



A Project of Legal Services
For Prisoners with Children

*East Bay Peace & Justice
Community Summit*

BRIEFING PACKET

END DISCRIMINATION AGAINST PEOPLE WITH CRIMINAL RECORDS

➤ **Adopt a Resolution opposing discrimination in public employment, benefits, and housing services against people with juvenile or adult criminal records.**

The constant discrimination faced by formerly-incarcerated people when seeking employment, public benefits and housing actually increases the likelihood of recidivism. Because most convictions are for non-violent drug offenses increased incarceration simply tears our communities apart rather than making the community safer. We believe true public safety happens only when everyone in our communities has access to jobs, housing, health care, public services, custody of our children, voting rights, and other civil rights now denied people with felony convictions or a prison record.

We believe all City, County, and State laws should specifically prohibit discrimination based on felony convictions. During the past three decades of “tough on crime” rhetoric, communities of color have seen a dramatic rise in incarceration. The overall trend supporting draconian mandatory minimum sentences, and expanding the number of crimes that are considered felonies has resulted in the creation of “second class” citizens. The California Supreme Court has specified two factors in determining whether a group of people should receive additional protection from the court. The Court considers whether a person suffers do to (1) immutable traits tied to outdated social stereotypes and (2) the stigma of inferiority and second-class citizenship, when determining if they are eligible for civil rights protections. A felony conviction is essentially “immutable” because even with the option of a rarely granted pardon from the Governor, the criminal record always remains.¹ Also, due to laws that allow nearly unlimited access to criminal records and blanket denials of access to public services, licenses and employment, a whole class of Californians has been “relegated to an inferior legal status without regard to the capabilities or characteristics of its individual members.”²

Discrimination against former prisoners acts as a barrier to the economic and social recovery of our communities. It is well documented that Black and Latino communities have been disproportionately impacted by mass incarceration, which results in discrimination based on a prison record.³ The California Fair Employment and Housing Act provides protection from discrimination based on race, color, national origin, and ancestry, but does not protect people with felony convictions.⁴ The absence of protections for formerly-incarcerated people allows many employers, landlords and public agencies to practice racial discrimination by using a person’s criminal record as a way to deny them access to jobs, housing and public benefits. By specifically prohibiting discrimination against formerly incarcerated people the state can effectively close the legal loophole that has allowed numerous agencies to practice institutional racism by excluding people with felonies or arrest records from eligibility for their services or employment. Safe communities can flourish by enforcing and strengthening existing laws that bar discrimination against formerly-incarcerated people of all races.

- **12 percent of African-American men, 4 percent of Latino men and 1.6 percent of white men in their twenties are in prison or jail.⁵**
- **New York State has two laws that protect persons with criminal records from discrimination by employers and occupational licensing agencies.⁶**
- **In Cleveland, Ohio City Council member Roosevelt Coats introduced a bill in February 2004 that would prohibit the city from granting contracts to companies that discriminate against ex-prisoners.⁷**
- **In December of 2003 the Pennsylvania Supreme Court overturned a state statute that barred anyone with a felon record from health care related employment.⁸**
- **The Equal Employment Opportunity Commission has determined that employers may not inquire into an applicant's history of criminal arrests as a determining factor in hiring decisions because using such information may have a disproportionate impact on minorities and violates Title VII of the Civil Rights Act of 1964.⁹**
- **In 1999 State Senator Gwendolynne Moore of Wisconsin led the fight against Bill 469, an ill-conceived attempt to weaken Wisconsin's current Fair Employment Act (FEA) by allowing employers to discriminate against individuals who have a felony conviction.¹⁰**

¹ See *Hetherington v. California State Personnel Board*, 82 Cal.App.3d 582, 604 (1978).

² See *Sail'er Inn, Inc v. Kirby.*, 5 Cal.3d 1, 18 (19??).

³ U.S. incarceration rates by race, June 30, 2002: Whites: 353 per 100,000; Latinos: 895 per 100,000; Blacks: 2,470 per 100,000

⁴ Cal. Govt. Code §12921 (a).

⁵ Amy E.Hirsch in *Every Door Closed: Barriers Facing Parents With Criminal Records* by Amy E. Hirsch, Sharon M. Dietrich, Rue Landau, Peter D. Schneider, Irv Ackelsberg, Judith Bernstein-Baker, and Joseph Hohenstein. Jointly published by the Center for Law and Social Policy and Community Legal Services, Inc.of Philadelphia.

⁶ Article 23-A of the Correction Law ("750-755) and the New York State Human Rights Law (Exec. L. 296 (15), (16)).

⁷ Angela Townsend, "Cleveland May Ban Bias Against Ex- Offenders," *The Plain Dealer*, February 2, 2004.

⁸ *Nixon v. Commonwealth of Pennsylvania* No. 004 M.D. Appeal. Supreme Court of Pennsylvania. 2002.

⁹ EEOC Policy Statement N-915.061. 11B3 September 1990.

¹⁰ Senator Gwen Moore, Wisconsin's 4th Senate District Home Page, <http://www.legis.state.wi.us/senate/sen04/news/index.asp>

OPT OUT OF THE LIFETIME WELFARE AND FOODSTAMPS BAN

- **Adopt a Resolution that California should opt out of the lifetime welfare and food stamps ban. State legislators should sponsor comprehensive bills opting out of the welfare and food stamps ban.**

California is one of 17 states that denies welfare and food stamps for life to people who were convicted of a drug felony after August 22, 1996.*¹ As a result of this policy, more than 2,289 people in need in Alameda County who have applied for food stamps have been denied. An unacceptable 77.8 percent of people denied these benefits are African American.²

The lifetime ban on welfare and food stamps for people convicted of a drug felony harms our community. By taking away the supports former prisoners need to make the transition from prison, we encourage recidivism, break-up families, and perpetuate a discriminatory system of imprisoning the poor, who are disproportionately people of color. We also lose out economically – the California Legislative Analyst’s Office estimates \$25 million in federal food stamps may be lost to California residents each year due to the ban.³ This is money that would be spent directly in our communities and contribute to the economic development of our neighborhoods.

California’s drug felony exclusion policy is harmful and unnecessary. The 1996 federal welfare act allows states to opt out of the ban. Not only have thirty-four states already done so, but six states have changed their policies within the last two years.⁴ Even in California, the state legislature is currently considering changes to the blanket ban for food stamps eligibility. Nationwide the trend is toward more effective policies that enable people who have been in prison to rebuild their lives. We call on our local leaders to join us in urging state legislators to opt out of the lifetime welfare and food stamps ban that unfairly targets former prisoners.

- **37,825 California women became ineligible for benefits for the rest of their lives between 1996-1999 due to the welfare ban.⁵**
- **24,100 California adults would be eligible for food stamps if the state opted out of the ban, including 16,300 parents with children:**

	Single Adult	Adult with Children	Total
Food Stamps	7,500	15,700	23,200
Food Assistance program*	300	600	900
Total	7,800	16,300	24,100

Source: California Legislative Analyst’s Office, April 2004, report prepared for Assemblymember Bill Maze. * Food assistance program serves immigrants excluded from federal aid.

- **Women of color and their families in California are disproportionately impacted by the welfare and food stamps ban due to racially biased drug policies and drug law enforcement.⁶**

	% of Female Prison Sentences for Drugs			% of State Population		
	African American	Latina	Total	African American	Latina	Total
California	29%	25%	54%	7%	31%	38%

From Marc Mauer, Cathy Potler, and Richard Wolf, *Gender and Justice: Women, Drugs, and Sentencing Policy*, The Sentencing Project, 1999, p. 22.

- **Nationally, 30 percent of women in prison were receiving welfare in the month prior to their arrest, and are likely to require public assistance after their release.⁷**

Alameda County adults denied food stamps due to drug convictions					
	African American	White	Latino	Other	Total denied foodstamps
Number denied	1,781	323	112	73	2289
Percent denied	77.8%	14.1%	4.9%	3.2%	100%
Source: Office of Data Management, Alameda County Social Services Agency. Data from 1998 to present.					

- **Only 17 states have adopted the federal lifetime ban on welfare and food stamps: Alabama, Alaska, Arizona, California, Georgia, Indiana, Kansas, Mississippi, Missouri, Montana, Nebraska, North Dakota, South Dakota, Texas, Virginia, West Virginia, Wyoming.⁸**
- **The California legislature is considering a bill that would restore food stamp eligibility to people who have prior felony convictions of drug possession.⁹**

¹ "State Implementation of Lifetime Welfare Ban," The Sentencing Project, updated February 2004. <http://www.sentencingproject.org/pdfs/9088smy.pdf>

² "1998 to present. Source: Office of Data Management, Alameda County Social Services Agency.

³ Legislative Analyst's Office estimate, 2004.

⁴ The Sentencing Project.

⁵ Patricia Allard, *Life Sentences: Denying Welfare Benefits to Women Convicted of Drug Offenses*, The Sentencing Project, 2002, p. 5.

⁶ Allard, p. 2.

⁷ Allard, p. 8.

⁸ "State Implementation of Lifetime Welfare Ban," The Sentencing Project, 2004.

⁹ AB 1796 (Leno, D-San Francisco).

IMPLEMENT THE BILL OF RIGHTS FOR CHILDREN OF INCARCERATED PARENTS

- **Develop arrest protocols for law enforcement and regulations for city, county, and state detention centers and prisons that recognize these rights.**

The Bill of Rights for Children of Incarcerated Parents was prepared by a partnership of San Francisco groups, led by young people who have incarcerated parents. The Center for Young Women's Development and other youth organizations have demanded that City, County, and State government agencies adopt and implement these demands:

- I have the right to be kept safe and informed at the time of my parent's arrest.
- I have the right to be heard when decisions are made about me.
- I have the right to be considered when decisions are made about my parent.
- I have the right to be well cared for in my parent's absence.
- I have the right to speak with, see and touch my parent.
- I have the right to support as I struggle with my parent's incarceration.
- I have the right not to be judged, blamed or labeled because of my parent's incarceration.
- I have the right to a lifelong relationship with my parent.

We are asking City and County governments to implement this Bill of Rights fully, starting with the development of arrest protocols for law enforcement and regulations for city, county, and state detention centers and prisons that recognize these rights. There are many additional suggestions for next steps included in **The Bill of Rights for Children of Incarcerated Parents**, including:

1. Relying on the arrested parent as the first-source of information about the number of minor children in their care and the presence of possible caretakers for those children in the community. Efforts should be made to avoid leaving children alone and to involving the child welfare system unnecessarily.
2. Allowing minor children to voice their concerns during the court proceedings for their parent. Allowing youth to comment on the effects of their parent's incarceration will educate the court's officers and alleviate the sense of isolation experienced by many youth. By considering the impact that sentencing a parent has on their family, the court can protect children from "doing time" for a parent's crime.
3. Subsidizing guardianship in lieu of foster care. If more services and financial support were offered to friends and family members of prisoners it would be more feasible for them to take on the role of guardian. While a guardian acquires many of the legal rights and responsibilities of a parent, biological parents will not permanently lose their rights and the opportunity to reunite with their children upon release under guardianship agreements.
4. Providing access to therapists, counselors and mentors who are trained to address the unique needs of children of incarcerated parents. The additional anxiety created by a parent's incarceration can result in mistrust of authority, low performance in institutional settings and difficulty in forming trusting relationships. Healthy communities require addressing the needs of at-risk youth.

- **About 1.5 million children have parents who are currently incarcerated.¹**
- **Each year approximately 400,000 mothers and fathers finish serving prison or jail sentences and return home eager to rebuild their families and their lives.²**
- **Sixty-five percent of women in state prison are mothers, and nearly two-thirds of these mothers lived with their children before they were arrested and incarcerated.³**
- **Fifty-five percent of men in state prison are fathers, and nearly half of these fathers lived with their children before incarceration.⁴**
- **More than 10 million children in the United States have parents who were imprisoned at some point in their children's lives.⁵**
- **In 1999 Black children (7.0%) were nearly 9 times more likely to have a parent in prison than white children (0.8%). Hispanic children (2.6%) were 3 times as likely as white children to have an inmate parent.⁶**
- **In California 195,000 children have a parent in State prison.⁷**

¹ Amy E.Hirsch in *Every Door Closed: Barriers Facing Parents With Criminal Records* by Amy E. Hirsch, Sharon M. Dietrich, Rue Landau, Peter D. Schneider, Irv Ackelsberg, Judith Bernstein-Baker, and Joseph Hohenstein. Jointly published by the Center for Law and Social Policy and Community Legal Services, Inc.of Philadelphia.

² IBID.

³ IBID

⁴ IBID

⁵ IBID

⁶ Christopher J. Mumola. *Incarcerated Parents and Their Children*, U.S. Department of Justice: Office of Justice Programs, Bureau of Justice Statistics August 2000.

⁷ Simons Charlene Wear, PHD., *Children of Incarcerated Parents*. California Research Bureau. March 2000, P.2.

BAN THE BOX ON APPLICATIONS FOR PUBLIC EMPLOYMENT

- **Eliminate the box requiring disclosure of past convictions on all applications for public employment or with government contractors. We demand disclosure of which felony convictions disqualify an applicant with a felony conviction from a specific job.**

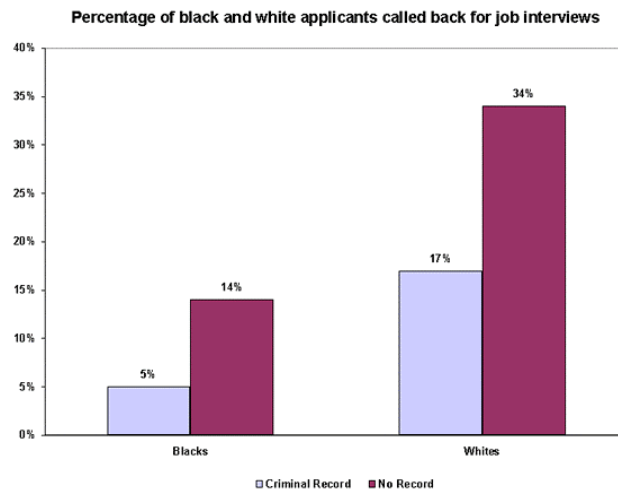
The California Supreme Court has characterized employment as a fundamental interest under the California Constitution.¹ California's Little Hoover Commission estimates that 70 to 90% of formerly-incarcerated people are unemployed.² Public entities, including City and County government, should lead the way in employing qualified people coming out of prison. In Alameda County, the City of Oakland, and other cities in the region, a job applicant is required to disclose past convictions even before taking a civil service examination. In Alameda County, disclosure is required even for misdemeanors and convictions that have been removed from your record. These requirements unfairly discriminate against people with past convictions and discourage people from applying for public employment. Disclosure of past violations of the law should only be required when they are specifically job-related.

Several state and federal laws³ forbid discrimination against people with disabilities, and people in recovery from drug and alcohol abuse are covered by the laws' definitions of disability in the state of California. Many felony convictions for non-violent drug offenses are the result of past drug or alcohol abuse. Therefore, requiring disclosure of these felonies is a violation of laws prohibiting discrimination against people with disabilities. Recent changes to state law⁴ that require sealing of criminal records following successful completion of a Proposition 36 drug diversion program reinforce this concept. Criminal records should also be sealed upon successful completion of other diversion programs, and when expungement petitions, and certificates of rehabilitation are granted.

Disproportionate numbers of people in Black and Latino communities have felony convictions. Consequently, requiring disclosure of past felonies provides cover for outright racial discrimination, which results in continuing marginal employment rates and further impoverishment of Black and Latino communities. By taking the lead in employing formerly-incarcerated people, public agencies can play an important role in developing public safety in our communities.

- **An estimated 70 to 80% of ex-prisoners in California are unemployed.⁵**
- **An unemployed ex-prisoner is three times more likely to return to prison.⁶**
- **According to a 1994 Federal Bureau of Prisons study, inmates who secure employment in preparation of release recidivate at a lower rate (27.6%) than those who did not secure employment (51.8%).⁷**

- **Whites and Blacks with felony records are twice as likely to be denied employment than applicants without felony records.⁸**



- **Over 60% of employers surveyed in a UC Berkeley study said they would definitely or probably not consider hiring an ex-prisoner.⁹**
- **A survey of 83 employers in the high crime rate areas of Houston and Dallas found that only 12% agreed or strongly agreed that they would hire an individual with a criminal record.¹⁰**
- **Crime rates and unemployment are closely tied. A Department of Justice, Bureau of Justice Assistance, and Robert Wood Johnson Foundation evaluation of 398 substance-using prisoners showed that prisoners employed prior to incarceration were less likely to have committed predatory acts and drug crimes by 46 percent and 65 percent respectively.¹¹**
- **74% of ex-offenders in Texas say employment is their number one post-release issue.¹²**

¹ See *Hetherington v. California State Personnel Board*, 82 Cal.App.3d 582, 602 (1978).

² *Back to the Community: Safe & Sound Parole Policies*, Little Hoover Commission, 2003,

³ Rehabilitation Act, Americans with Disabilities Act, California Fair Employment and Housing Act, Unruh Civil Rights Act, and Government Code (§19702 and California Civil Code §51.5)

⁴ See Cal. Penal Code §851.90.

⁵ *Back to the Community: Safe & Sound Parole Policies*, Little Hoover Commission, p.39

⁶ Eisenburg, M (1990). Project Rio Twelve Month Follow-up, March 1989 Intakes: Pardons and Paroles Division. Austin, Tx.: Texas Department of Criminal Justice.

⁷ Harer, M. (1994) *Recidivism Among Federal Prisoners Released in 1987*. Federal Bureau of Prisons, Office of Research and Evaluation. p.28.

⁸ Pager, Devah. "The mark of a criminal Record." Dept of Sociology. University of Wisconsin, Madison. 2002 p. 958

⁹ Holzer J. Harry, Raphael, Steven, Stoll, Micheal. *Will Employers Hire Ex- offenders? Employer Checks, Background Checks, and their Determinates*. Berkeley Program on Housing and Urban Policy, University of California, Berkeley 2001 p.38

¹⁰ Albright, S., & Denq, F. (1996 June). "Employer Attitudes Toward Hiring Ex-Offenders," *The Prison Journal*, 76, no. 2, 118 - 137

¹¹ Rossman, S., Sridharen, S., & Buck, J. (1998 July). "The Impact of the Opportunity to Succeed Program on Employment Success," *National Institute of Justice Journal*, 236. Washington, D.C.

¹² Texas Department of Justice (1990). Annual Report. Austin, TX.

INCREASE SUPPORT SERVICES FOR PEOPLE COMING OUT OF PRISON

- **Each individual returning to our community should have services guaranteed, including access to housing job training, drug & alcohol treatment, and public assistance.**

Each year California releases over 125,000 prisoners.¹ Once on the outside many ex-prisoners find it very difficult to secure the most basic necessities of independent living- a job, permanent housing, and access to public resources and assistance.

Much has been written about the high rate of parolee recidivism in California. (Sixty-four percent of parolees in California are returned to prison), but little has been done to make sure that all parolees coming out of state prisons have the support they need to become an asset to their communities and avoid recidivism.²

According to the Little Hoover Commission only 50 percent of California parolees receive the re-entry services and support that they need upon release.³ All too often the only things a new parolee can count on are a bus ticket, two-hundred dollars and a referral to under-funded agencies that cannot guarantee them housing, a job, drug treatment, training, education, or public assistance. Parole violations for minor infractions of regulations have contributed to the high recidivism rate. We advocate that the emphasis in parole supervision should change from punishment to assistance. Instead of spending 88% of our parole dollars on tracking down, and re-incarcerating parolees for "technical violations" we should be spending more money on providing services and support to them--this will not only save money it will save lives.⁴

- **The California Department of Corrections spends 12% of its parole budget on assistance and services and 88% on supervision.⁵**
- **The Parole & Community Services Division is only 10% of the overall California Department of Corrections budget.⁶**
- **According to a California Youth Authority study done in 1997, parolees with either a high school diploma, a GED or a high school proficiency certificate were four times more likely to succeed on parole.⁷**
- **Students incarcerated in state or federal prisons are ineligible for federal Pell grants and are denied federal financial aid if their convicted of a drug crime.⁸**
- **The Alameda County Sheriff's Office closed down the Community Re-Entry Center in the Fruitvale neighborhood of Oakland in 2003 due to inadequate funding. The County re-opened the Glen Dyer Jail in Oakland that same year to ease overcrowding in its Santa Rita facility.⁹**

¹ Nieto, Marcus. Adult Parole and Probation in California. California Research Bureau, September 2003 P.1.

² Nieto, Marcus. Adult Parole and Probation in California. California Research Bureau, September 2003 P.1.

³ Back to the Community: Safe and Sound Policies. The Little Hoover Commission, November 2003 P. 55.

⁴ Back to the Community: Safe and Sound Policies. The Little Hoover Commission, November 2003 P. 56.

⁵ Back to the Community: Safe & Sound Parole Polices. *The Little Hoover Commission* November 2003 p.56
<http://www.lhc.ca.gov/lhcdir/report172.html>

⁶ Department of Corrections Budget 2002-03 State of California, Department of Finance 2002-03

⁷ State of California, Department of Youth Authority, "No Diploma, No Parole" Diploma Policy Formalizes Education Commitment," CYA Today Special Edition. Sacramento Ca sept. 1999

⁸ Aftercare as Afterthought: Reentry and the California Youth Authority. Center on Juvenile and Criminal Justice. August 2002 P.13 (Note: Applicants for federal aid can regain their eligibility by completing a drug treatment program)

⁹ Matthew Green. Prison inmates saddened by closure, *Alameda Times-Star* October 4, 2003