .10$ ) predictors included respondent's age and criminal history, postprison employment, housing, neighborhood characteristics, physical and mental health, and family and peer relationships. Each domain is discussed below as we describe the characteristics and experiences of the 145 men before, during, and up to 16 months after incarceration.

## DEMOGRAPHICS AND CRIMINAL HISTORY

At the time of their release, respondents were 35 years old on average and less than half (43 percent) had graduated from high school or obtained their GED. Most (68 percent) had been incarcerated at least once previously and for their current sentence, respondents had served an average of 19 months. The current offense—for nearly half—was drug-related (44 percent), although a third (33 percent) were serving time for a property offense, and a fifth (21 percent) for a violent offense. Nearly two-thirds (60%) reported illegal income in the six months before their incarceration.

Older respondents and those with no prior incarcerations were better able to avoid reincarceration for the entire three-year postrelease period. Predicted probabilities of reincarceration were 55 percent for those 30 and older compared with 68 percent for those under 30; and 51 percent for those who had not been incarcerated before, compared with 63 percent for those who had been.<sup>8</sup>

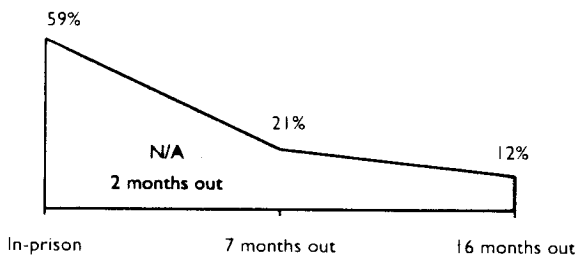
Similarly, respondents who were less criminally involved before their present incarceration (i.e., those who reported no illegal income before prison) were more successful at avoiding reincarceration 16 months after release. Predicted probabilities were 22 percent for those with no prior illegal income, compared with 42 percent for those reporting at least some.

## EMPLOYMENT AND SUBSTANCE USE

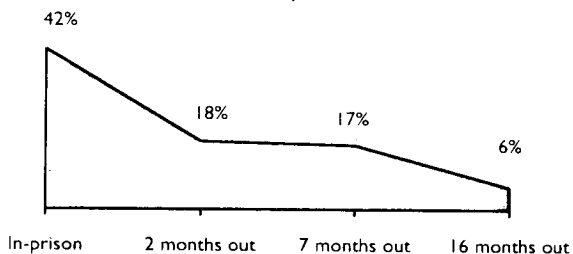
Substantial shares of respondents participated in education/employment programs (59 percent) or received substance abuse programming (42 percent) while incarcerated, but after release, these shares dropped to a fifth or less (figures 2 and 3). By 16 months out, only 12 percent had participated in an education/employment program and 6 percent in a substance abuse program, including Alcoholics Anonymous (AA) and Narcotics Anonymous (NA).



**Figure 2. Education/Employment Program Participation**



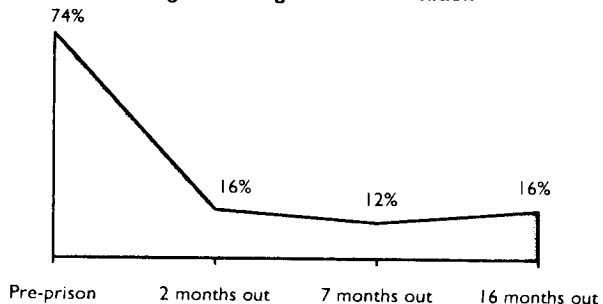
**Figure 3. Substance Abuse Program Participation**



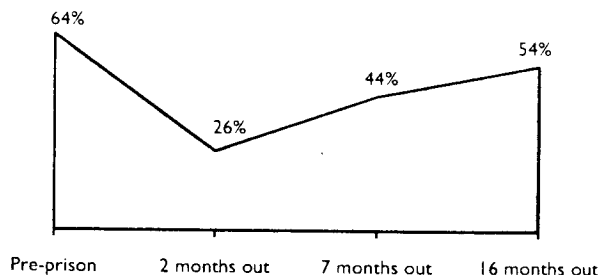
This drop in substance abuse programming participation may not be as problematic as it appears; by 16 months out, respondents continued to report relatively low rates of drug or alcohol use or intoxication (16 percent) (figure 4). However, unemployment rates after release were not comparably low. Almost half of the sample (46 percent) remained unemployed at 16 months out—meaning a fairly large number of former prisoners could have benefited from additional education or employment training in the community during this time (figure 5).

Importantly, respondents who were employed 16 months after release were less likely to have returned to prison three years out. Predicted probabilities of reincarceration were 51 percent for those who had worked at least one week compared with 69 percent for those who had not.<sup>9</sup>

**Figure 4. Drug Use or Intoxication**



**Figure 5. Employed at Least One Week**

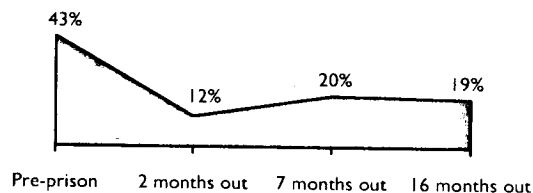


## HOUSING AND NEIGHBORHOODS

Before prison, almost half (43 percent) of the respondents lived in their own place, while the remainder depended on family or friends for housing (figure 6). Understandably, very few were able to live on their own soon after release: only 12 percent by two months out. However, even after one and a half years out of prison, only one in five had secured their own living quarters; the majority continued to depend on family.

The few respondents who secured their own residence by two months out were better able to avoid reincarceration by 16 months out and over the entire three years after release. Predicted 16-month reincarceration probabilities were 12 percent for those living in their own place compared with 37 percent for those not, while 37-month reincarceration probabilities were 35 percent for those in their own place compared with 62 percent for those not.

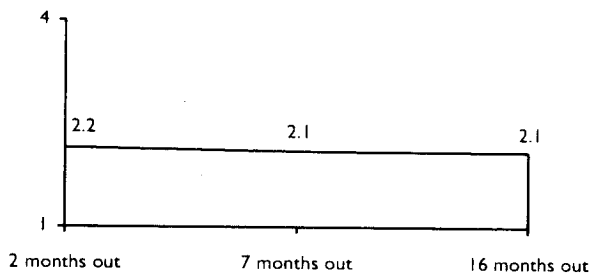
**Figure 6. Lived in Own Place**



After release, nearly two-thirds (62 percent) of the men returned to their old preprison neighborhoods. Those who chose to live in new neighborhoods did so primarily because they wanted to avoid trouble in their old neighborhoods or because their family members had moved. These respondents fared better than those who returned to old neighborhoods: less than half (42 percent) were reincarcerated three years out compared with more than two-thirds (69 percent) of those in old neighborhoods.

When asked about the safety and cohesiveness of their postprison neighborhoods, respondents reported disorganization levels measuring 2 out of 4 across all timepoints measured (figure 7). Regardless of whether their neighborhood was old or new to them, most respondents lived in relatively disorganized communities (e.g., where drug selling was a major problem, staying out of trouble was difficult, and the neighborhood was unsafe). Those who scored above 2 on the scale lived in the most disorganized communities; these respondents were more likely to return to prison in the first 16 months out (38 percent compared with 26 percent for those in more organized communities).

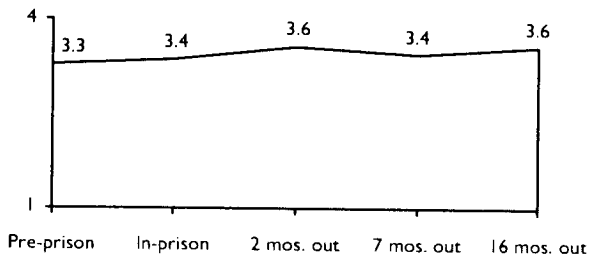
**Figure 7. Neighborhood Disorganization Scale**



**FAMILY AND PEER RELATIONSHIPS**

From respondents' perspectives, the quality of their relationships with family, partners, and children remained markedly stable from before to after release. Overall, respondents reported very positive family support and relationship quality, averaging 3.5 out of 4 on a scale measuring emotional support and closeness to one's family (figure 8).

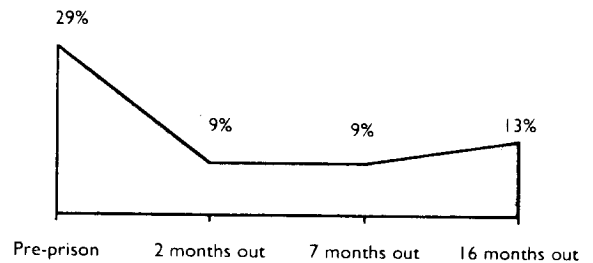
**Figure 8. Family Support and Relationship Quality Scale**



However, more than a quarter (29 percent) reported family violence or conflict before prison; about one out of ten reported the same in the months following their release from prison (figure 9). Respondents who experienced family violence or conflict before prison were twice as likely to return to prison the first 16 months after release (54 percent compared with 26 percent for those

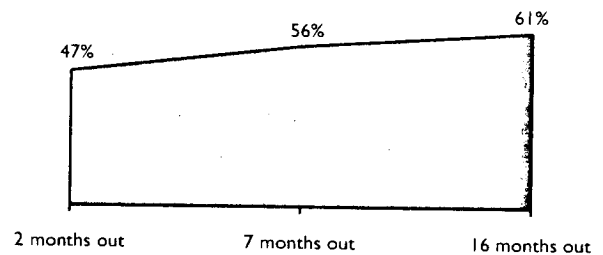
with no prior family problems). Notably, this was the only significant family-related predictor of reincarceration.

**Figure 9. Any Family Violence or Conflict**

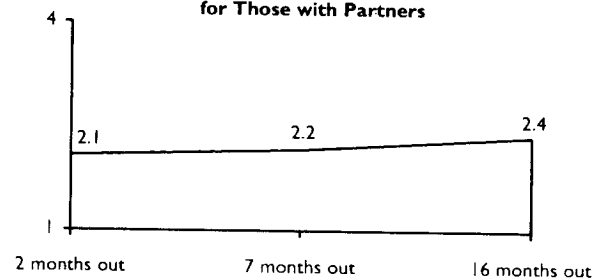


Immediately after release, almost half (47 percent) of the respondents reported being in a partner relationship—a share that increased to nearly two-thirds (61 percent) by 16 months out (figure 10). The quality of partner relationships overall was lower than that reported with regard to other family—respondents averaged only 2.1 to 2.4 out of 4 on a scale measuring the closeness to one's partner (figure 11).

**Figure 10. Has Partner**



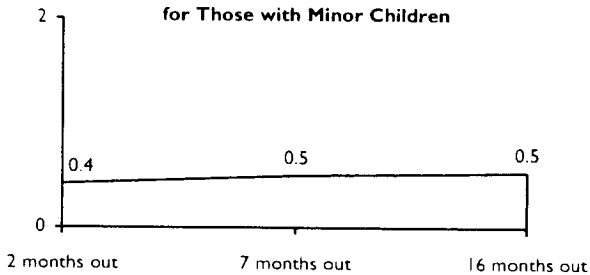
**Figure 11. Partner Relationship Quality Scale, for Those with Partners**



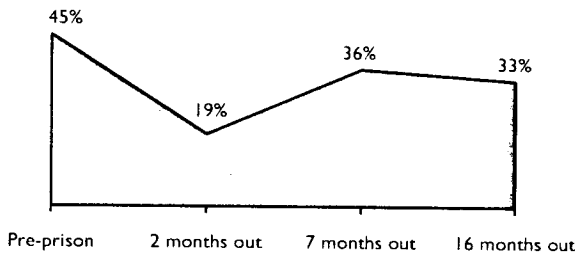
Attachment to children was similarly low for respondents during all 16 months measured after release (averaging 0.5 out of 2) (figure 12). This scale indicated how often respondents played with or talked to their children, placed limits on their children's behavior, knew where their children were, and were involved in their children's school-related activities, such as homework. Although just

under half (45 percent) of the men had lived with or financially supported their children before prison, only a fifth (19 percent) did so immediately after release and a third (33 to 36 percent) in subsequent months (figure 13).

**Figure 12. Attachment to Children Scale, for Those with Minor Children**

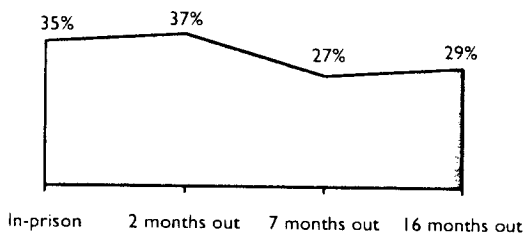


**Figure 13. Lived With or Financially Supported Kids**



The share of respondents with antisocial peers—friends who engaged in criminal or substance abuse behaviors—dropped from about a third in prison and 2 months after release to about a quarter at 7 and 16 months out (figure 14). Notably, those who still reported having antisocial peers 7 months after release were more likely to be reincarcerated later on (from 16 to 37 months out). Predicted probabilities of reincarceration during that time were 54 percent for those with antisocial peers compared with 33 percent for those with none.

**Figure 14. Antisocial Peers**

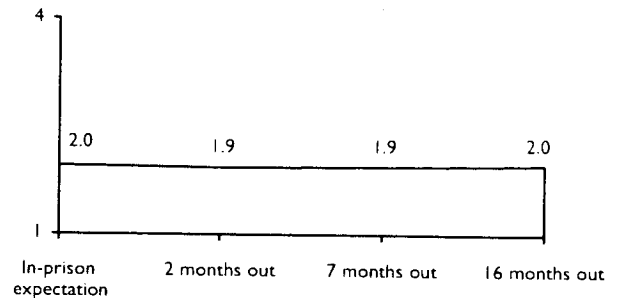


### ATTITUDES AND EXPECTATIONS

Two important scales—one measuring the degree of reintegration difficulties respondents experienced and the

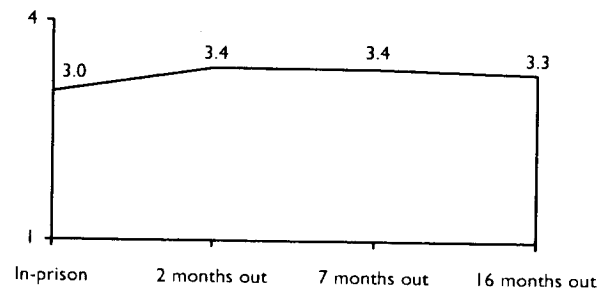
other measuring their sense of self-worth and control over their lives—showed marked stability over time. From responses while still incarcerated to nearly one and a half years after release, respondents reported relatively low levels of difficulty reintegrating, on average, across a wide range of domains (figure 15). The reintegration-difficulties scale measured agreement (4 = strongly agree, 1 = strongly disagree) with statements describing such postrelease difficulties as supporting oneself financially, finding a place to live, renewing relationships with family, and staying out of prison.

**Figure 15. Reintegration-Difficulties Scale**



Similarly, from prerelease to 16 months out, most respondents showed high levels of self-esteem and control over life—scoring 3 out of 4, on average, as they responded to questions indicating satisfaction with themselves, feeling important to others, and belief that one's future depends on oneself (figure 16).

**Figure 16. Self-Esteem and Control over Life Scale**



These findings held true when looking at the average scores across all respondents at each time and when looking at changes in individual respondents' answers across time. These results are interesting in light of the problems we identify throughout this paper. Despite evidence of imperfect reintegration into the community, from respondents' perspectives, life was not that bad and their perceptions of themselves were mostly positive. Notably, respondents' attitudes toward reintegration and their sense of self worth seemed to play no significant role in the likelihood of reincarceration either 16 months or three years after release.

## PHYSICAL AND MENTAL HEALTH

A fifth of respondents had health insurance the first 7 months after release, and less than a fifth reported a physical or mental health condition during that time (figures 17, 18 and 19). However, by 16 months out, health insurance rates had dropped to 11 percent even though respondents continued to report having physical (17 percent) or mental health conditions (8 percent) at the time.

Figure 17. Health Insurance

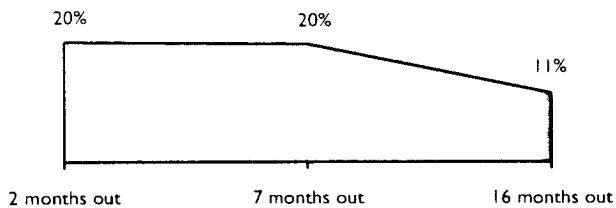


Figure 18. Physical Health Condition

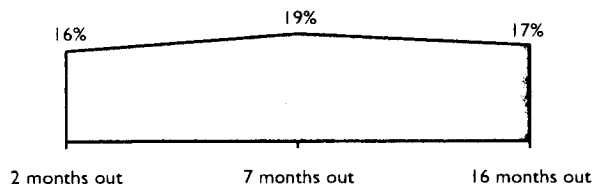
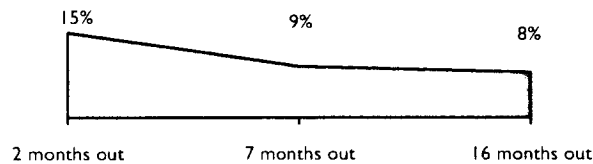


Figure 19. Mental Health Condition



Notably, respondents' health conditions worked to their advantage with regard to their likelihood of reincarceration. Those with a physical or mental health condition were less likely to be reincarcerated after release—perhaps because their routine activities likely centered more around the home than the street. Predicted probabilities of reincarceration were 9 percent (the first 16 months out) for those with a physical health

condition compared with 39 percent for those with none, and 12 percent (from 16 to 37 months out) for those with a mental health condition compared with 42 percent for those with none.

## SUMMARY AND POLICY IMPLICATIONS

In summary, respondents' chances at reentry success were largely affected by their experiences before and after incarceration rather than during incarceration. Older respondents and those who were less criminally involved prior to the current offense (e.g., first-time releases or those with no illegal income before prison) fared best in terms of avoiding reincarceration.

Self-sufficiency after release was important to reentry success. Former prisoners who secured their own housing and those employed for longer times after release were less likely to return to prison. Since most lived with family instead of on their own, having good relationships with those family members was also important. Overall, most respondents did—but those who had experienced family violence or conflict before their incarceration were more likely to return to prison after their release.

Also key to reentry success were characteristics of the neighborhoods to which respondents returned. Those who reintegrated into new neighborhoods—especially those characterized by relatively low disorder—fared best in terms of reincarceration likelihood.

Finally, although few respondents enjoyed the benefits of health insurance, having a physical or mental health condition improved their chances of reentry success—probably because it kept respondents largely house-bound rather than on the street. Few of those with a physical or mental condition returned to prison after their release.

Collectively, these findings point to several important policy implications. In addition to prerelease programming provided during incarceration, prisoners must receive sufficient help finding employment and securing housing immediately upon release. Employment and housing are key factors aiding individuals in gaining the sense of responsibility and independence associated with prosocial reintegration. Family counseling, especially for those who report violence or conflict in their family relationships before prison, should also be readily available to prisoners upon release.

<sup>1</sup> Petersilia, J. 2003. *When Prisoners Come Home: Parole and Prisoner Reentry*. New York, NY: Oxford University Press.

<sup>2</sup> Langan, P.A., and Levin, D.J. 2002. *Recidivism of Prisoners Released in 1994*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

<sup>3</sup> Since the study began, there have been some changes in Illinois's correctional system, including the opening of a treatment prison targeting substance-abusing offenders and ongoing revisions to parole supervision and revocation practices.

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<sup>4</sup> See, e.g., Visher, C., Kachnowski, V., La Vigne, N., and Travis, J. 2004. "Baltimore Prisoners' Experiences Returning Home." Washington, DC: The Urban Institute. Visher, C., and Courtney, S. 2006. "Cleveland Prisoners' Experiences Returning Home." Washington, DC: The Urban Institute. La Vigne, N., and Kachnowski, V. 2005. "Texas Prisoners' Reflections on Returning Home." Washington, DC: The Urban Institute.

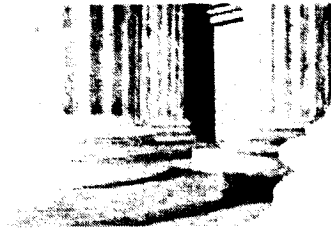
<sup>5</sup> In Texas, prisoners from state jails were also interviewed.

<sup>6</sup> Woolridge, J.M. 2002. "Inverse Probability Weighted m-Estimators for Sample Selection, Attrition, and Stratification." *Institute for Fiscal Studies, Cemmap Working Paper* (cwp 11/02). Hirano, K., Imbens, G.W., and Ridder, G. 2003. "Efficient Estimation of Average Treatment Effects Using the Estimated Propensity Score." *Econometrica* 71(4): 1161–89.

<sup>7</sup> Reincarceration data covered all returns to Illinois state prisons (not jails) from the time of release to 37 months after prison.

<sup>8</sup> Predicted probabilities were calculated from multivariate regression models that included all variables significantly ( $p < .10$ ) related to the reincarceration outcome of interest—either 16- or 37-month out reincarceration. Thus, predicted probabilities control for other factors relevant to reincarceration so that differences in reentry success specific to the predictor being discussed are highlighted.

<sup>9</sup> Perhaps because of limited variation in reported rates, substance use had no significant effect on reincarceration likelihood either 16 months or three years after release.



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## Treatment Matching

**By Laura Winterfield and  
Jennifer Castro**

Prepared for the Illinois Criminal Justice  
Information Authority  
August 2005

*Returning Home: Understanding the Challenges of Prisoner Reentry* is a longitudinal study of prisoner reentry in Maryland, Illinois, Ohio, and Texas. The study explores prisoner reentry across five domains: (1) the individual experience, as documented through interviews with prisoners before and after release from prison; (2) the family experience, as documented through interviews with family members of returning prisoners; (3) the peer group experience, as documented through prisoner interviews both before and after their release; (4) the community experience, as documented through interviews with key community stakeholders and focus groups with residents; and (5) the broader policy environment at the state level. In Illinois, the John D. and Catherine T. MacArthur Foundation, the Rockefeller Foundation, the Woods Fund of Chicago, the Annie E. Casey Foundation, and the Illinois Criminal Justice Information Authority supported *Returning Home*. The Metro Chicago Information Center (MCIC) conducted the original data collection under the expert direction of Dr. Alisú Schoua-Glusberg.

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**A**s has been well documented, large and growing numbers of persons entering prison have a substance abuse problem. According to the Bureau of Justice Statistics, in 1997, 83 percent of state prisoners reported ever using drugs, up from 79 percent in 1991 (Mumola 1999). Additionally, in 1997, 57 percent had used drugs in the month before their current offense, up from 50 percent in 1991. These findings are mirrored in survey results from the National Center on Addiction and Substance Abuse, where over three-quarters of federal, state, and local jail inmates reported one or more of the following: use of an illegal drug on a regular basis; at least one drug-related conviction or alcohol-related driving violation; being under the influence of drugs or alcohol when they committed their most recent offense; or commission of their offense to get money for drugs (Belenko and Peugh 1999, 2).

Addressing substance use and addiction is viewed as an essential component of successful reentry, increasing the likelihood that former prisoners will find and keep jobs, secure housing, and forge positive intimate and familial relationships after their release. In addition, research has shown that in-prison drug treatment, when linked with postrelease continuity of treatment, can reduce postrelease drug use and enhance positive outcomes (Gaes et al. 1999; Knight et al. 1999; Martin et al. 1995; Harrison 2000).

Nonetheless, over the last decade, programming of all kinds—both within and outside of prison—has declined (Lynch and Sabol 2001). With regard to drug treatment in particular, fewer than one in four (24 percent) prison inmates nationwide reported receiving any drug treatment since their time of admission (Belenko and Peugh 2005). Petersilia (2005), based on a somewhat different analysis of the same data, reported that well under half (40 percent) of those with a severe drug problem receive appropriate services.

This shortage of services for those in need is likely to get worse: Policymakers, mindful of mounting budget crises at both the state and county level, have been cutting prison and community programs further. At the federal level as well, the proposed FY2006 Federal Drug Control budget reduces or eliminates funding for many state-level programs. Amidst this context of fiscal conservatism, making appropriate use of scarce resources is essential.

Given the overwhelming need for substance abuse treatment in the context of reduced service availability, we pose an important but rarely asked question concerning treatment matching: Are limited drug treatment resources being targeted to those with the greatest needs? This research brief examines the degree to which prisoners with self-reported drug problems receive in-prison substance abuse treatment services or participate in other substance use and addiction programs, such as Alcoholics Anonymous (AA) or Narcotics Anonymous (NA), and then receive postrelease treatment (or AA/NA) as well.<sup>1</sup> If those who report a problem are those who actually receive treatment, then a scarce resource is being wisely applied. However, if treatment is being given to those who do not need it, then the underlying referral and admission processes may be in need of review and revision. Further, because treatment continuity from prison to the community has been found to be important as well, a secondary analytical question to be explored here concerns the extent to which those who receive in-prison treatment also receive postrelease treatment, irrespective of their drug problem status.

## DATA USED IN THIS ANALYSIS

**D**ata used in this article were gathered during the prerelease survey and the first postrelease survey of the *Returning Home Illinois* study (see Methodology sidebar on page 7 for more details on the full study design). Of the 400 male prisoners in the *Returning Home Illinois* prerelease sample, 251 respondents completed a postrelease interview within 3.5 months of release and provided valid information about

preprison substance use, in-prison treatment, and postprison treatment. When the respondents were compared to the 149 prisoners not included, only two differences emerged as statistically significant in a multivariate regression: the 251 respondents were somewhat more likely to be African American, and they had slightly fewer prior incarcerations. These 251 male prisoners comprise the sample used in this analysis.

## CONCEPTUAL APPROACH AND DEFINITIONS

**T**he primary research question for this analysis concerns treatment matching: Did those most in need of substance abuse treatment receive treatment? Secondly, we are interested in examining the issue of continuity of treatment (both with and without regard to initial need): Did those who received in-prison treatment receive postprison treatment as well?

To determine if those most in need received treatment, three key constructs were developed: (1) preprison drug problem; (2) in-prison treatment/services, and (3) postprison treatment/services. The definitions for these constructs are as follows:

(1) **Preprison drug problem:** This construct was defined by combining two dimensions, mirroring the approach suggested by Belenko and Peugh (2005): self-reported drug use (type and frequency) and problems stemming from drug use during the six months leading up to incarceration. The operational definition of a pre-prison drug problem, then, was frequent use (a few times a week or more) of heroin, cocaine, or similar drugs; frequent drunkenness; or a report of any problems symptomatic of drug or alcohol abuse (e.g., used drugs or alcohol more or in greater amounts than intended, needed more drugs or alcohol to achieve same effect). Respondents who reported neither frequent drug use nor problems resulting from use were defined as having no pre-prison drug problem.

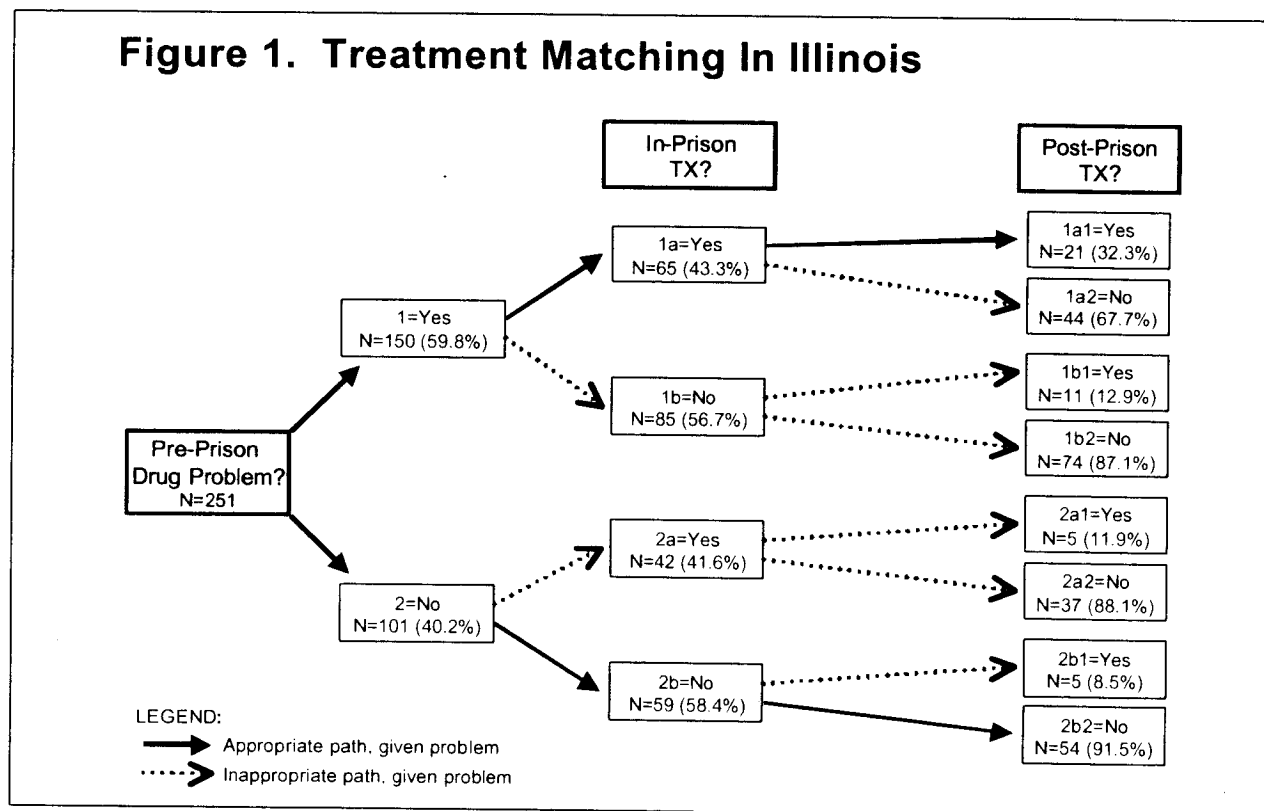
(2) **In-prison substance abuse services:** This construct was defined as self-reported receipt

of substance abuse services in prison, including formal programs such as Residential Substance Abuse Treatment (RSAT) and any other outpatient substance abuse program, as well as self-help programs such as Alcoholics Anonymous (AA), Narcotics Anonymous (NA). We include AA/NA as a form of substance use programming in accordance with previous Bureau of Justice Statistics researchers (see, e.g., Mumola 1999), but call attention to the distinction between AA/NA services and those provided by more formalized treatment programs. Notably, only 16 percent of those who reported receiving in-prison treatment/services had received only AA/NA; the remaining 84 percent received some other form of substance use treatment programming.

**(3) Postprison substance abuse services:** This construct was defined as self-reported receipt of substance abuse treatment services after release from prison, including outpatient substance abuse treatment or self-help programs (either AA or NA).<sup>2</sup> We note that most of the services being provided postrelease were

AA or NA: 67 percent of those reporting postprison drug treatment services were in AA or NA only. It is also important to note that AA/NA services in the community may be operating more formally than those in prison and frequently serve as the main type of service available.

Developing these constructs enabled us to create a flowchart of the relationship between having a pre-prison drug problem and receiving treatment at the two points in time (in prison and post prison). As shown in figure 1, “appropriate” treatment matching with continuity of treatment is presented in both the uppermost and bottommost paths: The first group is those reporting a drug problem (box 1) who received both in-prison treatment and postrelease treatment (boxes 1a and 1a1). The second group is those who reported no such problem (box 2) and received neither in-prison nor postprison treatment (boxes 2b and 2b2). The other boxes represent various combinations of either mismatches between need and services or discontinuity between in-prison and





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postprison treatment. Results are presented in figure 1.

## FINDINGS

In this sample of prisoners returning to Chicago, Illinois, we found little evidence of treatment/service matching. As can be seen in the figure 1 flowchart (specifically, by examining box 1a and 2a), approximately 42 to 43 percent of those who say they *did* and those who say they *did not* have a drug problem before prison reported receiving some kind of in-prison drug treatment or related service. This finding can be viewed as problematic on two counts. First, there was no differentiation of treatment delivery based on need: Virtually the same proportion of prisoners received treatment regardless of whether they reported having a drug problem.<sup>3</sup> Second, the proportion of those who needed treatment that actually received it was less than half.

Second, when looking only at the issue of continuity of treatment without regard to drug problem, only 24 percent of those who received treatment in prison (boxes 1a and 2a) received postprison treatment as well (boxes 1a1 and 2a1). This picture is substantially better among those with a drug problem who received in-prison treatment, with 32 percent also receiving treatment after release. Nonetheless, concern arises as to treatment outcomes when we consider that continuity of treatment exists for only a third of those receiving treatment that were 'in need.'<sup>4</sup> Furthermore, it is worth noting that if we exclude prisoners who participated in AA or NA *only* after release, then an even more discouraging picture of continuity emerges: Only 7 percent of those who received in-prison treatment (and 9 percent of those with a pre-prison drug problem who received treatment) also received substance abuse treatment after release.

Overall, the flowchart shows that nearly half of those with a preprison drug problem failed to receive needed treatment either in prison or after release (box 1b2 divided by box 1), and only 14 percent received the continuous treatment suggested by research as being most

effective in preventing relapse and recidivism (box 1a1 divided by box 1). These findings identify serious problems in the delivery of substance abuse treatment services, both in terms of initial matching of need to service as well as continuity of service over time.

## POLICY AND PRACTICE IMPLICATIONS

### TREATMENT MATCHING

Several reasons may explain the observed lack of treatment matching and continuity of services. These include lack of routine administration of screening instruments, divergence between the stated mission of many correctional systems as compared to that required to enhance access to services, and the reasons that inmates self-select into various programs. Each of these possible factors is discussed in turn.

First, routine administration of good screening tools will produce information that can be used to match services. There are currently several instruments in the public domain that might be effectively implemented for this purpose, including the Texas Christian University Drug Screen II (TCUDS II), the CAGE questionnaire, and the CRAFFT (see Inciardi 1994, and Broner et al. 2001, for a more complete review). The TCUDS II is a standardized 15-item tool that takes five minutes to complete and that has been used in large correctional settings around the United States. The CAGE and the CRAFFT, on the other hand, consist of four and six questions, respectively, that are easy to remember and which can be modified to screen for either alcohol or drug abuse. The CAGE has been used internationally on both adult and adolescent (see CAGE-AA) populations, while the CRAFFT was designed primarily for adolescents.

Another instrument currently in the testing phase is the Inmate Pre-Release Assessment (IPASS), being developed by Farabee and Prendergast as part of the NIDA-funded Criminal Justice Drug Abuse Studies. The primary focus of the IPASS is on pre-release assessment to determine the need for specific

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postrelease drug placement. The instrument is to be administered approximately 90 days prior to release, and takes into account risk factors, in-prison treatment performance, and prisoner interest in as well as a counselor's assessment of need for postrelease treatment. It is currently being tested in four states.

The second issue is that there may be a disconnect between the processes and practices underlying the 'confinement model' of corrections (Logan 1993, 20–35) and those that would encourage access to programs. For systems that implement a routine screening and assessment protocol, it is important that policymakers view the results as equally important as security classification when making program assignments. In some systems, this may run counter to institutional policies usually given priority when making assignments, such as security risk and expected length of stay.

However, it may be possible to organize service availability for those with the greatest need by repositioning programmatic resources. For example, if a department finds that most of the high-need prisoners are also high-risk, they may choose to shift their drug treatment programming from lower-security to higher-security institutions. Or, regardless of location, if a department finds that the need for treatment far exceeds capacity, treatment programs may need to "prioritize" access by wait-listing prisoners according to drug abuse severity. Also of consideration to many systems is expected length of stay: How long must a prisoner be expected to remain in prison to receive an "adequate dosage" of treatment? Although the length of treatment needed will vary by the individual, research has shown that treatment of a minimal 90 days can be effective (NIDA 1999; Anglin and Hser 1990).

A third policy issue that should be examined with regard to treatment matching concerns institutional incentives for program participation, especially with regard to release eligibility. In many systems, prisoners receive credit for program participation, regardless of their need or the specific program content. Implementation of treatment matching would mean that prisoners' admission into drug programs would

be contingent on some assessment of need. For prisoners who are interested in receiving programming but are not accepted because of lack of demonstrated need, it will be important to put policies in place that offer them the possibility to accrue the same type of credits for an alternative program as those received by completing drug treatment or service.

Understanding many of these issues, in January 2004 the Illinois Department of Corrections (IDOC) implemented the Sheridan National Model Drug Prison and Reentry Program at the Sheridan Correctional Center.<sup>5</sup> Since that time, Sheridan has become the largest fully dedicated drug treatment prison in the United States (Olson, Juergens, and Karr 2004).

With the opening of the Sheridan facility, IDOC instituted use of the TCUDS II to screen at reception every Illinois prisoner for a substance abuse problem. Those prisoners who meet eligibility criteria for the Sheridan program are then transferred to the facility, where they receive a full assessment and identification of treatment needs. During the program, inmates receive intensive substance abuse treatment in a therapeutic community, as well as educational and vocational programming, other forms of specialized programming (e.g., anger management, family reunification), and, prior to their release, assistance in developing an aftercare plan for meeting treatment and other service needs, such as education, housing, and employment. Upon their release, Sheridan participants receive referrals to various services in the community, including clinically-appropriate treatment and educational/vocational programs, job placement assistance, and linkage to a community mentor. It stands to reason that the analysis presented in this paper would have resulted in different findings had the *Returning Home Illinois* study been conducted after the opening of Sheridan. An evaluation of the effectiveness of the Sheridan approach is currently underway by the Illinois Criminal Justice Information Authority (ICJIA) and should provide information on the extent to which the model has resulted in more efficient treatment allocation decisions.

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## CONTINUITY OF SERVICES

**A**lthough the benefit of drug treatment service continuity is well-established in the research literature, it was not shown to be a common practice. Regarding strategies for enhancing continuity of services, SAMHSA has developed several *Treatment Improvement Protocol* (TIP) practice briefs on how to improve comprehensive case management (Siegal 1998) and offender treatment continuity (Field 1998). Interestingly, even though the focus of the documents is somewhat different (the case management TIP is primarily concerned with improvements in individual case management approaches, and the offender treatment continuity TIP focuses on cross-system strategies) both documents cite the importance of linking and managing service delivery across systems and agencies.

The case management strategies TIP offers three different organizational models that can be considered when thinking about increasing continuity of services. These range from an informal single-agency model (one manager reporting to a single agency) to a formal 'consortium' (multiple providers linked by a formal contractual arrangement). The offender treatment continuity TIP also describes various types of models, called program strategies, to enhance treatment continuity. The first is 'institution outreach,' in which a member of the institution's staff initiates linkages with agencies and services beyond the institution. The second is 'community reach-in,' in which the individual community agencies take responsibility for initiating contact and postrelease treatment before prisoners are released. Finally, there is the 'third party' model, in which an independent agency takes responsibility and serves as a liaison between the pre- and postrelease treatment agencies.

Each of the approaches discussed in the offender treatment continuity TIP specifies the key organization responsible for developing and maintaining the cross-agency links. The appropriateness of one model over another will depend on specific organizational constraints.

For example, the institutional outreach model may work best in organizational situations where the same organization manages both in-prison services and postrelease supervision, while the community reach-in approach may be more appropriate in situations where postrelease supervision is managed by an organization separate from the corrections department. Regardless of the specific organizational focus of the agency that develops the service links, the degree of formalization of the partnerships will be contingent on the number of partners and the formality of their organizational arrangements (as detailed in the case management TIP).

## CONCLUSION

**A**lthough the current picture of treatment matching and service continuity based on our analysis of self-reported data from Illinois prisoners is somewhat disheartening, we have described several mechanisms that can be put into place to improve the existing processes. Simple and effective screening instruments exist in the public domain and adopting those instruments can be done with relatively little training, yet can lead to improvements in the linkage of substance-abusing prisoners to appropriate drug treatment. These principles are exemplified by the IDOC's use of a simple screening instrument and use of the results to refer prisoners to the Sheridan National Model Drug Prison and Reentry Program. This type of programmatic enhancement should lead to improvements in the linkage of substance-abusing prisoners to appropriate drug treatment.

Furthermore, as state and federal government agencies increasingly make funding contingent on employing evidence-based practices, correctional systems should focus on implementation of best-practice treatment approaches. Ideally, those programs will be offered first and foremost to the prisoners that need them, and they will include elements that ensure continuity of services beyond release. The current context of fiscal constraints may

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provide the impetus needed to encourage more systems to embrace these practices.

## Methodology

The Illinois Returning Home study entailed four separate data collection efforts with 400 male prisoners returning to the City of Chicago. Prisoners were recruited over a five-month period through the use of a preexisting reentry program known as PreStart. The Illinois Department of Correction (IDOC) requires the vast majority of prisoners to complete this two-week prerelease program, which is convened in groups of 10 to 30 prisoners in a classroom setting. This strategy resulted in a participation rate of 75 percent and the resulting sample was representative of all releases for the year based on factors such as major offense, admission type, release reason (MSR/parole, discharge, etc.), security level, time served, as well as demographic characteristics, such as race and age.

This analysis is based on data collected in one prerelease survey and three waves of postrelease interviews. The first survey was administered one to three months prior to release (N = 400). Postrelease data were collected from three subsequent waves of interviews: wave 1 data were collected at two to three months after release (N = 296); wave 2 data were collected between six and nine months after release (N = 266); and wave 3 data were collected between one and two years after release (N = 198).

## END NOTES

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<sup>1</sup> The distinction between substance abuse treatment and other services, such as AA/NA, is noteworthy because in-prison AA/NA programs may be run by prisoners themselves and may be substantively different than those operating more formally. For the purposes of this paper, we follow the practice of Bureau of Justice Statistics analysts (see, e.g., Mumola, 1999) and include all types of substance abuse programs under the guise of "treatment services."

<sup>2</sup> The *Returning Home* questionnaire for the first post-release interview did not ask about receipt of in-patient residential treatment.

<sup>3</sup> There is, of course, a possibility that some respondents represent 'false positives' (those who say they do not have a drug problem but actually do) and were 'correctly' screened into treatment. Although this possibility could not be disentangled in the *Returning Home* data, a host of

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previous research on the validity of self-reports suggests otherwise.

<sup>4</sup> Very limited information on in-prison referrals for community treatment after release was available: Only the 99 respondents who participated in a prerelease program where substance abuse prevention was discussed were asked about treatment referrals. Of these respondents, there was no significant relationship between receiving a community referral for treatment and actually receiving post-prison treatment.

<sup>5</sup> The data analyzed in this report (N = 251) come from prerelease interviews conducted October 2002 to March 2003, and post-release interviews conducted December 2002 to July 2003. All interviews preceded opening of the Sheridan Correctional Center; thus, none of the prisoners interviewed were screened, assessed, or treated by the Sheridan program.

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1 AN ACT concerning public aid.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Public Aid Code is amended by  
5 adding Section 5-1.3 as follows:

6 (305 ILCS 5/5-1.3 new)

7 Sec. 5-1.3. Recipient's incarceration or detention;  
8 continued eligibility.

9 (a) To the extent permitted by federal law and  
10 notwithstanding any other provision of this Code, the  
11 Department of Healthcare and Family Services shall not cancel a  
12 person's eligibility for medical assistance solely because  
13 that person has become an inmate of a public institution,  
14 including, but not limited to, a county jail, juvenile  
15 detention center, or State correctional facility. The person  
16 may remain enrolled for medical assistance as long as all other  
17 eligibility criteria are met. Counties, the Department of  
18 Juvenile Justice, and the Department of Corrections shall  
19 cooperate to share information sufficient to inform the  
20 Department of Healthcare and Family Services, in a manner  
21 established by the Department, that an enrolled person has been  
22 detained or incarcerated.

23 (b) The Department shall not be responsible to provide

1 medical assistance under this Article for any medical care,  
2 services, or supplies provided to the individual during that  
3 period. The responsibility for providing medical care shall  
4 remain, as otherwise provided by law, with the Department of  
5 Corrections, the county, or the other arresting authority. The  
6 Department may seek federal financial participation, to the  
7 extent that it is available and with the cooperation of the  
8 Department of Juvenile Justice, the Department of Corrections,  
9 or the relevant county, for the costs of those services.

10 (c) The Department shall resume responsibility for  
11 providing medical assistance upon release of the person to the  
12 community as long as all of the following apply:

13 (1) The person is enrolled for medical assistance at  
14 the time of release.

15 (2) Neither a county, the Department of Juvenile  
16 Justice, nor the Department of Corrections continues to  
17 bear responsibility for the person's medical care.

18 (3) The county, the Department of Juvenile Justice, or  
19 the Department of Corrections provides timely notice of the  
20 date of release in a manner established by the Department  
21 of Healthcare and Family Services.

1 AN ACT concerning public aid.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Public Aid Code is amended by  
5 adding Section 5-3.5 as follows:

6 (305 ILCS 5/5-3.5 new)

7 Sec. 5-3.5. Inmate of penal institution; eligibility.

8 (a) An inmate of a penal institution maintained by the  
9 State or a unit of local government may qualify for aid under  
10 this Article only after he or she has ceased to be an inmate of  
11 such an institution, but the inmate may apply for aid under  
12 this Article in advance of his or her discharge or release from  
13 the institution. Whenever the Department of Healthcare and  
14 Family Services receives an application for aid under this  
15 Article from an inmate who is scheduled for discharge or  
16 release from a penal institution, the Department shall process  
17 the application in an expeditious manner. For an inmate whose  
18 application is approved by the Department, the date of  
19 eligibility for aid under this Article shall be the date of the  
20 inmate's discharge or release from the institution.

21 (b) A recipient of aid under this Article who becomes an  
22 inmate of a penal institution maintained by the State or a unit  
23 of local government may be permitted a period of up to 30 days



1 in the institution without suspension or termination of his or  
2 her eligibility for aid under this Article. If the inmate's  
3 incarceration extends beyond 30 days, his or her eligibility  
4 for aid under this Article shall be suspended. The inmate's  
5 eligibility shall be restored as of the date of his or her  
6 discharge or release from the institution.

7 (c) Within a reasonable time after the discharge or release  
8 of a person who was an inmate of a penal institution, the  
9 Department shall redetermine the person's eligibility for aid  
10 under this Article.

11 (d) Notwithstanding any other rulemaking authority that  
12 may exist, neither the Governor nor any agency or agency head  
13 under the jurisdiction of the Governor has any authority to  
14 make or promulgate rules to implement or enforce the provisions  
15 of this amendatory Act of the 95th General Assembly. If,  
16 however, the Governor believes that rules are necessary to  
17 implement or enforce the provisions of this amendatory Act of  
18 the 95th General Assembly, the Governor may suggest rules to  
19 the General Assembly by filing them with the Clerk of the House  
20 and Secretary of the Senate and by requesting that the General  
21 Assembly authorize such rulemaking by law, enact those  
22 suggested rules into law, or take any other appropriate action  
23 in the General Assembly's discretion. Nothing contained in this  
24 amendatory Act of the 95th General Assembly shall be  
25 interpreted to grant rulemaking authority under any other  
26 Illinois statute where such authority is not otherwise

1 explicitly given. For the purposes of this amendatory Act of  
2 the 95th General Assembly, "rules" is given the meaning  
3 contained in Section 1-70 of the Illinois Administrative  
4 Procedure Act, and "agency" and "agency head" are given the  
5 meanings contained in Sections 1-20 and 1-25 of the Illinois  
6 Administrative Procedure Act to the extent that such  
7 definitions apply to agencies or agency heads under the  
8 jurisdiction of the Governor.

9       Section 99. Effective date. This Act takes effect upon  
10 becoming law.

October 24, 2008

To: Jodina Hicks

From: Tom Grippando

Re: Issuance of state IDs to prisoners about to be discharged

On October 23, Rep. Nekritz hosted a roundtable discussion on the issue of supportive services to those discharged from prison.

Issuance of state IDs was one of the items on the agenda. It was suggested that a provision in state law prevents the Secretary of State from issuing an ID, where the prisoner is incarcerated under a name other than his own. However, upon release, the prisoner eventually will be able to obtain the identification card. This process could take several weeks.

There is a good chance that if we could identify that statute, the recommendations will include a revision of the statute, lifting the bar. However, we must first be able to cite the relevant statute.

It is my understanding that where the prisoner is cooperative, the Department of Corrections will assist him in obtaining a so security card and a birth certificate. With that documentation, the Department will provide the inmate with a temporary identification card, upon release.

At one point, in the past, advocates for inmates had been told that there is a state law that bars the prisoner from obtaining an identification card from the Secretary of State where the inmate was incarcerated under a false name. Late last night, I researched the matter, and was unable to identify a statute, which specifically addressed the situation.

§ 15 ILCS 335/13(a) does authorize the Secretary of State to deny issuance of a state ID, under certain circumstances. It provides:

The **Secretary** of State may reject or deny any application if he:

1. is not satisfied with the genuineness, regularity or legality of any application; or
2. has not been supplied with the required information; or
3. is not satisfied with the truth of any information or documentation supplied by an applicant; or
4. determines that the applicant is not entitled to the card as applied for; or
5. determines that any fraud was committed by the applicant; or
6. determines that a signature is not valid or is a forgery; or
7. determines that the applicant has not paid the prescribed fee; or

8. determines that the applicant has falsely claimed to be a disabled person as defined in Section 4A of this Act [15 ILCS 335/4A].

9. cannot verify the accuracy of any information or documentation submitted by the applicant.

Does the Secretary of State take a position that one or more of the above conditions exist where the inmate is incarcerated under a name other than his own? If so, I am at a loss to understand why that same bar would not exist, after the inmate's release.

I also examined the regulations promulgated by the secretary of state with respect to the documentation necessary for issuance of a state ID. In doing so; I assumed that the applicant/inmate had a birth certificate and a social security card.

92 Ill. Adm. Code 1030 Appx. BB requires that an applicant applying for an identification card for the first time or a duplicate identification card must present one document from each of Group A, B, C, and D. The rule requires documentation, which would prove: written signature (GROUP A), proof of date birth (GROUP B), Social Security number (GROUP C), Residency/Personal Data (GROUP D).

A birth certificate together with his social security card was satisfy the requirements of a, B., and C.

1) GROUP A (Written Signature)

Social Security Card

2) GROUP B (Proof of Date of Birth)

Birth Certificate

3) GROUP C (Social Security Number)

Social Security Card - issued by Social Security Administration

4) GROUP D (Residency/Personal Data)

Examples of residency may be, but are not limited to, the following:

Utility Bill

Vehicle Registration Card

Voter Registration Card

Lease Agreement

If the prison acknowledges that the inmate was initially incarcerated under the wrong name, and assisted the inmate in obtaining a birth certificate, and a Social Security card, under is correct the a.k.a. in the prison records should satisfy the requirement for GROUP D.

# Memorandum

TO: Representative Nekritz, 57<sup>th</sup> District

FROM: Kathleen Kane-Willis, Roosevelt University

CC: Tom Grippando, Cook County Public Defender's Office

DATE: October 15, 2008

SUBJECT: Pre-Release Prisoner ID Programs

As you requested, I have investigated how states disseminate identification cards for those in prison. I examined each state to determine if any programs have been implemented that allows prisoners to obtain state identification before release from prison. My research shows that only a few states have implemented such programs: Minnesota, Montana, Colorado, and Utah. Montana has implemented a great program for individuals in prison to obtain state identification. Starting at the end of this year, all individuals in Minnesota's prisons will be issued a state ID card before leaving, thus facilitating the process of obtaining other pertinent documentation, such as social security cards, while still in prison.

## **State Models and Examples of Pre-Release Prisoner ID Programs**

Below is a brief summary of the four state's pre-release identification program:

### **Minnesota:**

DOC staff work with newly-admitted offenders to apply for two critical ID documents – a birth certificate and social security card. Application mailing costs are covered by the DOC, and fees for birth certificate applications are paid with offender phone revenues. Once these documents are obtained, they are retained in the offender's file until the day of release.

The Department of Corrections and Department of Public Safety have partnered to provide photo ID equipment at most DOC facilities, allowing offenders to secure state photo ID cards or driver license renewals closer to their release date. Staff from various local DPS driver services offices come to the facilities as needed and provide this service. The ID card or driver license is then mailed to the facility for retention until the offender's release.

### **Montana:**

The Montana Department of Corrections and Department of Justice have a Memorandum of Understanding that allows the Department of Motor Vehicles to bring a mobile unit to the State prison once a month to issue driver's licenses and state identification cards to inmates prior to release. In order to get a state ID, the inmate needs to have his inmate identification and court judgment (which all should have), and the ID is free of charge, paid for by the state. In order to

get a driver's license, the inmate needs to have a copy of his birth certificate, in addition to his inmate identification, and the inmate pays the regular fee for a driver's license. Beginning December 1, 2008, **ALL** inmates leaving the correctional system in Montana will be issued a driver's license or state identification card. Additionally, once the state ID is on file for an inmate, they can start the process of obtaining a replacement social security card and/or birth certificate from prison. For more information, contact Leslie Black at the Montana Department of Corrections (406/444-3930, ext. 2447).

**Colorado:**

The Colorado Department of Corrections has successfully partnered with the Department of Motor Vehicles to start a Prison ID Program. Department of Motor Vehicle Director Joan Vecchi, with the help of two employees, set up the miniature driver's license bureau at the East Canon Prison Complex visitor's center complete with computer, fingerprint machine, camera, blue photo backdrop and printer.

Just prior to establishing the lab at the prison complex, motor vehicle employee Aggie Garcia is provided with a list of names. She runs them through the system to see who qualifies for a driver's license, or, if the privilege is revoked, who will need a state identification card. This DOC would like to eventually acquire a permanent DMV station at the East Canon Prison Complex, but for now is still in the pilot stage, being conducted once every 2-4 months. Additionally, the inmates do pay the regular fee for their driver's license or state ID card.

**Utah:**

Utah Department of Corrections has partnered with the Public Safety Office so that ID cards and driver licenses are provided several weeks before release. (This information is from H.I.R.E. Network's 2003 study, but no corroborating evidence could be found on the internet. The number for Utah DOC is (801) 201-9153.)

I hope this information is helpful. If there is any other way that I can be of assistance, or if you have any questions or comments, please do not hesitate to contact me at 312-341-4336 or via email at [kkane@roosevelt.edu](mailto:kkane@roosevelt.edu)

AMERICAN BAR ASSOCIATION  
CRIMINAL JUSTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association urges federal, state, local and territorial  
2 governments to maintain the Medicaid eligibility of otherwise-eligible incarcerated persons and  
3 provide continuity of health care to persons newly-released from custody.  
4  
5 FURTHER RESOLVED, That the American Bar Association urges Congress to repeal the “inmate  
6 exception” to the Social Security Act by amending 42 U.S.C. §1396d(a) to permit states to receive  
7 federal matching funds for health services provided to otherwise-eligible incarcerated persons.  
8  
9 FURTHER RESOLVED, That until the Social Security Act is so amended, the American Bar  
10 Association urges federal, state, local and territorial governments to suspend, rather than terminate,  
11 the Medicaid enrollment of persons who become incarcerated.

REPORT

Institutionalized persons are the only Americans constitutionally guaranteed access to medical care.<sup>1</sup> Yet, despite guaranteed access to minimally adequate medical treatment, statistics reveal that prisoners suffer from mental and physical health problems at rates that far exceed those found in the general population.<sup>2</sup> When left untreated, these health problems follow prisoners as they return home, jeopardizing public health and safety.<sup>3</sup> Although many, if not most, incarcerated persons are eligible for Medicaid coverage by reason of indigency, federal law prohibits states from receiving federal reimbursement for payments made for care or services on behalf of any individual who is an “inmate of a public institution.”<sup>4</sup> Consequently, states bear the full cost of providing health care to inmates of American jails and prisons.

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<sup>1</sup> ESTELLE V. GAMBLE, 429 U.S. 97, 103 (1976).

<sup>2</sup> National Commission on Correctional Health Care, *The Health Status of Soon-To-Be-Released Inmates: A Report to Congress, Volume 2* (2004).

<sup>3</sup> Bazelon Center, *An Act to Reduce Recidivism by Improving Access to Benefits for Individuals with Psychiatric Disabilities upon Release from Incarceration* (2003); Vera Institute of Justice, *The First Month Out, Post-Incarceration Experiences in New York City* (1999).

<sup>4</sup> 42 U.S.C. § 1396d (a)(27)(A); 42 C.F.R. § 435.1008.

Public institutions and agencies face innumerable obstacles in providing prisoners and former prisoners with access to adequate medical care. The recommendations outlined above are intended to address the most prominent financial and bureaucratic obstacles impeding the delivery of quality health care to incarcerated and formerly incarcerated persons. By amending the Medicaid statute to permit states to receive federal matching funds, Congress can provide the monetary resources states need to advance public health and ensure the delivery of constitutionally adequate medical care to inmates. By revising state rules regarding the termination of Medicaid benefits, state agencies can prevent unnecessary interruptions in the provision of health care. And by fostering cooperative efforts to assist prisoners in applying for and maintaining Medicaid, correctional and state agencies can ensure that all eligible persons obtain continuous access to appropriate medical and psychiatric treatment upon release.

### I. Scope of the Prison Health Care Challenge

Inmates suffer from physical ailments and psychiatric disorders at rates that far exceed those found in the general population. Prisoners are two to four times more likely to suffer from serious mental illness than are non-incarcerated persons.<sup>5</sup> In addition, prisoners are more prone to physical ailments than are their non-incarcerated counterparts. Prisoners suffer from HIV/AIDS, hepatitis C, diabetes, tuberculosis, sexually transmitted diseases and other highly contagious diseases at higher rates than their non-incarcerated counterparts<sup>6</sup> and experience age-related ailments on average ten to fifteen years earlier than members of the general population.<sup>7</sup> Roughly one-third of State prison inmates and one quarter of federal prison inmates surveyed in 1997 reported having some physical impairment or mental condition, with older inmates and women most likely to report a health problem.<sup>8</sup> Thirty-seven percent of jail inmates surveyed between October 1995 and March 1996 reported that they had “a physical, mental, or emotional condition, or difficulty seeing, learning, hearing or speaking.”<sup>9</sup>

Given the scope and prevalence of health problems amongst prisoners, it is not surprising that medical costs account for a large portion of correctional budgets. States expend more than \$3.3 billion each year on medical care for persons incarcerated in their prisons.<sup>10</sup> The Federal Bureau of

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<sup>5</sup> Human Rights Watch, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness* (2003).

<sup>6</sup> John V. Jacobi, *Prison Health, Public Health: Obligations and Opportunities*, American Journal of Law and Medicine. Boston: 2005. Vol. 31, Iss. 4; p. 447; Linda M. Maruschak, Bureau of Justice Statistics, *HIV in Prisons, 2004* (2006) (AIDS case rate for state and federal prisoners more than three times higher than in the U.S. general population).

<sup>7</sup> Mike Mitka, *Aging Prisoners Stressing Health Care System*, JAMA 292:4, 423 (2004).

<sup>8</sup> See Laura M. Maruschak and Allen J. Beck, Bureau of Justice Statistics *Medical Problems of Inmates, 1997* 1 (2001).

<sup>9</sup> See Caroline Wolf Harlow, Bureau of Justice Statistics, *Profile of Jail Inmates 1996* 11 (1998).

<sup>10</sup> Bureau of Justice Statistics, *State Prison Expenditures 2001* 6 (2004). The Wisconsin Department of Corrections Bureau of Health Services= FY 2006 operating budget was \$69,287,900, <http://www.wi-doc.com/BHS.htm> (last visited May 14, 2007). The Washington State Department of Corrections spends more than \$60 million each year to provide medical care for about 15,000 inmates, Eric Monague, PRISON HEALTH CARE: HEALING A SICK SYSTEM THROUGH PRIVATE COMPETITION, available at <http://www.washingtonpolicy.org/ConOutPrivatization/PNPrisonHealthCare03-08.html> (last visited May 14, 2007).



Prisons spends an additional \$372.1 million annually serving the health care needs of its prisoners.<sup>11</sup> Although national statistics are not available for the annual cost of providing care to jail inmates, regional reports indicate that jail medical spending matches or exceeds the expenditure rate of state and federal prisons.<sup>12</sup>

## II. The “Inmate Exception”: Basics of Medicaid Funding

Despite the enormity of the cost of prison health care, federal law prohibits states from receiving federal reimbursement under the Medicaid program for care or services provided to any individuals who are “inmate[s] of a public institution”<sup>13</sup> This so-called “inmate exception” has been a feature of the Social Security Act since its inception in 1965.<sup>14</sup>

In 1976, the United States Supreme Court announced in *Estelle v. Gamble* that states bear a constitutional obligation to provide medical care for incarcerated persons.<sup>15</sup> Yet, in the thirty years since *Estelle* was issued, no action has been taken to extend federal Medicaid funding to any services provided to prisoners. It is not entirely clear why, in the immediate wake of *Estelle*, states did not demand federal support to offset the newly mandated costs of prison health care. Low incarceration rates combined with the relatively low cost of medical care in the 1970s meant that *Estelle* placed on state treasuries a proportionally lesser burden than it does today. Perhaps because states had no reason to anticipate the skyrocketing cost of health care and enormous growth in prison population seen today, they had little motivation to demand increased federal funding at that time.

During the decades following *Estelle*, several phenomena converged to dramatically increase the costs associated with prison health care. Incarceration rates and sentence durations increased gradually throughout the 1980s and soared during the 1990s, resulting in a jump in the United States’ prison population from approximately 330,000 in 1980 to approximately 1.5 million in 2004.<sup>16</sup> As the number of prisoners has increased, so have the medical costs associated with their care.<sup>17</sup>

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<sup>11</sup> United States General Accounting Office, Richard Stana, Testimony before Senate Judiciary Committee Subcommittee on Criminal Justice Oversight, Document No. GAO/T-GGD-00-112, *Containing Health Care Costs for an Increasing Inmate Population* 6 (2000) (relying on figures from fiscal year 1999).

<sup>12</sup> Arthur Sulzberger, *Jail Health Care Operations Improve, But At A Price*, THE OREGONIAN, Mar. 15, 2007, at B03 (noting annual health care costs above \$14 million at Multnomah County Jail, Oregon); Mike Carter, *Mistakes, Some Deadly, Haunt County Jails*, SEATTLE TIMES, Mar. 9, 2007 (reporting \$22 million annual health care budget for King’s County Jail, Washington); Steve McVicker & Anita Hassan, *Deaths Behind Bars*, HOUSTON CHRONICLE, Feb. 18, 2007, at A1 (reporting annual health care budget of more than \$18 million for Harris County Jail, Texas); Richard Byrne Reilly, *Controller: County Jail Inmates’ Health Care Rivals Private Sector*, PITTSBURGH TRIBUNE REVIEW, Feb. 1, 2007 (reporting annual health care budget of \$10 million for Allegheny County Jail, Pennsylvania).

<sup>13</sup> 42 U.S.C. § 1396d(a); 42 C.F.R. § 435.1008.

<sup>14</sup> SCHWEIKER V. WILSON, 450 U.S. 221, 224 (1981); Youth Law Center, *The Inmate Exception and Its Impact on Health Care Services for Children in Out-of-Home Care in California* 9 (discussing sparsely documented legislative history of the Inmate exception).

<sup>15</sup> 429 U.S. at 103.

<sup>16</sup> Bureau of Justice Statistics, *Prisoners under State or Federal Jurisdiction, 1977-2004* (2005).

<sup>17</sup> Kathleen Auerhahn, *Selective Incapacitation, Three Strikes, and the Problem of Aging Prison Populations*:

Prison medical care has become a matter of increasing concern to state and federal officials. On June 8, 2006, the Commission on Safety and Abuse in America's Prison released a report based on fifteen months of research and public hearings sponsored by the Vera Institute of Justice. The report made 30 recommendations for the improvement of American prisons. Among these was the recommendation that Congress

[c]hange the Medicaid and Medicare rules so that correctional facilities can receive federal funds to help cover the costs of providing health care to eligible prisoners. Until Congress acts, states should ensure that benefits are available to people immediately upon release.<sup>18</sup>

If state prisons are to provide medical care that is adequate, humane, and promotes public health and safety, they need resources. Those resources are sorely lacking. By repealing the inmate exception to Medicaid funding, Congress can move the nation to meet the constitutional standard recognized in *Estelle* over 30 years ago.

### III. Suspension vs. Termination

Of the approximately 2.2 million Americans incarcerated on any given day, the vast majority will be released during their lifetimes.<sup>19</sup> Recognizing this reality, legislatures, community activists, police and corrections officials have paid increasing attention to the phenomenon of "reentry" and the many barriers that exist to its successful completion.<sup>20</sup> Inmates returning to their communities face many well-documented obstacles to social and economic reintegration, in the form of decreased access to jobs, subsidized housing, and educational opportunities.<sup>21</sup> Without access to jobs that provide employer-based health insurance, ex-prisoners are forced to rely upon public funding or to go without medical care at all.

Without access to medical care, many newly released person pose a threat to public health. For persons suffering from debilitating or contagious diseases, the cost of going without medical care, even for a brief period of time, can be tremendous. For inmates suffering from chronic

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*Using Simulation Modeling to See the Future*, CRIMINOLOGY & PUBLIC POLICY 1(3):353, 361 (2002) (reporting that cost of health care delivery services in United States has outpaced inflation substantially and is expected to double in next decade).

<sup>18</sup> John J. Gibbons & Nicholas Katzenbach, Commission on Safety and Abuse in America's Prisons, *Confronting Confinement* 38 (2006). Other health-related recommendations contained in the Commission report include: (1) developing partnerships between prisons and community health providers; (2) building collaborative working relationships between corrections administrators and officers within prison institutions; (3) committing adequate resources to identify and treat mentally ill prisoners and reduce the number of people with mental illness in prisons and jails; (4) screening, testing, and treatment of infectious diseases under the oversight of public health authorities; and (5) ending co-payments for medical care within prisons.

<sup>19</sup> Bureau of Justice Statistics, *Prison and Jail Inmates at Midyear 2005* (2006); Timothy Hughes & Doris James Wilson, Bureau of Justice Statistics, *Reentry Trends in the United States* (2003).

<sup>20</sup> See, e.g., Christy Visher, Nancy LaVigne & Jeremy Travis, *Returning Home: Understanding the Challenges of Prisoner Reentry* (Urban Institute 2004); Margaret Colgate Love, *The Debt That Can Never Be Repaid: A Report Card on the Collateral Consequences of Conviction*, CRIMINAL JUSTICE 21(3): 16-25 (2006).

<sup>21</sup> D. Pager, *The Mark of a Criminal Record*, Am J. Sociol. 108(5):937-75 (2003).

diseases, such as HIV, rheumatic conditions or diabetes, interruptions in medication can create resistance to less expensive “frontline” drugs, necessitating the use of stronger, more expensive and often more dangerous medical interventions when treatment is ultimately resumed.<sup>22</sup> Inmates with untreated contagious diseases, such as sexually transmitted disease, are likely to pass those illnesses on to friends and acquaintances, who may themselves be unable to access proper medical care.<sup>23</sup>

Lack of adequate medical care poses risks not only to public health, but also to public safety. Gaps in treatment can lead mentally ill persons to commit criminal acts.<sup>24</sup> Moreover, without Medicaid, many newly released persons with addiction to alcohol and other drugs are not able to access appropriate treatment. Left untreated, continued addiction leads inexorably back to jail and prison. While the evidence is not conclusive, some studies have suggested that individuals who have health insurance following release from prison have lower rates of re-arrest than their uninsured counterparts.<sup>25</sup>

The inmate exception in the Social Security Act has not been well understood, and has led many states to implement unnecessarily restrictive procedures for ensuring that prisoners are unable to access medical care through state Medicaid programs. Unfortunately, many of these procedures place unwarranted burdens on inmates’ ability to resume Medicaid coverage when they leave prison or jail.

In many states, when an individual receiving medical benefits under the Social Security Act becomes incarcerated, his enrollment in the medical benefits program is terminated.<sup>26</sup> Yet many inmates are released from jail within days.<sup>27</sup> Because jails and prisons are paid a “bounty” for reporting new arrests to their local social security offices, the termination often occurs within a few days of the prisoner’s incarceration.<sup>28</sup> Upon release, the individual is required to re-establish his

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<sup>22</sup> Theodore M. Hammett, Cheryl Roberts & Sofia Kennedy, *Health-Related Issues in Prisoner Reentry*, CRIME & DELINQUENCY 47(3): 390-409 (2001).

<sup>23</sup> Catherine H. Conly, *Helping Inmates Obtain Federal Disability Benefits: Serious Medical and Mental Illness, Incarceration, and Federal Disability Entitlement Programs* (2005); National Commission on Correctional Health Care, *The Health Status of Soon-To-Be-Released Inmates: A Report to Congress*, VOLUME 2 (2004).

<sup>24</sup> See, e.g., M. Nelson, P. Deess, and C. Allen, *The First Month Out, Post-Incarceration Experiences in New York City* (1999); Bazelon Center, *An Act to Reduce Recidivism by Improving Access to Benefits for Individuals with Psychiatric Disabilities upon Release from Incarceration* (2003).

<sup>25</sup> See, e.g., Joshua Lee, David Vlahov & Nicholas Freudenberg, *Primary Care and Health Insurance among Women Released from New York City Jails*, JOURNAL OF HEALTH CARE FOR THE POOR AND UNDERSERVED, 17(1): 200-217 (2006); Reentry Policy Council of the Council of State Governments, *How and Why Medicaid Matters for People with Serious Mental Illness Released From Jail: Research Implications*.

<sup>26</sup> Bazelon Center, *A Better Life: A Safer Community, Helping Inmates Access Federal Benefits* (2003); see also Ohio Assoc. of County Behavioral Health Authorities, *Medicaid Termination Policy, Behavioral Health: Toward a Better Understanding* (2006), available online at [http://www.oacbha.org/Educational\\_Advocacy/Volume2Issue11.pdf#search=%22pilot%20program%20medicaid%20prisoner%20suspend%20terminate%22](http://www.oacbha.org/Educational_Advocacy/Volume2Issue11.pdf#search=%22pilot%20program%20medicaid%20prisoner%20suspend%20terminate%22).

<sup>27</sup> For example, in New York City, 25% of all jail admissions leave within 3 days and 65% are released within 30 days. City of New York, Department of Correction, internal reports.

<sup>28</sup> Bill Thomas, Committee on Ways and Means, Subcommittee on Human Resources Report, *A Decade Since Welfare Reform: Ending Waste, Fraud and Abuse of Welfare Benefits 2* (June 1, 2006) (reporting bounties up to \$400 per prisoner), available online at [waysandmeans.house.gov/media/pdf/welfare/060106welfarereport.pdf](http://waysandmeans.house.gov/media/pdf/welfare/060106welfarereport.pdf).

Medicaid eligibility by completing a new application--a process that may take many months and which may interrupt the ex-prisoner's access to medications and other medical treatment.<sup>29</sup>

Although state agencies may not use federal matching funds to cover any portion of the costs associated with a prisoner's medical care, federal law does not *require* states to terminate the benefits of an otherwise eligible prisoner. The Department of Health and Human Services has released several letters and memoranda in recent years urging states to "suspend" rather than "terminate" otherwise eligible individuals from Medicaid programs upon incarceration.<sup>30</sup> For example, on May 25, 2004, Glenn Stanton, the Acting Director of the U.S. Department of Health & Human Services Centers for Medicare & Medicaid Services (CMS), issued a memo to all State Medicaid Directors encouraging states to suspend and not terminate Medicaid benefits for individuals who are housed in any public institution, and recommending that states take "whatever steps are necessary to ensure that an eligible individual is placed in payment status so that he or she can begin receiving Medicaid-covered services immediately upon leaving the facilities." Despite those directives, termination is the standard practice in most states.<sup>31</sup>

There are exceptions, however. Several states have experimented with pilot programs to ensure that Medicaid-eligible persons beginning a period of incarceration are not terminated from the program and that Medicaid-eligible individuals not already approved for the program are identified prior to their release.<sup>32</sup> Other states have gone so far as to introduce legislation mandating the practice of suspending, rather than terminating, the Medicaid benefits of incarcerated persons.<sup>33</sup>

In 2004, the American Bar Association passed a resolution promoting a variety of reforms relating to mentally ill persons within the criminal justice system. One of these recommendations encouraged federal, state and local governments to improve continuity of care for the mentally ill upon release from prison by eliminating needless "administrative delays."<sup>34</sup> The termination of Medicaid eligibility for otherwise-eligible incarcerated persons is one such delay.

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<sup>29</sup> Catherine Conley, *Helping Inmates Obtain Federal Disability Benefits: Serious Medical and Mental Illness, Incarceration, and Federal Disability Entitlement Programs* 19 (2005).

<sup>30</sup> Bazelon Center, *supra*, n. 19.

<sup>31</sup> The reason why termination is the most common option appears to be largely bureaucratic. In New York, for example, state officials have refused to suspend benefits because suspension is not a choice available in the state's computerized benefits management system.

<sup>32</sup> Centers for Medicare Services, Eiken, S. & Sara Galantowicz, *Improving Medicaid Access for People Experiencing Chronic Homelessness*, 12-15 (2004) (summarizing state-sponsored initiatives to provide seamless resumption of benefits upon re-entry, including efforts in Washington and Texas to suspend of benefits for those serving short terms of confinement); National GAINS Center for People with Co-Occurring Disorders in the Justice System, *Maintaining Medicaid Benefits for Jail Detainees with Co-Occurring Mental Health and Substance Use Disorders* (rev. ed. 2002) (describing pilot program in Lane County, Oregon).

<sup>33</sup> See, e.g., Omnibus Mental Health and Substance Abuse Treatment Act@ Washington State House of Representatives Bill E2SSB 5763 (2005); California AB 2004 (requiring state Department of Health Services to suspend health care benefits under Medi-Cal for incarcerated minors, rather than terminate eligibility as provided by current law and requiring Department to ensure that minors who are no longer inmates have immediate access to health care services under Medi-Cal).

<sup>34</sup> ABA Resolution MY-04-116 (sponsored by the Criminal Justice Section). The resolution states, in relevant part:

FURTHER RESOLVED, That the American Bar Association urges federal, state, local and territorial governments to improve their response to adults with mental illness and juveniles with mental or emotional disorders who come

States must recognize that the needless termination of Medicaid benefits has consequences for the public as well as for the prisoner forced to forgo necessary medical treatment upon release from prison. By heeding federal directives and developing systems for suspending, rather than terminating, the Medicaid benefits of prisoners, states can assist correctional institutions in preparing prisoners for release, allow for easy and early reinstatement of benefits, and facilitate continuity of care for persons returning to their local communities. Federal officials should assist states in implementing suspension procedures and ensuring that otherwise-eligible persons resume their benefits without interruption upon release from jails or prisons.

Each state requires Medicaid recipients to undergo a periodic predetermination of Medicaid eligibility. Failure to complete paperwork or to attend a determination interview may result in automatic termination of benefits, even if those benefits have been suspended during the period of incarceration. State and local governments should modify their procedures to accommodate the unique needs of incarcerated persons during the predetermination process.

#### IV: Pre-Release Planning

Under current law and practice, many otherwise-eligible persons leave prison without Medicaid coverage, either because their benefits have been terminated during incarceration or because they have not applied for benefits (a process that is often complicated and time-consuming). In addition to taking the steps detailed above, correctional facilities and state agencies should take active steps to ensure that all persons who are eligible for Medicaid are identified and assisted in procuring enrollment prior to their release from custody.

The administrative process by which enrollment is accomplished may vary greatly, depending on the size of the correctional institution, the length of a prisoner's custody, and the resources available to local agencies. In Lane County, Oregon, for example, the local Medicaid processing agency worked with jail diversion staff to develop a "fast track" for applications filed on behalf of prisoners.<sup>35</sup> Under that program, the local agency processed applications in one to two days, faxing temporary Medicaid cards to the jail, thereby ensuring that even short-term detainees were able to gain immediate access to needed medical care upon release.<sup>36</sup> Massachusetts has developed a similar program, partnering with state health officials to ensure that eligible prisoners leave jail with a Mass Health (Medicaid) card in hand.<sup>37</sup>

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into contact with the criminal justice and juvenile justice systems, by developing and promoting programs, policies and laws that would accomplish the following:

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. . . Improve federal, state and local policy and practice with respect to access to health and income benefits for persons with mental illness being released from incarceration so that such benefits are available to them immediately upon release without administrative delays.

<sup>35</sup> National GAINS Center, *supra*, n. 29.

<sup>36</sup> *Id.*

<sup>37</sup> American Psychiatry Association, Liz Lipton, *Jail Program Helps Inmates Avoid Health Care Gap*, *Psychiatry News* 36:16 (Aug. 17, 2001).

In New York, state funds pay for psychiatric medications for Medicaid applicants leaving correctional facilities and for transition managers to assist former inmates in filing benefit claims.<sup>38</sup> In addition, the state works to connect mentally ill persons leaving custody with food stamps, cash assistance, and community-based resources.<sup>39</sup>

In Washington, the Department of Social and Health Services has placed an eligibility social worker at the Seattle jail to assist prisoners close to release in accessing Medicaid benefits. Whenever an inmate is 45 days from his or her projected release date, jail staff notify the social worker, who then collects medical and financial information and helps the prisoner obtain substance abuse treatment, mental health services, and income support. The Department of Social and Health Services waives the face-to-face eligibility interview requirement for prisoners with mental illness or addiction disorder treatment needs.

Regardless of the procedures adopted by state and local agencies, the end result should be the same: no eligible prisoner should leave jail or prison without immediate access to medical care. By working in partnership, state governments and correctional institutions can ensure that eligible persons are identified and leave jail or prison with access to the resources they need to access medical care in their communities.

## V. Conclusion

To best serve the medical needs of incarcerated persons and relieve unwarranted financial burdens on state and local governments, Congress should repeal the inmate exception to the Social Security Act to state government to continue receiving federal funds for health care provided to incarcerated persons. In the meantime, state agencies should suspend, rather than terminate, the Medicaid benefits of otherwise-eligible prisoners during their period of incarceration. Finally, state and local officials should partner with correctional agencies to identify prisoners who are eligible for Medicaid upon release and develop mechanisms for ensuring that these persons receive continuous care upon release from custody.

Respectfully submitted,

Robert M.A. Johnson  
Chair, Criminal Justice Section  
August 2007

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<sup>38</sup> Bazelon Center, Robert Bernstein, *Finding the Key to Successful Transition from Jail to the Community: An Explanation of Federal Medicaid and Disability Program Rules* (2001).

<sup>39</sup> Reentry Policy Council, Council for State Governments, *Ensuring Timely Access to Medicaid and SSI/SSDI for People with Mental Illness Released from Prison: New York*, available at [www.reentrypolicy.org/reentry/Document\\_View.asp?DocumentID=1017](http://www.reentrypolicy.org/reentry/Document_View.asp?DocumentID=1017).

**ADDITIONAL INFORMATION: SUBCOMMITTEE ON PREPARING  
INCARCERATED PERSONS FOR EMPLOYMENT**

## **Employment of Persons with Past Criminal Convictions Task Force, Subcommittee on Preparing Incarcerated Persons for Employment**

**Additional information provided by other concerned groups including the Safer Foundation, Chicago Metropolis 2020, and the Cook County Public Defender's Office –**

1. **Obtaining Identification: Secretary of State should establish a procedure by which an inmate, upon release (or shortly thereafter), is able to acquire a state ID by presenting his/her birth certificate and Social Security card.**

Prisoners released from IDOC facilities are at a serious disadvantage because they leave the facility without identification documentation – except for the temporary identification card, issued by IDOC – which is needed to access social services, job training programs, drug treatment, etc., upon reentry.

IDOC staff will assist inmates in obtaining a social security card and birth certificate.<sup>1</sup> Even with these documents, inmates and those recently discharged are finding it difficult to obtain state IDs.

§ 15 ILCS 335/13(a) authorizes the Secretary of State to deny issuance of a state ID, under certain circumstances. The Secretary of State may reject or deny any application if the accuracy of any information or documentation submitted by the applicant cannot be verified.

92 Ill. Adm. Code 1030 Apex. BB requires that an applicant applying for an identification card for the first time or a duplicate identification card must present one document from each of Group A, B, C, and D. The rule requires documentation, which would prove: written signature (Group A), proof of date of birth (Group B), Social Security number (Group C), residency/personal data (Group D).

For example, a birth certificate together with a social security card would satisfy the requirements of A, B and C.<sup>2</sup> Prison-issued documentation would satisfy the requirements for proof of residency (Group D).

### **Recommendations**

- Determine whether the Secretary of State is constrained by a state law which does not permit his office to issue an identification card to a prisoner incarcerated in a state facility.
  - If such a law exists, the legislature should amend any laws that serve as a barrier to issuance of state ID.

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<sup>1</sup> While some prisoners cannot be assisted with obtaining identification documentation because they will not cooperate, a significant number are willing to assist IDOC staff in obtaining birth certificates and social security cards.

<sup>2</sup> There also appears to be a problem where the prisoner was initially incarcerated under the wrong name (an alias). Prison authorities will assist the inmate in obtaining a birth certificate and a social security card. Prison records will list the inmate under both the correct name and the alias. A significant number of individuals are incarcerated under aliases. If these individuals are able to obtain their birth certificates and so security cards, they should be eligible for a state ID. Some have suggested that state law bars the Secretary of State from issuing an ID, where the inmate is incarcerated under an alias.



- Waive the required \$20 fee for identification when the prisoner can demonstrate indigence.
- Establish a streamlined process with IDOC and the Secretary of State's office so that a state ID can be obtained immediately after release, if the reentering individual possesses a social security card and birth certificate.
- IDOC and the Secretary of State should explore initiatives taken by other states that provide ID within the prison.

### **ID Model Programs**

#### **Indiana**

Two correctional facilities have a limited license branch under the Bureau of Motor Vehicles to issue identification cards to inmates, upon release, in Indiana. In 2006 Indiana Department of Corrections signed a Memorandum of Understanding with the Family and Social Services Administration enabling offenders to apply for Medicaid, Food Stamps, and TANF prior to leaving incarceration. Additionally a partnership was formed between Indiana DOC and the Indiana State Department of Health to purchase birth certificates for offenders prior to release.

#### **Minnesota**

Minnesota DOC staff works with newly-admitted offenders to apply for a birth certificate and social security card. DOC covers the mailing costs for application, and additional fees are paid for with offender phone revenues.

#### **Montana**

Montana has a partnership with the Department of Motor Vehicles which brings a mobile unit to the State prison once a month to issue driver's licenses and identification cards to inmates close to their release date. Beginning December 1, 2008, *all* inmates leaving the correctional system in Montana will be issued either a driver's license or state identification card.

#### **Colorado**

Colorado has set up a program with the Department of Motor Vehicles (located in their East Canon Prison Complex visitor's center) where inmates, upon release, can obtain proper identification.

2. **Preservation of Existing ID: State laws should be amended so that government issued ID, in the possession of the inmate at the time of admission to a county jail, is sent to the IDOC facility and returned to the inmate upon release.**

### Background

Some inmates have government issued identification in their possession at the time that they are arrested. When they are incarcerated at the Cook County Jail, as pretrial detainees, jail authorities store the documents. The sheriff returns the documents to those who are acquitted or released on bail. However, those who are sent directly from the jail to an IDOC facility may lose those documents.

The Cook County Sheriff's office provides these inmates with two options to preserve the stored documentation:

- (1) The inmate can arrange for a family member or friend to retrieve the documentation from the jail; or
- (2) If the inmate has sufficient funds in his or her commissary account, arrangements will be made to mail the materials to a family friend or relative.

*If the inmate fails to make arrangements to have the ID picked up or mailed, the jail will shred the materials when the inmate is transferred to an IDOC facility.*

### Prior Legislative Remedies

- In 2007, Representative Yarbrough introduced House Bill 222, which would have required the sheriff to transfer the government issued ID with the prisoner. The bill passed the House with a vote of 106-04, but stalled in the Senate Judiciary committee.
- In 2008, Representative Yarbrough introduced House Bill 5239, which in substance mirrored the earlier bill. The latter bill passed out of the House Judiciary II committee with a vote of 13 – 0. It was not called for a vote in the House.

These bills simply required the sheriff to retrieve ID issued by the government. Those documents would be kept by the IDOC officials until the inmate's release.<sup>3</sup>

### Recommendations

- Support legislation similar to HB 5239, which would require the sheriff to transfer government issued ID with the inmate to an IDOC facility.
3. **Transfer of Existing Records: State law should be amended to compel counties to provide IDOC with inmate's background and medical information at the time that custody is transferred to IDOC.**

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<sup>3</sup> Deputy Director Program and Support Services of IDOC, Roberta Fewes, pointed out that at the time of arrest, individuals may have in their possession ID, along with materials treated as contraband by prison officials, which are placed in bags. She indicated that it would be labor intensive to go through each bag and sort out the items the inmate is permitted to keep, such as ID. Under HB 5239, the sheriff would not have to segregate contraband from non-contraband, but simply retain government issued ID to accompany the prisoner to an IDOC facility.

### Background

Inmates arrive at IDOC without sufficient information regarding medical conditions, social service needs and employment history. IDOC officials have a difficult time providing services for individuals when they lack information regarding the prisoner's history and corresponding social service needs.

These records are needed to provide both in-prison services and reentry plans. For example, an inmate who was involved in a domestic violence incident should not be returned to that domestic environment, even if the victim agrees to the arrangement.

### Medical Records

The failure of jail authorities to share medical records is another significant problem. Currently, when an inmate is transferred from the Cook County Jail to an IDOC facility, no medical documentation accompanies the prisoner. At intake, the prison authorities have no idea as to what health treatment was provided to the inmate or what diagnostic conclusions were arrived at. This omission is especially serious where the prisoner suffers from a mental illness.

Many prisoners receive treatment in jail for mental health issues. Their medical conditions may have stabilized, but have not been cured. Because the prison authorities are not aware of the past history of mental illness, appropriate care is not arranged and the prisoner is placed with the general population. Additionally, some inmates arrive at IDOC with prescription drugs, but without the proper prescription records (including the medical condition that requires said prescription).

### Records Transfer

The county has an archaic computer system, which cannot communicate with the state's system. *Rebuilding Lives, Restoring Hope, Strengthening Communities*, prepared by the Mayoral Policy Caucus on Prisoner Reentry [hereinafter the Mayoral report], pointed out that, by law, the Cook County Jail is supposed to provide personal files to IDOC upon transfer of prisoners. The assessments are paper records that must be collected, copied and physically transferred when the prisoner leaves jail. Unfortunately, Cook County Jail lacks the personnel to adequately accomplish this task. At the same time IDOC also lacks sufficient staff to review and manage all files transferred from the jail. *Inside Out, A Plan to Reduce Recidivism and Improve Public Safety*, prepared by the Governor's Community Safety and Reentry Working Group [hereinafter Gubernatorial report] also addressed this issue.

### Existing Legislation

However, there is a provision in the Illinois Code (§730 ILCS 5/ 5-4-1) that mandates that the Clerk of the Court is to transmit the following documentation to IDOC<sup>4</sup>:

- a. Any statement by the court of the basis for imposing the sentence.
- b. Any pre-sentence reports.
- c. A record of the committed person's time and his or her behavior and conduct while in the custody of the county. Any action on the part of the committed person, including but not limited to an escape attempt, participation in a riot, or suicide attempt, which might affect

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<sup>4</sup> IDOC officials indicate that most counties do not comply with this obligation.

- security status, and a record of medical treatment, if any, should be included in the record.
- d. The State's Attorney's Statement of Facts. If the statement is unavailable at the time of delivery, the statement shall be transmitted within 10 days of receipt by the Clerk of the Court. (This subsection is permissive rather than mandatory; therefore the State's Attorney need not provide that information if he/she declines to do so.)
  - e. Any medical or mental health record or summaries.
  - f. The name of municipality(ies) where the arrest of the committed person and the commission of the offense occurred.
  - g. All additional matters which the court directs the clerk to transmit.

*Ill. Adm. Code 107.20 provides that IDOC may refuse admission of a prisoner, where the items listed above are not received at the time of delivery of a committed person to the prison.*

### Recommendations

- The Mayoral and Gubernatorial reports include recommendations that the state should encourage enforcement of the existing law and require all counties to deliver medical records, along with other judicial and penal documents to IDOC upon an individual's transfer from the county jail.
- The Gubernatorial report includes a recommendation that the state should enforce the statutory requirements on local jurisdictions for submitting court documents and pre-sentence investigation reports.
- The Gubernatorial report also recommended that IDOC should be allowed to refuse admissions unless county jurisdictions have provided all necessary documentation.
- 730 ILCS 5/ 5-4-1 should be amended to require that a fact sheet, be prepared by the State's Attorney within a certain period of time. The state should pass legislation mandating that counties use a standard paper process for committing offenders that include statement of facts, social investigations, medical information, and police reports.

4. **Short-Stay Inmates: Inmates required to serve 90 days or less, should be diverted to a community program or a county jail, rather than transferred to a penitentiary.**

Background

A large number of inmates have sentences of 90 days or less. The state incurs significant costs related to transport, processing and housing of these short-term inmates. Because of the duration of their sentences, there is little that IDOC can do in the areas of education and rehabilitation.

A better approach would be to divert these individuals to community programs similar to the programs funded by the state to assist inmates in integrating into society after serving longer terms. These facilities could set curfews. They could connect the inmates with drug treatment and job training programs, located in the communities where the inmate will return.

Another possibility is to divert these inmates to the Impact Incarceration Program (IIP), which provides a 120-180 day sentencing alternative to traditional incarceration for adult felons between 17-35 years of age, sentenced to eight years or less, if they have not been previously incarcerated. The three elements of the program include military training, substance abuse treatment and counseling, and a gradual reintroduction to the community with a tapering of supervision. It is possible that this approach has been used in some "61-day wonder" cases to avoid incarceration. However, some research suggests that the "boot-camp" strategy does not produce more desirable recidivism rates than general incarceration.

A third approach would be to permit the inmate to complete his or her sentence in the county jail. The 94th General Assembly passed S.B 554, which was signed into law as P.A. 383, and codified as 730 ILCS 5/3-18-5 et seq. This law implicitly acknowledges the challenge of preparing inmates for reentry, when they are incarcerated far from the communities they will return to. It provides for a "Program of Reentry into Community" through a jail-based reentry program that facilitates the inmate's reintegration in the community. The legislation permits IDOC to transfer an inmate to a jail up to one year prior to the discharge date. However, the jail has to consent to the transfer. This statute can be amended to permit the inmate to remain in the jail to complete his or her sentence. Obviously, the counties would have to be reimbursed for the additional costs. These funds could come out of the saving which result from not having to transport, process and house the prisoner for short periods of time.

Recommendations

- Short-term prisoners should be diverted to community programs similar to the programs funded by the state to assist inmates in integrating into society after serving longer terms. The Legislature should look at programs adopted by other states to assist in the reentry of prisoners into society.
- Illinois law now permits inmates to be released to a jail-based reentry program up to one year prior to their anticipated release date. This approach should be considered with respect to those individuals who are only obligated to serve 90 days or less in an IDOC facility.

## **Existing State Prison/Community-Based Correctional Programs**

### **Indiana**

Indiana has work-release programs where offenders near the end of their sentence are housed together in specialized units and able to leave for work and vocational training programs. At these units, intensive substance abuse aftercare and relapse prevention treatment is available. Indiana legislation allows (but doesn't mandate) each county to acquire a Community Transitional Program (CTP). Depending on the felony class, committed prisoners will serve a varying amount of time at the end of their sentence in a transitional center, if they so choose.

### **New York**

New York's Monterey Shock Incarceration Program is similar to Illinois' IIP program. Inmates under 35 are able to participate in Monterey's program, which involves both military training and therapeutic community components.

### **Minnesota**

In 1992, the Minnesota legislature mandated the Challenge Incarceration Program (CIP). The participants consist of non-violent drug or property offenders, with between 18 to 48 months remaining in their imprisonment term. The program is intensive and highly structured, consisting of three phases. All three phases last a minimum of 6 months each. The first phase is completed in prison, including chemical dependency treatment; education; cognitive skills; restorative justice; physical training; work crew; and military bearing, drill, and ceremony. Participants complete the second and third phases within the community under close supervision. After completion of the program, if the participant's original sentence is longer than 18 months, the remainder of the sentence is carried out under supervised release (e.g., parole).

Sentencing to Service (STS) places carefully selected nonviolent offenders to work on community improvement projects. Judges sentence offenders to STS as an alternative to jail or fines, in combination with jail time, or as a probation sanction. STS saves an estimated 55,000 jail days worth about \$2.9 million annually, based on a \$55 per day cost.

5. **Education: In regard to educational programming in IDOC, there is a lack of data about educational enrollment and waitlist.**

Background

The Mayoral report states that in 2003, 1,801 inmates were on a waiting list for GED classes. In the same year, 2,846 prisoners were on a waiting list for Adult Basic Education (ABE) classes. By statute, any prisoner whose achievement falls below sixth-grade level (as determined by IDOC reception classification unit) is required to attend the 90 day adult basic education class. *The report notes that only 42% of released prisoners surveyed by the IDOC have not participated in any educational programming during their incarceration.*

Roberta Fewes noted that IDOC only recently has been given authorization to hire teachers and counselors for positions which had been vacant for several months. The process is lengthy. Current employees must be provided with an opportunity to apply. The state looks outside of the IDOC only if current employee applicants are found to be unqualified. If a guard is found to be qualified to be a counselor, there will be a vacant position for the guard. That position could take several months to fill. Vacant guard positions can also result in a denial of educational opportunities, as the prisoners require escorts in order to attend the classes. Fewes indicated that even if these positions are filled, there will still be waiting lists for educational classes, as the number of open positions is still inadequate.

The Mayoral report recommended that the Department should consider innovative ways to expand educational options without significantly expanding the school staff within the facility. One example provided is the city's considerable experience in providing GED preparation to prisoners in Cook County Jail and its status as a large provider of distance-learning worldwide. Combining these two resources with the teachers union's consent, city colleges could broadcast GED courses over the correctional institutions existing closed-circuit television network or through a web-based format. The city colleges could provide teachers and IDOC would simply need to provide facilitators in prison classrooms. IDOC's existing teaching staff could then devote resources to prisoners who need more personalized instruction to successfully complete a GED course. Roberta Fewes indicated that union members would not support a program such as the one described above.

Recommendations

- IDOC should submit to the General Assembly an annual report that includes:
  - The number of inmates on waiting lists for adult basic education classes and GED classes;
  - The median duration of the wait for education;
  - What steps the Department is taking to significantly reduce the waiting list and delays; and
  - Costs related to the initiatives to reduce the waiting lists.
- IDOC officials should review education initiatives adopted by other states, and make a determination whether they should be implemented in Illinois.
- Promote distance learning.

- Expand higher educational programming in prisons.
- Make existing educational programs more available to inmates.

### **Model Educational Programs**

#### **Michigan**

After calculating the student capacity of each facility, defined as the number of prisoners in need of a GED or Career and Technical Certificate, Michigan instituted a mandate requiring 1 teacher for every 60 students in academic courses, and 1 teacher for every 30 students in career and technical courses. Michigan has also passed legislation that requires anyone seeking release on parole to have obtained a GED.

#### **Minnesota**

Minnesota Correctional Education Foundation (MCEF) was established by the DOC in 2004. It is a non-profit organization that supports the Department's postsecondary education program for inmates. The Foundation's express purpose is to further fund and coordinate college and vocational opportunities at state correctional facilities, which augments the state's educational programming by providing services at *no cost to taxpayers*. The program utilizes live instruction, interactive television, self-guided instruction, and distance learning technology to meet individual needs on a cost-effective basis.

#### **Ohio**

In 2004 the Ohio Department of Rehabilitation and Correction partnered with the Ohio Central School System to pilot a distance-learning program called *Transitional Education Program Ohio*. The program involves in-class teleconferenced lessons, supplemental CD-ROM text books and assignments, as well as a post-release aftercare website connecting inmates to resume, job, and community resources. Between 2004 and 2006 the program educated 1,291 inmates, 87% of which did not return to prison 3 years following their release.

#### **Wisconsin**

Wisconsin offers teleconferenced courses at some facilities, available through the Transforming Lives Network. Courses are taught via satellite to participating facilities around the country. Between 2005 and 2006 over 300,000 offenders nation-wide utilized the Transforming Lives Network teleconference courses, for a cost to the participating facilities of \$1,195 annually.



6. **Child Support: Legislature should enact a statute suspending child support obligations during the period in which the obligor is incarcerated.**

Recommendations

- **Parents should be informed at intake of the consequences of the child support order, and provided with a viable means of requesting a reduction in child support, based on the reduction in income.**

Support

Most prisoners are parents, and many are under child support orders. Illinois law does permit the incarcerated parent to seek a court order reducing the amount of child support to reflect his/her reduction in income. However, many parents in this situation assume that child support is automatically suspended upon entry to prison because it is obvious that they will not be earning enough to pay. This is not the case. Furthermore, even if the incarcerated parent is aware of the need to seek a reduction in child support, the state has not provided a viable means of requesting a modification of the support order, based on the reduction in income.

Existing Legislation

Congress adopted the Bradley Amendment to Title IV-D in 1986 to prohibit all retroactive modifications to child support orders, *regardless of the reason for the request*. 42 U.S.C.A. § 666(a) (9) (c) This provision prohibits requests to reduce or eliminate the amount of a support order already in arrears. Prior to the amendment, it was a common practice for obligors to amass large child support debt, only to have the amount owed reduced or eliminated by providing "good cause" and invoking judicial discretion to obtain the reduction. All arrears previously accrued by the parent become non-dischargeable debt. Therefore, if parents fail to seek--and obtain--a modification before arrears mount, they are responsible for paying them<sup>5</sup>.

Consequences

On the surface, it would appear that the prisoner's child would benefit from the current practice. However, that is not the case. When faced with an insurmountable arrearage, the obligor will typically enter the underground economy - where wage garnishment is not a viable option.

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<sup>5</sup> Oregon by administrative rule has implemented a model project to notify those recently incarcerated that their obligations continue to mount and what steps need to be taken to modify the order. In addition, the state has established a rebuttable presumption that a noncustodial parent who is incarcerated for a period exceeding 180 days and has an income of less than \$200 per month is unable to pay support. If the parent requests modification, the order is reduced to \$0 for the period of incarceration; sixty-one days after an individual is released, his or her order reverts to the original amount. Or. Admin. R. 137-055-3300(1)(b)(B), (4)

Massachusetts employs a full-time Child Support Enforcement employee at the state Department of Correction reception facility who makes presentations and meets individually with parents to prepare, among other things, modifications of child support orders.

- **There should be a provision for automatic suspension of child support obligations, after the obligor notifies the state of his incarceration.**

North Carolina automatically allows a child support order to be suspended with no arrears accruing "during any period when the supporting party is incarcerated, is not on work release, and has no resources with which to make payment." N.C. Gen. Stat. Ann. § 50-13.10(d)(4). The bill should include this provision.

- **Illinois should suspend aggressive collection practices (such as 65% wage garnishment and license suspension) for arrearages which accrued while the obligor was imprisoned.**

Illinois provides for garnishment of a parent's salary at the rate of up to 65% to recoup on *child support arrears* if the obligor has no dependents and 50% if the obligor has one or more dependants. If the former inmate obtains a job (which is often low-wage) the majority of that person's income will be deducted immediately to satisfy this debt, regardless of whether enough remains for self-support. Collection at this rate should not be permitted where the arrears occurred while the obligor was incarcerated.

Surviving in the low-wage economy, while being garnished for arrears *as well as ongoing support*, is impossible. This encourages noncustodial parents to find work "off-the-books," where they can avoid the government's tracking system but are subject to exploitation by unscrupulous employers--or to resume criminal activity. Under this rubric, it is likely that children will get less--or *no*--ongoing support and the dynamic is likely to exacerbate tensions with custodial parents. Further, maintaining employment in the underground economy creates limitations on future income growth and financial stability.

In addition, the former inmate may well find that his/her driver's or professional license has been suspended. Professional licenses can be suspended or denied on the basis of child support arrearage. Illinois recently enacted a statute which provides for suspension of a driver's license where the arrears are more than 90 days. 625 ILCS 5/6-103(14.5). This sanction should not be imposed on those who were unable to meet their obligations because of incarceration. Suspension should not be permitted where the arrears occurred while the obligor was incarcerated<sup>6</sup>.

- **Illinois should forgive arrearages owed to the state where the arrearages occurred while the obligor was incarcerated.**

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<sup>6</sup>A study of 650 incarcerated parents with child support orders in Massachusetts found that the parents entered prison owing an average of \$10,543 in unpaid child support; if the orders remained at pre-incarceration levels, they would accumulate another \$20,461 in debt over time, plus 12% interest and 6% in penalty charges. Similar trends have been reported in other states. Bleak prospects for employment after incarceration don't provide much hope of satisfying this debt over the long term.

Another study, which focused on "less-educated" black men, suggests that over the past two decades incarceration and strict child support enforcement have curtailed labor force activity, especially in those aged 25-34. The results of this study also indicate that past incarceration and child support can account for most of the declines over time in labor force activity for this group.

Typically, where the child is receiving public benefits during the period in which the arrearages occurred, the unpaid monthly child support payments are owed to the state – not the child’s caretaker. The state should forgive the arrears where the obligor can demonstrate that incarceration prevented him/her from making those payments.

7. **Public Benefits: State law should be amended to provide for suspension rather than termination of benefits during periods of incarceration. Prisoners should be able to apply for benefits while incarcerated.**

Recommendations

- **Medicaid should be suspended rather than terminated by enacting legislation similar to SB 2303 and HB 4714**

Prior Legislative Remedies

HB 4714 was passed by the House, and is pending in the Senate Rules. SB 2303 was passed by the Senate, and it is pending in House rules. Passage by both bodies has been suspended because of the Madigan language. Both call for the suspension - rather than the termination - of Medicaid coverage, during the period that one is incarcerated. A significant number of those entering CCDOC and IDOC facilities were receiving Medicaid benefits, immediately prior to their incarceration. Many were eligible because of a mental disability. Their Medicaid coverage is terminated upon entry to a correctional facility. Upon release, the individual is required to reestablish his Medicaid eligibility a process that may take many months, and will interrupt the ex-offender's access to medications and other medical treatment.

Under these bills, when a person is released, his/her Medicaid benefits automatically resume. HB 4714 also provides that an inmate, who had not been on Medicaid at the time of incarceration, can apply while incarcerated. If found eligible, benefits would begin on the date of release. This approach was recommended by the Criminal Law Section of the ABA. The bills are modeled after recently enacted N.Y. legislation.

In 2006 Indiana Department of Corrections signed a Memorandum of Understanding with the Family and Social Services Administration enabling offenders to apply for Medicaid, Food Stamps, and TANF prior to leaving incarceration.

- **Inmates should be permitted to apply for public benefits (such as SSI, VA, food stamps, and Medicaid) while incarcerated, so that benefits can begin upon release.**

Background

The Cook County Sheriffs Reentry Council, in its intro report of November 2007, noted that a significant number persons who pass through the Cook County Department of Corrections are eligible for benefits upon release, but do not receive them, either because there has not been an initial application, or in the case of SSI benefits, they were terminated by the Social Security Administration after 30 days of detention. A significant number of persons in jail are unable to work after release. Many detainees over the age of 50 are probably eligible for SSI or possibly veteran's benefits. Inability to access benefits makes it difficult for many released detainees to obtain food and shelter, and treatment for medical and mental health conditions, including substance abuse disorders. This puts reentering individuals at a very high risk of recidivism and rearrest.

The Sheriff is working with advocacy groups to design and implement a project to screen detainees for SSI eligibility and assist them in applying for benefits.

- **Create partnerships between IDOC, Social Security Administration, and other public agencies that mirror the Sheriff's project, to screen inmates for SSI eligibility and assist them in applying for benefits.**
  - The Department of Corrections has initiated a program of this nature in a handful of facilities. It should be expanded to all facilities.

This issue is also addressed in the Mayoral report. That report noted that the Social Security Administration (SSA) has a pre-released procedure designed to promote deinstitutionalization by ensuring an eligible individual's timely payments when they reenter the community. The report recommended that IDOC should take advantage of this pre-release procedure to ensure speedy restoration of SSI and SSDI benefits upon release. The report includes a recommendation that IDOC and SSA enter into a pre-release agreement. Under the agreement, local SSA offices would help correctional staff learn the rules for pre-release processing of applications and reapplication for benefits. Correctional staff would then help prisoners to initiate his or her benefit applications in anticipation of release, gather supporting documents and notify SSA when the prisoner is officially released.

- **IDOC should pilot a program with local legal service programs which provide advocacy services for SSI applicants. If the pilot program demonstrates a significant increase in approval rates, the program can be expanded.**

Applicants for disability benefits often require advocacy in order to achieve those benefits. Many of the applications, submitted by the inmates and based on claims of disability, are denied, because adequate medical documentation demonstrating disability has not been forwarded to SSA.

As the Mayoral report explains, under the current system, most individuals with serious mental illness will spend their first months out of prison living on the streets, sliding into more and more dangerous mental states. Many will be rearrested and returned to jail or prison before their SSI and Medicaid benefits are reinstated.

8. **Employment: IDOC should expand the number of inmates who are eligible for vocational training and Illinois Correctional Industries (ICI) opportunities by providing waivers to educational requirement, in appropriate cases.**

#### Recommendations

- **IDOC should review its educational requirements for vocational training and ICI jobs.**

##### Background

The Mayoral report notes that job training, prison industries and placement programs connect former inmates to work thereby reducing their likelihood of rearrest and reincarceration. However, only a small percentage of inmates participate in these vocational programs.

Many factors hinder greater participation in vocational training. Enrollment in an accredited vocational program has historically required a high school diploma or GED, and TAD score of 8.0 or higher. Only a small percentage of the prison population meets both these requirements and is therefore eligible for vocational education.

Illinois Correctional Industries (ICI) programs require a GED – a status which many prisoners have not achieved.

In 2003, only 1,078 prisoners participated in the ICI program. IDOC has initiated a waiver program at the Sheridan facility. The report recommended that this waiver be expanded to other facilities.

- **IDOC should tailor its vocational and ICI programs for the jobs which will be available in the communities to which the inmates will return.**

##### Background

The report also noted that there is a mismatch between vocational training and ICI opportunities inside the prison and employment opportunities outside the prison. Without linking vocational programs to high demand industries, employment outcomes can vary significantly. Prisoners are offered training in industries located in the community in which the IDOC facility is located. However, those employment opportunities may not be available in the community to which the inmate will return. The report recommended that IDOC work with the Illinois Department of Employment Security, the Illinois Community College Board, and local workforce boards in identifying what skills would be in demand upon the prisoner's release.

9. **Program Evaluation: Illinois should contract with an independent organization to evaluate the effectiveness of programs, which provide rehabilitation and vocational services in IDOC facilities, and in the community.**

Rationale

A multitude of private organizations that receive funding from the state to assist inmates and those recently released in achieving stable and productive lives. At this point, state officials have a very limited knowledge of the effectiveness of these programs. Without this information, it is impossible for state officials to adopt evidence-based policies and practices. In other words, we simply do not know what works and what does not work. Yet, we continue to fund programs, which may or may not be effective.

Recommendation

- The state should contract with an independent institution (perhaps, a state university) to perform a longitude study of outcomes, which have been achieved through these programs.

With that information, the state can better allocate limited funds to those programs which have been the most successful. It can provide guidance to private organizations performing these services to the community.