

*Saints and Sinners have been imprisoned throughout history —  
No one should be defined only by the criminal justice system.*



## **New Jersey Reentry Services Commission**

*Barriers, Best Practices, and Action Items for  
Improving Reentry Services*

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## Forward

The Reentry Services Commission Report is the result of a series of hearings and exhaustive research as to “best practices” for persons returning to civilian life from incarceration. The trauma and often violence of prison is frequently met by the inability of the recently released person to have identification, a driver’s license, a Medicaid card, and that person is often without healthcare, housing, and employment. The returning person continues to wrestle with the remnants of the criminal justice system, frequently grappling with long outstanding warrants and fines from varied agencies, ranging from MVC to VCCB to child support payments.

Over 9,000 inmates were released from New Jersey Department of Corrections last year and approximately 86,000 persons passed through the statewide County Jail system. At present, there are over 19,000 individuals in New Jersey State Correctional Institutions, 3,200 in Federal Prisons, and over 12,000 individuals in the New Jersey County Jail System on an given day.

Imagine yourself “dropped” into any major city in New Jersey without any of the fundamentals of life: no money, no home, no job, and in many instances no family. For persons, who “max out,” that is those serving the maximum of their sentence without the benefit of parole, their return from prison is roughly analogous to a “survival” television series.

This report painstakingly explores gaps in the treatment and service delivery network, which jeopardizes the ability of the returning person to maintain sobriety, healthy living, and employment.

As Co Chairs, we express our gratitude to Senate President Sweeney and Speaker Coughlin for commissioning this report. It is our hope that Governor Murphy, the New Jersey State Legislature, and the New Jersey State Supreme Court read this well cited document in an effort to more fully appreciate the burdens and challenges of reentering persons, as well as, the possibilities to practically improve upon the status quo.



Senator Sandra Cunningham

Co Chair



Larry Lustberg

Co Chair



Assemblywoman Eliana Pintor Marin

Co Chair



Jim McGreevey

Co Chair

## Acknowledgments

Report authored by Katie Forkey, Catia Twal, Dr. Aakash Shah, Domenick J. Scrivanich, Douglas Wisneiski, and the New Jersey Reentry Corporation researchers, Lucas Faria, Samir Kamat, and Kevan Shah.

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Graphic design by Maro Twal. Photos provided by Wiki Commons and Google.

Cover photos: top left Martin Luther King Jr.; top second left Rosa Parks; top middle Mahatma Gandhi, top right Cesar Chavez, bottom left Dorothy Day; bottom second left Nelson Mandela; bottom middle Catholic nun, bottom right prison of Jesus Christ.

# Introduction

The Commission on Reentry Services, established by Senate Concurrent Resolution No. 144, is charged with examining

... issues relating to prisoner reentry, including, but not limited to, identifying specific services that are necessary for successful reentry, identifying current obstacles to prisoners receiving these services, and proposing *solutions* to remove these obstacles.<sup>1</sup>

More specifically, the Legislature has required the Commission to consider the following “areas and services”:

- a. the psychological profile of the prisoner, including the psychological health of prisoners and methods to minimize psychological damage;
- b. housing, including halfway houses and residential housing;
- c. employment;
- d. education and training;
- e. employment training and workforce development;
- f. addiction and substance abuse treatment, including drug treatment for individuals released from State and county correctional facilities; specifically, the length of drug treatment and access to medication assisted treatment, Alcoholics Anonymous (AA), Narcotics Anonymous (NA), and intensive outpatient programs;
- g. medical and mental health treatment;
- h. access to legal assistance and current legal restrictions that create barriers to successful reentry;
- i. integration of corrections, parole, and reentry, including the use of parole and supervision; and
- j. coordination with faith-based services.

The Report that follows respectfully seeks to fulfill the Commission’s responsibility by providing an evidence-based analysis of the reentry challenges in five key issue areas; describing best practices in each area, as derived both from other jurisdictions and from empirical research and academic study; and then deriving concrete and feasible recommendations across the issue areas

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<sup>1</sup> S. Con. Res. 144, 218th Leg., 1st Ann. Sess. (N.J. 2018).

(denominated “Action Items”) to move New Jersey forward in the area of reentry. The Commission will issue future reports, including recommendations regarding the discrete requirements of the sex offender population. These action items were derived through comprehensive research into best practices and consultation with experts in each field; they were then adapted and formulated with the particular needs and capacities of New Jersey in mind. Over 9,000<sup>2</sup> inmates were released from New Jersey Department of Corrections last year and approximately 86,000 persons passed through the statewide County Jail system.<sup>3</sup> At present, there are over 19,000 individuals in New Jersey State Correctional Institutions, 3,200 in Federal Prisons, and over 12,000 individuals in the New Jersey County Jail System on an given day.<sup>4</sup> As the Prison Policy Initiative stated, “even ‘progressive’ New Jersey with an incarceration rate below the national average continues to lock up people at more than double the rates of our closest international allies.”<sup>5</sup>

Moreover, this prison population reflects deep social problems of race, poverty and the failure of our social institutions to provide for New Jerseyans in a way that would reduce the rates of incarceration in the first place. For example, any attempt to discuss reentry practices, designed as they are to provide a first, if not last, opportunity for many to join society, cannot but recognize that New Jersey’s prisons and jails reflect the worst racial disparity in the nation.<sup>6</sup>

In New Jersey, African American adults are 12 times more likely, and Latinos six times more likely<sup>8</sup> than whites to be incarcerated. New Jersey has the highest racial disparity in state prisons in the nation. Moreover, prisons and jails serve persons that have disproportionately suffered from trauma, co-occurring medical conditions, and addiction,<sup>9</sup> a problem that has been severely exacerbated by

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2 “Frequently Asked Questions.” State of New Jersey Department of Corrections, n.d. <https://www.state.nj.us/corrections/pages/FAQ.html>.

3 Bertram, Wanda & Jones, Alexi “How many people in your state go to local jails every year?” Prison Policy Initiative, September 2019. <https://www.prisonpolicy.org/blog/2019/09/18/state-jail-bookings/>.

4 “New Jersey Profile.” Prison Policy Initiative, 2018. <https://www.prisonpolicy.org/profiles/NJ.html>.

5 Wagner, Peter, and Wendy Sawyer. “States of Incarceration: The Global Context 2018.” Prison Policy Initiative, July 2018. <https://www.prisonpolicy.org/global/2018.html#methodology>.

6 Nellis, Ashley. “The Color of Justice: Racial and Ethnic Disparity in State Prisons.” The Sentencing Project, June 2016. <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.

7 “Reducing Mass Incarceration Would Benefit New Jersey’s Communities.” Criminal Justice Reform, n.d. [https://www.fundfornj.org/sites/default/files/crossroadsnj/Cross\\_JUST\\_1.8.pdf](https://www.fundfornj.org/sites/default/files/crossroadsnj/Cross_JUST_1.8.pdf).

8 U.S. Bureau of Justice Statistics, Prisoners in 2016, 8 tbl.6 (Jan. 2018).

9 Mallik-Kane, Kamala, and Christy A. Visher. “Health and Prisoner Reentry: How Physical, Mental, and Substance Abuse Conditions Shape the Process of Reintegration.” Urban Institute Justice Policy Center, February 2008. <https://www.urban.org/sites/default/files/publication/31491/411617-Health-and-Prisoner-Reentry.PDF>.

the current opioid crisis.<sup>10</sup> Thus, a staggering 75 percent of the incarcerated population in New Jersey suffers from drug or alcohol addiction;<sup>11</sup> 40 percent of those suffering from addiction also presenting with a co-occurring mental illness.<sup>12</sup> These problems serve to both complicate and emphasize the importance and urgency of the reentry process. For example, as is discussed in further detail below, incarcerated individuals with Substance Use Disorder (SUD) are 129 times more likely to overdose within the first two weeks of their prison release than are members of the general population.<sup>13</sup> The problem is genuinely one of life and death.

New Jersey has begun to make progress in addressing these areas, and in doing so has begun reducing recidivism rates.<sup>14</sup> This Commission is a reflection of the State's resolve to continue that process, as are the appropriations which have supported reentry services in recent years. But daunting barriers—exacerbated by the problems of race, poverty and addiction—remain for the reentering prisoner, who will face difficult, sometimes insuperable obstacles to obtaining healthcare and especially addiction treatment; to obtaining employment, education, and job training; to obtaining the legal services that are essential to reintegration, such as management of impossible-to-meet financial obligations, obtainment of documentation needed to rejoin the community, and removal of old warrants; and to obtaining the true necessities of survival, such as housing. Each of these areas are discussed below; what follows is the product of extensive research guided by the invaluable input of the State's foremost subject matter experts who met with the Commission in a series of five meetings, held at Kean College, during the summer of 2019. Those meetings were attended as well by representatives of the reentry community, including affected individuals, state and local officials, and private service providers, all of whom assisted the Commission to understand and assess the current gaps in service and to derive recommendations that we are confident will result in improvements in the quantity, quality and coordination

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10 Joudrey, Paul, et. al., A Conceptual Model for Understanding Post-Release Opioid-related Overdose Risk, *Addiction Science & CLinical Practice*, Apr. 15, 2019, <https://ascjournal.biomedcentral.com/articles/10.1186/s13722-019-0145-5>

11 Governor's Council on Alcoholism and Drug Abuse. (2014). *Confronting New Jersey's new drug problem: A strategic action plan to address a burgeoning heroin/opiate epidemic among adolescents and young adults*. GCADA. Retrieved on June 14, 2019 from [https://gcada.nj.gov/policy/master/documents/2014\\_TaskForce\\_Report.pdf](https://gcada.nj.gov/policy/master/documents/2014_TaskForce_Report.pdf)

12 Hedden, S., Kennet, J., Lipari, R., Medley, G., Tice, P., Copello, E., & Kroutil, L. "Behavioral Health Trends in the United States: Results from the 2014 National Survey on Drug Use and Health." *Substance Abuse and Mental Health Services Administration*. September 2015.

13 Binswanger, Ingrid A., Marc F. Stern, Richard A. Deyo, Patrick J. Heagerty, Allen Cheadle, Joann G. Elmore, and Thomas D. Koepsell. "Release from Prison – A High Risk of Death for Former Inmates." *New England Journal of Medicine* 356, no. 2 (November 2007): 157–65. <https://doi.org/10.1056/nejmsa064115>.

14 O'Dea, Colleen. "New Jersey's Recidivism Rate Plummets 19% Over the Past Six Years." Retrieved September 21, 2019 from <https://www.njspotlight.com/stories/18/11/14/new-jerseys-recidivism-rate-plummets-19-percent-over-past-six-years/>.

of services for those leaving prison, whether they have served the maximum sentence or are on parole, as well as those on probation and under Drug Court supervision.

Whether as a matter of doing social justice or of preserving the public interest—the inevitable result of reducing crime and recidivism—the Commission’s recommendations serve as a blueprint, a plan, to do the right thing, not only for historically disadvantaged populations and the desperately needy, but for all of us. The Commission urges that this Report results in concrete progress to those ends. The need could not be greater, nor the timeline more urgent.

## Action Items

### I. Healthcare

To overcome barriers to mental and physical healthcare behind the wall, the Commission recommends:

1. Implementing comprehensive testing of hepatitis B and C in all prisons and jails;
2. Providing comprehensive treatment for all those who test positive for hepatitis B or C in all prisons and jails.
3. Ensuring that all individuals entering prisons or jails are able to continue taking medications prescribed prior to incarceration.

To overcome barriers to mental and physical healthcare on reentry, the Commission recommends:

4. Organizing pre-enrollment and enrollment sessions for Medicaid at least sixty days prior to release with the support of the Department of Human Services;
5. Changing the Medicaid enrollment process behind the wall to be opt-out instead of opt-in;
6. Providing a physical Medicaid card is provided to individuals at the time of release;
7. Providing bridge prescriptions for at least 30-days with the option of up to two refills;
8. Implementing comprehensive needs assessments, including opt-out testing for hepatitis and HIV/AIDS;
9. Ensuring the construction of biopsychosocial profiles, prior to release;
10. Implementing in-reach programs to facilitate such comprehensive needs assessments and coordinate linkages to appropriate community providers and services; and
11. Establishing a platform that enables the bidirectional flow of health records between correctional facilities and community healthcare providers.

To overcome barriers to mental and physical healthcare after reentry, the Commission recommends:

12. Introducing peer supports into all prisons, jails, and transitional settings;
13. Establishing a “peer line” through which those in reentry can access peer support by hotline;
14. Providing Medicaid reimbursement of peer support services;
15. Creating a single integrated license for the provision of addiction, mental health, and physical health care services;
16. Allowing reimbursement of multiple types of care services during a single visit; and
17. Accelerating the creation of a statewide health information exchange (HIE) in New Jersey.

## II. Addiction Treatment

To meet the need for robust medication-assisted treatment (MAT) behind the wall, the Commission recommends:

18. Introducing a standardized and universal screen for substance abuse disorders (SUDs) in all correctional facilities at the time of intake;
19. Providing all individuals in need of addiction treatment with a clinically appropriate individualized treatment plan for treatment behind the wall.
20. Increasing access to medication-assisted treatment in all prisons, jails, and transitional settings;
21. Increasing access to counseling and wraparound services in all prisons, jails, and transitional settings; and
22. Expanding the IRTS Program to meet the existing need in all prisons, jails, and transitional settings.

To bridge the transition during the weeks prior to release, the Commission recommends:

23. Providing prescriptions for longer courses of MAT where permitted;
24. Connecting all individuals nearing release to coordinators (be they peer navigators or from existing reentry service organizations) to develop a comprehensive and individualized treatment plan prior to release; and
25. Establishing affiliation agreements between all correctional facilities and providers in the community to ensure coordination of care prior to release.

To address the barriers to addiction treatment faced upon release, the Commission recommends:

26. Implementing a hub-and-spoke model with hubs available in each county;
27. Empowering and supporting pharmacist to provide maintenance dosing of MAT

with specialist support on call; and

28. Establishing opioid treatment providers who are open twenty-four hours a day and seven days a week.

To increase accessibility of addiction treatment within the state, the Commission recommends:

29. Requiring schools in the health professions to provide training about opioid use disorder (OUD) and MAT including the required training to apply for a waiver to prescribe buprenorphine;
30. Introducing incentives for existing prescribers to attend the required training to apply for a waiver to prescribe buprenorphine;
31. Implementing a Project ECHO model to encourage those with waivers to prescribe buprenorphine to use it fully and effectively; and
32. Supporting national advocacy efforts to remove limitations on waivers to prescribe buprenorphine as well as efforts to repeal the requirement for such a waiver entirely.

To connect individuals with treatment earlier, the Commission recommends:

33. Repealing the No Early Release Act (NERA) to modifying sentences to 50 percent if an inmate meets clinical standards for a transfer to inpatient or outpatient treatment services for mental health or substance use disorder.

To promote long-term rehabilitation, the Commission recommends:

34. The Commission recommends expanding New Jersey's use of AOC Criminal Justice Probation entities, including Drug Court, and Swift, Certain, and Fair methodology in drug courts for opioid involved individuals.

To ensure that the addicted formerly incarcerated population has the best possible chance to successfully reintegrate into society, the commission recommends:

35. Enacting into law the Cunningham legislation, which would lift the lifetime restriction and allow the addicted formerly incarcerated to receive basic public benefits.

### III. Employment and Training

To facilitate comprehensive vocational training during incarceration for every inmate to ensure formerly incarcerated individuals are competitive in the job market, the Commission recommends:

36. Forming a partnership between the New Jersey Department of Corrections and Department of Labor and Workforce Development (LWD) in which the funding requirements and data on the interests and needs of inmates are shared;
37. Charging the Department of Labor and Workforce Development with identifying those employment opportunities for returning persons, which have minimal

barriers, while possessing ample market demand;

38. Charging LWD in consultation with the Department of Corrections with designing training initiatives which comply with “best practices” and provide for certification of skill-based training;
39. Assessing inmates’ eligibility and programing needs upon entrance into the Department of Corrections;
40. Devising an individual plan that outlines goals for their time incarcerated based on their personal interests;
41. Conducting regular assessments of progress made toward achieving their goals;
42. Working with employers to train individuals while incarcerated with the understanding of an employment opportunity upon release, ensuring well-trained employees;
43. Expanding access to basic skills and literacy education that is integrated with vocational training and connected to post-secondary education; and
44. Focusing on improvement of soft skills through job training.

To incentivize participation in educational and vocational training during incarceration, the Commission also recommends:

45. Connecting participation in education and training to parole eligibility;
46. Scheduling business service representatives from local job markets to speak in prisons to explain the qualities and qualifications that are valued in the employment market.

To facilitate comprehensive, advanced educational programs that allow for incarcerated individuals to receive credit toward or complete an associates/bachelor’s degree in the field in which they are passionate, the Commission recommends:

47. Developing a partnership between community colleges, vocational schools, and DOC to ensure that training courses carry credit and expand access to accommodate every incarcerated individual that wants continued education;
48. Allowing the use of computers during college courses taught in correctional facilities through monitoring and guard presence;
49. Expanding access to state tuition assistance and scholarships, including the Tuition Assistance Grant (TAG) Program and the Community College Opportunity Grant (CCOG) for individuals who are incarcerated; and
50. Updating and streamline clearance procedures for professors to encourage participation in college programs.

To expand the employment opportunities available to formerly incarcerated individuals, the Commission recommends:

51. Coordinating with businesses, community colleges, and peer mentors to provide educational and employment counseling and an individual employment plan prior to release.

52. Establishing higher state-funded tax credits for employers that hire formerly incarcerated individuals that are phased in over time to encourage long-term and stable employment;
53. Instituting an apprenticeship program upon release;
54. Providing pre-apprenticeship programs to accommodate those requiring remedial academic, technical, and soft skills;
55. Limiting restrictions on occupational licenses for individuals with criminal records (See Legal); and
56. Leading by example by mandating a quota or a good faith effort to hire from reentry population for public contractors and state employers.

To promote employment retention during supervised release, the Commission recommends:

57. Limiting restrictions and disruptions on employment for individuals on parole and probation and in RCRP and community programs;
58. Working with individuals to schedule community and reentry program appointments and other requirements around work schedules; and
59. Limiting visits by parole officers and Special Investigations Division to when there is a serious concern.

#### IV. Legal

To eliminate barriers that harm both the reentering individual and his/her family, and that increase the likelihood of recidivism while lowering the likelihood of effective reintegration, the Commission recommends three changes to how child support obligations for an incarcerated parent are addressed:

60. Decreasing the maximum percentage of wages that are able to garnish in child support payments;
61. Automatically modifying child support orders through a cap or suspension for incarcerated parents, either legislatively or programmatically during the intake process upon sentence to a term in jail/prison; and
62. In the absence of automatic child support suspension or modification, educating incarcerated individuals on the current law regarding the lowering of child support orders during incarceration, and assist in the modification request process.

To address the morass of fines, fees, and bench warrants that often-further disadvantage reentering individuals, the Commission recommends:

63. Requiring that all municipal fines be income-based, to lower the initial burden on low-income individuals;
64. Requiring that all municipal court matters are settled in the superior court prior to

incarceration; and

65. Ensuring that courts state-wide provide clear notice of and education regarding the public defender fee and the process of waiving it in the event of inability to pay.

To support recovery, self-sufficiency, and reintegration upon release the Commission recommends:

66. Limiting driver's license suspensions to driving-related crimes;
67. Allowing inmates to renew driver's licenses using existing photographs on file; and
68. Requiring Department of Corrections to notify the Motor Vehicle Commission of the change of address upon arrival at the Central Reception and Assignment Facility so renewal notices are received (CRAF).

To lower the barriers posed by lack of identification on release from prison, the Commission recommends:

69. Providing every inmate with a New Jersey Motor Vehicle Commission Driver or Non-Driver Photo ID prior to release through a memorandum of understanding or other agreement between the Department of Corrections and the Motor Vehicle Commission;
70. Modifying the provision of Fair Release and Reentry Act services to make these services opt-out rather than strictly voluntary; and
71. Adopting similar legislation to that of the New Pathways Act, mandating that the New Jersey Department of Corrections help incarcerated individuals obtain proper identification prior to their release.

To promote gainful employment upon release, the Commission recommends:

72. Removing the "Good Moral Character" requirement for occupational licenses and replace it with individualized assessments of prior crimes as they relate to the nature and requirements of the occupation;
73. Requiring licensing boards to eliminate vague language and specifically list disqualifying crimes, those specifically related to the nature of the occupation; and
74. Preventing municipalities or judges from banning individuals from employment in government services.

To ease the difficult transition faced by returning long-term offenders, the Commission recommends:

75. Requiring participation in reentry programming for all individuals released through parole or probation;
76. Requiring DOC to provide referrals to reentry programming upon release for all individuals who have maxed-out their sentences; and
77. Automatically qualifying long-term offenders (15 years or more) for Residential

## Community Release Programs (RCRPs).

### V. Housing

To increase the number of vouchers and housing units available, the Commission recommends:

78. Increasing State Rental Assistance Program (SRAP) funding from about \$40 million to \$80 million; and
79. Designing a permanent or transitional housing voucher program, with wrap-around supportive and case management services, that would specifically serve the re-entry population.

To expand the production of affordable and supportive housing in the state, the Commission recommends:

80. Making continued robust investments in the state Affordable Housing Trust Fund and encouraging the recapitalization of the Special Needs Housing Trust Fund;
81. Piloting well-integrated, affordable, and supportive housing developments for the formerly-incarcerated population using innovative housing finance mechanisms; and
82. Explicitly designating special needs and recovery housing as of “inherently beneficial use” under the Municipal Land Use Law.

To expand access to affordable housing for those in the reentry population, the Commission recommends:

83. Increasing the utilization of master leasing programs by nonprofit organizations in New Jersey that prioritize active individual participation in the design of treatment plans, as relevant;
84. Affirmatively furthering 2015 and 2016 HUD guidance on blanket bans for tenants with criminal history by promoting it at the state level; and
85. Ensuring that Public Housing Agencies (PHAs) and landlords in both federally-assisted housing complexes and private, market-rate developments are fully compliant with this guidance through training workshops and compliance monitoring.

To reduce the vulnerability of formerly-incarcerated individuals experiencing homelessness to rearrest and recidivism, the Commission recommends:

86. Passing a Homeless Bill of Rights to reduce the criminalization of homelessness and protect homeless individuals’ ability to move freely, exercise their basic civil rights and civil liberties, experience equal treatment under the law, and access public programs and amenities; and
87. Designating specialized Task Force as a part of the newly-created Office of Homelessness Services in the Department of Community Affairs that would

work to reduce the criminalization of homelessness across the state and develop strategies to reduce homelessness among the reentry population.

To better reintegrate those who have served long sentences and maxed out their sentences, the Commission recommends:

88. Ensuring that state-led housing interventions for re-entry populations, especially those that have served extremely long sentences and;
89. Ensure the inclusion of wrap-around services and personalized case management.

To better reintegrate those who have Substance Use Disorders, the Commission recommends:

90. For sober-living environments, designating the Division of Community Affairs to ensure that programs have adequate oversight to ensure staff compliance with project policies and to ensure that life-saving treatments are available on the premises; and
91. For Housing First programs, designating state agencies with relevant oversight authority to ensure that housing programs are adhering to the model and minimizing barriers to entry.

## VI. Reentry Supportive Legislation

To support the above recommendations, the Commission recommends and recognizes support for the following pending pieces of legislation at the state level:

92. Earn Your Way Out Act 2019 (S761/A1986): Requires the Department of Corrections to develop an inmate reentry plan by instituting a Division of Reentry and Rehabilitative Services.
93. Expungement Revision Bill 2019 (S3205/A4498): Revises the procedures and policies of the New Jersey expungement law allowing for a wider availability for expungement of non-violent offenders
94. Medicated Eligibility for Incarcerated Individuals 2018 (s1182/A3568): Requires establishment of processes to identify Medicaid-eligible incarcerated individuals who are awaiting pre-trial release determinations, are being released following period of incarceration, or are undergoing inpatient hospital treatment.
95. Occupational Licensing for Incarcerated Individuals 2019 (S1589/A3872): Requires certain standards for professional and occupational boards considering applicants with criminal history records. Specifically eliminates the "good moral character" requirement.
96. Dignity for Incarcerated Primary Caretaker Parents Act (2019 (S2540/A3979): Ensures that all incarcerated women in New Jersey receive free feminine hygiene products and prohibits the act of chaining inmates while they are giving birth.

To support the above recommendations, the Commission recommends and recognizes support for the following pending pieces of legislation at the federal level:

97. The First Step Act (H.R.5682): Allows inmates to receive “earned time credits” by participating in more vocational and rehabilitative programs and could be used to allow them to be released early to halfway houses or home confinement
98. The Next Step Act (S. 697): Reduces harsh mandatory minimums for nonviolent drug offenses; improves ability of those behind bars to stay in touch with loved ones; provide better training for law enforcement in implicit racial bias, de-escalation, and use of force; reinstates voting rights for formerly incarcerated individuals; and end the federal prohibition on marijuana.
99. The New Pathways Act (S. 1080): Amends Second Chance Act of 2007 to require identification for returning citizens, and for other purposes; also provides guidelines for the Bureau of Prisons to obtain proper identification for inmates being released including driver’s license, birth certificate, Social Security card, photo identification, or work authorization form.
100. The Fair Chance Act (S. 387): Prohibits Federal agencies and Federal contractors from requesting that an applicant for employment disclose criminal record history information before the applicant has received a conditional offer, and for other purposes.

## I. Mental and Physical Healthcare

The prevalence of mental and physical health conditions among those behind the wall and in reentry is high. A study conducted by Cynthia Visher and Kamala Malik-Kane of the Justice Policy Center at the Urban Institute found that roughly eight out of ten men and nine out of ten women had a diagnosed medical need.<sup>15</sup> Specifically, they found that one-seventh of men and one-third of women suffered from a mental health condition such as anxiety, depression, or post-traumatic stress disorder.<sup>16</sup> Additionally, half of men and two-thirds of women suffered from a physical health condition such as asthma, diabetes, hepatitis, or HIV/AIDS.<sup>17</sup> Subsequent studies indicate that infectious diseases associated with injection drug use such as hepatitis and HIV/AIDS are rising as a result of the opioid epidemic.<sup>18</sup>

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15 Mallik-Kane, Kamala, and Christy A. Visher. “Health and Prisoner Reentry: How Physical, Mental, and Substance Abuse Conditions Shape the Process of Reintegration.” Urban Institute Justice Policy Center, February 2008. <https://www.urban.org/sites/default/files/publication/31491/411617-Health-and-Prisoner-Reentry.PDF>.

16 Ibid.

17 Ibid.

18 “Viral Hepatitis-A Very Real Consequence of Substance Use.” National Institute on Drug Abuse (NIDA). May 16, 2013. Accessed August 15, 2019. <https://www.drugabuse.gov/related-topics/viral-hepatitis-very-real-consequence-substance-use>.

Coupled with social needs – such as food insecurity, housing instability, unemployment, and outstanding legal challenges – individuals in reentry are arguably some of the most medically and socially complex patients in the community. As a result, they face several barriers to reliable and robust access to healthcare. Upon incarceration, inmates often do not receive a broad array of medical screenings such as hepatitis testing despite such screening being considered an evidence-based best practice by multiple medical experts. Nearing release, individuals often do not receive a comprehensive medical needs assessment, a physical Medicaid card (and much less education on when, where, and how to use health insurance), more than a couple-week supply of their medications, or referrals to community healthcare providers—to say nothing of an easy way to share their correctional health records with them. These problems may create further ones after reentry including difficulty navigating the healthcare system; obtaining integrated care to meet their addiction, mental health, and physical health needs in a coordinated and efficient manner; and sharing their health records with multiple community-based providers.

In the following section, the report details the need for and barriers to reliable and robust mental and physical healthcare behind the wall (in both state prisons and local jails), near release, and after reentry. It outlines the scale, scope, and nature of the barriers to such care during each of these stages as well as highlights best practices – often drawn from other states – in addressing these barriers. The section ultimately closes with recommendations on how to best implement these best practices here in New Jersey.

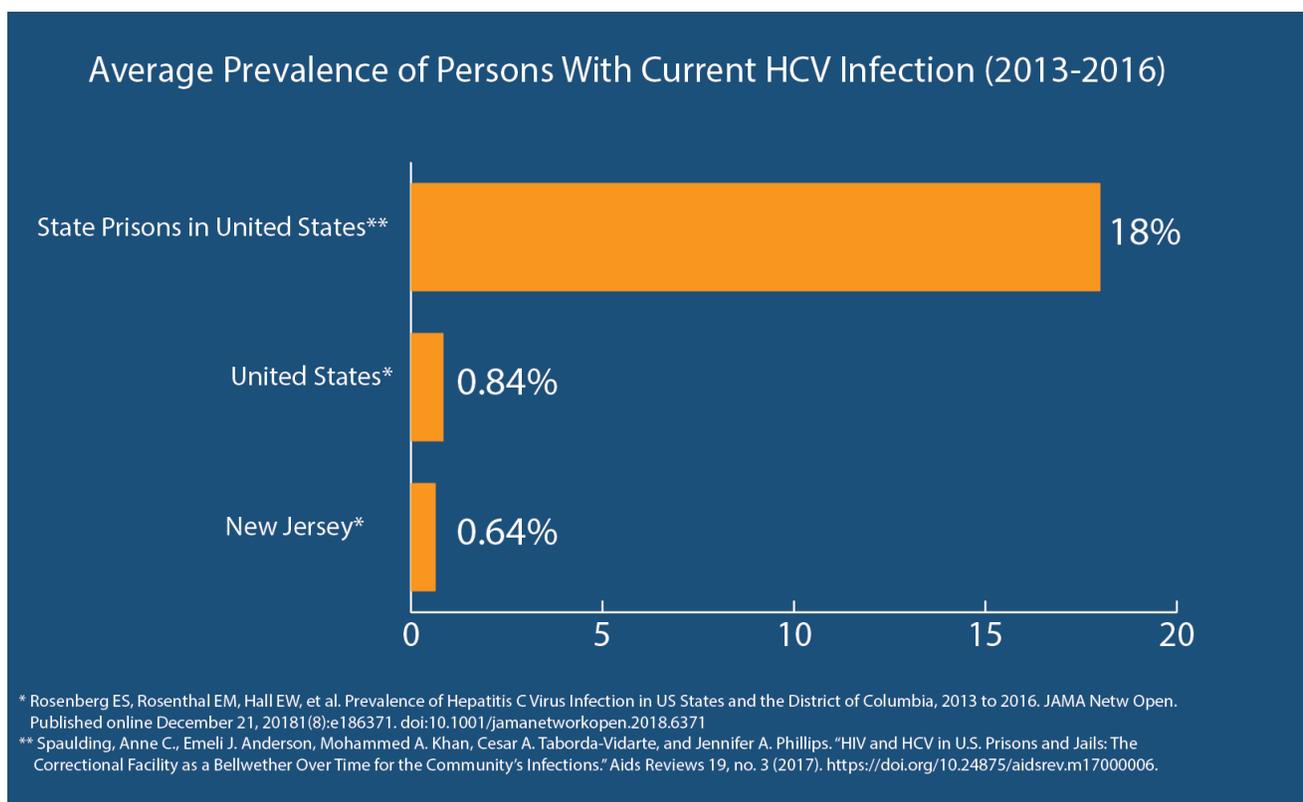
## **Hepatitis Behind the Wall**

### *Barriers to Entry*

The need for and barriers to treating hepatitis provide a particularly timely window into the challenges associated with accessing healthcare behind the wall. Hepatitis is caused by a virus that is transmittable through the exchange of bodily fluids. Because such exchange is associated with sharing needles and drug preparation equipment, the prevalence of hepatitis is relatively high among those who inject drugs and, by extension, those behind the wall. Studies estimate that, while roughly 1 percent of the general population may have hepatitis C (a specific strain of the virus; other strains include hepatitis A and hepatitis B), between 12-

35 percent of those behind the wall likely have it.<sup>19</sup> If identified and treated early, hepatitis is curable. If not, however, then there is a markedly increased risk of chronic liver infection and inflammation, liver cancer, and liver failure.<sup>20</sup> Therefore, the course of untreated hepatitis is both personally devastating and costly, often resulting in frequent hospitalizations, transplant surgery, and – all too often – death. Moreover, untreated and uncontrolled hepatitis also interferes with the treatment of common co-occurring conditions such as opioid use disorder (OUD) (e.g. an individual with hepatitis may not begin to use certain forms of MAT such as naltrexone).

Notably, New Jersey does not perform universal, opt-out screening for hepatitis. Instead, its state prisons offer targeted testing to those who report risk factors involving age, injection drug use, sexual history, and tattoos. Given the high miss rate of targeted strategies,<sup>21</sup> it is helpful that those without risk factors can also obtain testing and treatment upon request. If requested, however, individuals must provide a co-pay for initial blood testing, a co-pay for



19 Weinbaum, Cindy, Rob Lyerla, and Harold S. Margolis. "Prevention and Control of Infections with Hepatitis Viruses in Correctional Settings." Centers for Disease Control and Prevention. January 24, 2003. Accessed August 15, 2019. <https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5201a1.htm>.

20 Thio CL, Seaberg EC, Skolasky R, et al. Multicenter AIDS Cohort Study. HIV-1, hepatitis B virus, and risk of liver-related mortality in the Multicenter Cohort Study (MACS). Lancet. 2002 Dec;360(9349):1921-6.

21 Assoumou SA, Wang J, Tasillo A, et al. Hepatitis c testing and patient characteristics in Washington state's prisons between 2012 and 2016. American Journal of Preventive Medicine. 2018. Doi: <https://doi.org/10.1016/j.amepre.2018.08.016>

confirmatory testing, and a co-pay for treatment. Testing and treatment in local jails are reportedly more limited.

### ***Best Practices Models***

In light of the high prevalence of hepatitis behind the wall and the fact that up to two-thirds of those with hepatitis are unaware that they are infected – much less treated – the United States Preventive Services Task Force recommends that all individuals behind the wall receive screening for hepatitis.<sup>22</sup> Experts from Boston Medical Center echoed this recommendation in a study published in the *American Journal of Preventive Medicine*, finding that universal testing for hepatitis is far more effective than targeted testing that limits screening to those with certain risk factors such as reported injection drug use.<sup>23</sup> Such recommendations appear particularly sound given recent research that found targeted testing strategies typically miss over one-third of individuals with the disease—an alarming rate of misses in any field, much less medicine, where the consequences can be so grave. Moreover, studies show that universal screening in this context is cost-effective.<sup>24</sup> In keeping with such recommendations, New York,<sup>25</sup> Pennsylvania,<sup>26</sup> and other states have implemented universal testing for hepatitis while offering those behind wall the option to opt-out if desired.

### ***Action Items***

To overcome barriers to mental and physical healthcare behind the wall, the Commission recommends:

1. Implementing comprehensive testing of hepatitis B and C in all prisons and jails;
2. Providing comprehensive treatment for all those who test positive for hepatitis B or C in all prisons and jails.
3. Ensuring that all individuals entering prisons or jails are able to continue taking medications prescribed prior to incarceration.

22 “Evaluation and Management of Chronic Hepatitis C Virus (HCV) Infection.” Federal Bureau of Prisons, October 2016, 1-48. doi:10.4324/9780203328323\_chapter\_5.

23 Assoumou SA, Wang J, Tasillo A, et al. Hepatitis c testing and patient characteristics in Washington state’s prisons between 2012 and 2016. *American Journal of Preventive Medicine*. 2018. Doi: <https://doi.org/10.1016/j.amepre.2018.08.016>

24 He T, Li K, Roberts MS, Spaulding AC, Ayer T, Grefenstette JJ, et al. Prevention of Hepatitis C by Screening and Treatment in U.S. Prisons. *Ann Intern Med*. 2016;164(2):84-92.

25 Akiyama, M. J., Kaba, F., Rosner, Z., Alper, H., Holzman, R. S., & MacDonald, R. (2016). Hepatitis C Screening of the “Birth Cohort” (Born 1945-1965) and Younger Inmates of New York City Jails. *American Journal of Public Health*, 106(7), 1276-1277. doi:10.2105/AJPH.2016.303163

26 Larney, S., Mahowald, M. K., Scharff, N., Flanigan, T. P., Beckwith, C. G., & Zaller, N. D. (2014). Epidemiology of Hepatitis C Virus in Pennsylvania State Prisons, 2004-2012: limitations of 1945-1965 birth cohort screening in correctional settings. *American Journal of Public Health*, 104(6), e69-e74. doi:10.2105/AJPH.2014.301943

## Healthcare Near Release

### *Barriers to Entry*

Given the high prevalence of mental and physical health conditions among those behind the wall, the period near release represents a critical opportunity to help individuals connect to care. A closer look at practices in the months and weeks before release, however, bring four barriers to this care into perspective.

First, although state prisons are required to complete applications for those eligible for Medicaid as they near release, many individuals are released without having done so. Even if they were able to do so, determining where to mail their Medicaid card can be challenging since those who have served long sentences often do not have a well-established mailing address. In such instances, officials may instruct the card to be mailed to a social services office within the county. However, knowing which county to send it to is not always obvious or easy to reach for an individual. As a result, individuals often navigate the weeks leading up to and after release without effectively securing a Medicaid card. Without a Medicaid card or insurance details in hand, their ability to access healthcare suffer. Experts suggest release from incarceration without a Medicaid card is a major contributor to high recidivism among those with Substance Use Disorder (SUD).<sup>27</sup>

Second, prescriptions provided upon release - known as bridge prescriptions - are often for less than one-month of medicine without refills.<sup>28</sup> The challenges created by these prescriptions were detailed above vis-à-vis addiction treatment. The same dynamic applies to other mental and physical health needs. These limited courses of asthma, diabetes, or seizure medications require an individual to secure insurance, establish care, and attend a primary care or specialist appointment in short order to maintain therapeutic levels of their medications. While this can be challenging under even the best of circumstances, it can be significantly more so for those who were not provided a physical Medicaid card upon release.

Third, knowing where and why to go to continue care can be challenging. Navigating the healthcare system is difficult, especially when providers may not

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27 "Medicaid and Financing Health Care for Individuals Involved with the Criminal Justice System," in Council of State Governments Justice Center, [Pages 22-25], last modified December 2013, <https://csgjusticecenter.org/wp-content/uploads/2013/12/ACA-Medicaid-Expansion-Policy-Brief.pdf>.

28 "Prison Health Care Costs and Quality." The Pew Charitable Trusts. October 2017. Accessed August 15, 2019. [http://www.pewtrusts.org/~media/assets/2017/10/sfh\\_prison\\_health\\_care\\_costs\\_and\\_quality\\_final.pdf](http://www.pewtrusts.org/~media/assets/2017/10/sfh_prison_health_care_costs_and_quality_final.pdf).

accept your insurance. For those who have spent significant time behind the wall, there is even greater difficulty. Moreover, past interactions with healthcare providers are less than therapeutic for reasons ranging from the stigma surrounding incarceration—real or perceived—that may affect health professionals or perverse incentives within the correctional system that may discourage seeking healthcare. In the absence of a referral and instruction on where to seek care, too many individuals nearing release do so without having a clear sense of what to do next to access care.

Fourth, for those individuals who do manage to overcome these barriers, they do so only to discover that the healthcare provider does not have access to his or her medical records behind the wall creating gaps in his or her medical records. These important gaps in his or her medical records increase the risk of a medical error due to incomplete information. Ultimately, these challenges—the need for a Medicaid card, longer-term prescriptions, referral to a community-based provider, and access to correctional healthcare records—are not unique to New Jersey. Several states have found effective solutions.

Studies have shown—as a result of these barriers—that nearly 90 percent of those behind the wall end up seeking care in the emergency room rather than a primary care clinic upon release,<sup>29</sup> that one in twelve end up hospitalized within 90 days,<sup>30</sup> and that many do not have health insurance just months after release.<sup>31</sup>

### ***Best Practices and Models***

Several states have identified and implemented best practices to address these barriers for those nearing releases. Both Arizona and Ohio provide effective examples of providing Medicaid enrollment. In Arizona, prisons and jails submit Medicaid applications—via fax, mail, or online portal—roughly thirty days before release.<sup>32</sup> The application remains pending until an exact release date is

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29 Trotter li, R. T., Camplain, R., Eaves, E. R., Fofanov, V. Y., Dmitrieva, N. O., Hepp, C. M., ... Baldwin, J. A. (2018). Health Disparities and Converging Epidemics in Jail Populations: Protocol for a Mixed-Methods Study. *JMIR research protocols*, 7(10), e10337. doi:10.2196/10337

30 "Incarceration and Health: A Family Medicine Perspective." American Academy of Family Physicians (AAFP), March 18, 2019. <https://www.aafp.org/about/policies/all/incarcerationandhealth.html>.

31 Mallik-Kane, Kamala, and Christy A. Visher. "Health and Prisoner Reentry: How Physical, Mental, and Substance Abuse Conditions Shape the Process of Reintegration." Urban Institute Justice Policy Center, February 2008. <https://www.urban.org/sites/default/files/publication/31491/411617-Health-and-Prisoner-Reentry.PDF>.

32 Jennifer Ryan et al., "Connecting the Justice-Involved Population to Medicaid Coverage and Care: Findings from Three States," Kaiser Family Foundation (KFF), last modified June 1, 2016, <https://www.kff.org/medicaid/issue-brief/connecting-the-justice-involved-population-to-medicaid-coverage-and-care-findings-from-three-states/view/print/>.

# Ohio's Medicaid Pre-Release Enrollment Program

*Ensuring Successful Transition to a Healthcare plan upon release*



confirmed.<sup>33</sup> Once confirmed, the application approved and a physical Medicaid card is mailed to the appropriate prison or jail to be physically handed to an individual at the time of release.<sup>34</sup> In Ohio, the Medicaid Pre-Release Enrollment Program (MRPE) oversees this process.<sup>35</sup> The MRPE arranges for individuals behind the wall to attend a peer-led Medicaid pre-enrollment session 90 days before release.<sup>36</sup> The session provides individuals with information regarding the benefits of Medicaid, the application process, and pertinent differences between the five managed care plans that are available.<sup>37</sup> Although individuals do have the option to opt-out of enrollment, they must express an understanding of the tax penalty for being uninsured before doing so.<sup>38</sup> Two to three days after the pre-enrollment sessions, individuals attend an enrollment session that provides them with an opportunity to apply for the Medicaid managed care plan of their choice, and a direct line is provided to an enrollment broker at the Ohio Medicaid Consumer Hotline to guide through the enrollment process.<sup>39</sup> For individuals identified with chronic conditions for which access to care is critical upon release, the correctional facility requires the managed care plan to meet with the individual via video

33 Ibid.

34 Ibid.

35 Jesse Jannetta, Jane B. Wishner, and Rebecca Peters, "Ohio's Medicaid Pre-Release Enrollment Program," in Urban Institute, last modified January 2017, [https://www.urban.org/sites/default/files/publication/88051/ohio\\_medicaid\\_1.pdf](https://www.urban.org/sites/default/files/publication/88051/ohio_medicaid_1.pdf).

36 Ibid.

37 Ibid.

38 Ibid.

39 Ibid.

conference and then follow up periodically after release (while providing monthly and quarterly reports of these follow-ups).<sup>40</sup> As part of this multi-step process, prisons and jails also arrange to ensure that an individual receives a physical Medicaid card upon release.<sup>41</sup>

In Indiana, a 2015 law dictates that individuals must receive assistance with enrollment before release.<sup>42</sup> When a person enters a facility, the Department of Corrections screens him or her for active Medicaid participation; if determined to have coverage, the Family and Social Services Administration suspends coverage.<sup>43</sup> Sixty days before they begin their reintegration into the community, the processing unit of the Department of Corrections coordinates and works with inmates to complete new applications; the final steps let to over 12,000 individuals receiving coverage at release.<sup>44</sup> Such a policy dramatically increases the ability of persons to receive adequate care, especially for Substance Use Disorder, potentially avoiding death.

For bridging prescriptions, Missouri is a leader in meeting the medication needs of those nearing releases.<sup>45</sup> Missouri facilities provide a thirty-day supply with the option for up to two refills from nonprofit pharmacy partners.<sup>46</sup> While officials may not do so for all medications—especially those with a high possibility of misuse—the ability to refill prescriptions provides individuals more time to establish care without risk of interruption to their medication regimen.

Several states have developed promising models to complete needs assessments and link individuals to providers in the community to ensure those nearing releases are aware of why and where to go to continue care. These states—including Florida, New Mexico, and Ohio—include requirements in their managed care organizations to ensure that individuals nearing release can connect to comprehensive primary care.<sup>47</sup> Several other states—including Arizona, Louisiana, Ohio, Utah, and South Carolina—go further by requiring their managed

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40 Ibid.

41 Ibid.

42 "How and When Medicaid Covers People Under Correctional Supervision." The Pew Charitable Trusts. August 2, 2016. Accessed September 23, 2019.

43 Ibid.

44 Ibid.

45 "Prison Health Care Costs and Quality." The Pew Charitable Trusts. October 2017. Accessed August 15, 2019. [http://www.pewtrusts.org/~media/assets/2017/10/sfh\\_prison\\_health\\_care\\_costs\\_and\\_quality\\_final.pdf](http://www.pewtrusts.org/~media/assets/2017/10/sfh_prison_health_care_costs_and_quality_final.pdf).

46 Ibid.

47 Ibid.

care organizations to provide continuity care that involves in-reach to ensure care coordination.<sup>48</sup> In New Mexico, for instance, an in-reach pilot project at the Albuquerque Jail enabled clinicians to connect with individuals nearing release, assess their health needs, and develop a care plan that included which specific providers would help meet their health needs upon release.<sup>49</sup> The intervention was shown to cut both the risk of recidivism and emergency department visits by roughly two-thirds.<sup>50</sup>

Conversations with stakeholders underscore the importance of robust needs assessments before release. Such assessments not only take into consideration pre-existing diagnoses but involve an exit health screen (e.g. testing for hepatitis and HIV/AIDS, biopsychosocial evaluations) to ensure that individuals nearing release possess a comprehensive understanding of their needs and next steps. These assessments would facilitate linkages to community providers and services, as other states already do, for those with complex medical needs. In New York, all individuals behind the wall who received mental health treatment within three years of their anticipated release have an appointment with a provider for the explicit purposes of discharge planning, care coordination, and bridge prescription writing. California, Colorado, and Oklahoma have similar models that emphasize connecting those with serious mental health needs to behavioral health clinics capable of addressing addiction, mental health, and housing needs.<sup>51</sup> Multiple studies demonstrate how such programs increase the use of community providers and services, decrease emergency department visits, decrease hospitalizations, and reduce recidivism.<sup>52</sup>

In terms of access to correctional health records by community providers, several facilities around the country have taken meaningful strides towards overcoming this barrier. They obtain consent from those behind the wall to have their medical records shared with community providers. The facilities then ensure that those electronic records can interface with the appropriate health information exchanges (HIEs), online platforms that facilitate medical record sharing while

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48 Ibid.

49 Guyer, Jocelyn, Kinda Serafi, Deborah Bachrach, and Alixandra Gould. "State Strategies for Establishing Connections to Health Care for Justice-Involved Populations: The Central Role of Medicaid." Commonwealth Fund. Accessed August 15, 2019. <https://www.commonwealthfund.org/publications/issue-briefs/2019/jan/state-strategies-health-care-justice-involved-role-medicaid>.

50 Ibid.

51 Ibid.

52 Ibid.

maintaining strict adherence to privacy laws and concerns. In Delaware, the flow of correctional health records is unidirectional, and community providers can view but not contribute to the medical file available behind the wall.<sup>53</sup> In contrast, California, Indiana, Iowa, and Vermont have undertaken efforts to make sure that correctional health records are interoperable with those of community providers.<sup>54</sup> In all of these instances, government support and local champions with a vested interest in ensuring continuity of care were integral to the success of such efforts.<sup>55</sup> One bright spot here in New Jersey has been the development of an HIE that incorporates correctional health records from the local jail. The push was spearheaded by a coalition of community, correctional, and healthcare stakeholders—among others—and may provide a template for related efforts in the state.<sup>56</sup>

### *Action Items*

To overcome barriers to mental and physical healthcare behind the wall, the Commission recommends:

1. Organizing pre-enrollment and enrollment sessions for Medicaid at least sixty days prior to release with the support of the Department of Human Services;
2. Changing the Medicaid enrollment process behind the wall to be opt-out instead of opt-in;
3. Providing a physical Medicaid card is provided to individuals at the time of release;
4. Providing bridge prescriptions for at least 30-days with the option of up to two refills;
5. Implementing comprehensive needs assessments, including opt-out testing for hepatitis and HIV/AIDS;
6. Ensuring the construction of biopsychosocial profiles, prior to release;
7. Implementing in-reach programs to facilitate such comprehensive needs assessments and coordinate linkages to appropriate community providers and services; and
8. Establishing a platform that enables the bidirectional flow of health records between correctional facilities and community healthcare providers.

53 "Prison Health Care Costs and Quality." The Pew Charitable Trusts. October 2017. Accessed August 15, 2019. [http://www.pewtrusts.org/~media/assets/2017/10/sfh\\_prison\\_health\\_care\\_costs\\_and\\_quality\\_final.pdf](http://www.pewtrusts.org/~media/assets/2017/10/sfh_prison_health_care_costs_and_quality_final.pdf).

54 Ibid.

55 Ibid.

56 Ibid.

## Healthcare After Reentry

### *Barriers to Entry*

After release from prison, the barriers to accessing healthcare that many individuals face are often pronounced. Three recurring challenges for those in reentry—as some of the most medically and socially complex patients in the community<sup>57</sup>—include the need for assistance in navigating the healthcare system, integrated care, and access to previous medical records.

First, the relative medical and social complexity of those in reentry (e.g. frequent co-occurring addiction, mental health, and physical health needs as well as social needs such as housing instability, food insecurity, unemployment, and outstanding legal issues) presents barriers to accessing and coordinating care. Parole has traditionally provided opportunities to support individuals through this transition. However, as detailed later in this report, a smaller percentage of those in reentry are able to access parole. As a result, they end of serving the maximum term of their sentence—often referred to as “max-outs”—and are then released with minimal, if any, support. Attempting to secure services without support often proves challenging. Studies link such circumstances to recidivism, avoidable emergency room visits, and preventable hospitalizations.

Second, the co-occurring needs of those in reentry often necessitate integrated care. Integrated care is the ability to receive care that addresses an individual’s addiction, mental health, and physical health needs in a coordinated and efficient manner. Integrated care is important because delivering one type of care for those in reentry often intersects or is predicated on another type of care. For example, an individual in reentry with OUD and hepatitis may benefit from naltrexone to treat his or her opioid addiction, but only after his or her hepatitis is treated and controlled. Similarly, an individual with OUD and schizophrenia may benefit from methadone but only if it does not interact with his or her antipsychotics. Otherwise, such drug interactions may result in a potentially dangerous heart condition. As a result, community-based organizations that work with those in reentry in New Jersey, such as Integrity House, strive to provide integrated care by evaluating individuals by a specialist in addiction medicine,

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57 Substance Abuse and Mental Health Services Administration: Principles of Community-based Behavioral Health Services for Justice-involved Individuals: A Research-based Guide. HHS Publication No. SMA19-5097. Rockville, MD: Office of Policy, Planning, and Innovation. Substance Abuse and Mental Health Services Administration, 2019. <https://store.samhsa.gov/system/files/sma19-5097.pdf>.

a mental health specialist, and a primary care provider in tandem. However, delivering such integrated care is challenging.

These challenges are often regulatory. Licensing for addiction medicine, mental health, and physical health is split between two different departments—the Department of Health and the Department of Human Services—and three different agencies.<sup>58</sup> Providers report discrepancies of licensing requirements between the various departments and agencies, noting the resulting challenges they face in navigating them.<sup>59</sup> Moreover, at present, Medicaid does not reimburse for integrated care so that when a community-based organization provides addiction medicine, mental health, and primary care services during a single visit, the organization is only permitted to be reimbursed for a single type of service (i.e. either addiction medicine, mental health, or primary care services but not all three even if all three types of services were provided due to the patient’s needs).

Third, just as community providers cannot easily access correctional health records, health records are not easily shareable between community providers. While this challenge is not unique to the reentry population, the consequences are often more common and consequential for those in reentry because of the number of providers they typically encounter due to health or logistical needs. The inability for community providers to easily access records results in sub-optimal care due to duplicative treatment and medical errors.

Finally, as a matter of prudence, individuals may rely upon the faith-based organizations in their community to assist in the provision of care. While these pillars of the community do not provide care themselves, they can provide access to organizations such as Alcoholics Anonymous or Narcotics Anonymous. These organizations are often the only option for those seeking reentry into the community as they do not have access to Medicaid based medical services. For those who do have coverage, these organizations--because of their close integration into the community itself--can provide individuals with directions on where to go to seek care. Relying on these organizations is crucial to the success of many seeking to reenter the community as they do not have the established

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58 Jacobi, John V., Tara Adams Ragone, and Kate undefined Greenwood. “Integration of Behavioral and Physical Health Care: Licensing and Reimbursement Barriers and Opportunities in New Jersey.” Seton Hall University School of Law, March 31, 2016. [https://thenicholsonfoundation.org/sites/default/files/Integration\\_Healthcare\\_Seton\\_Hall\\_report.pdf](https://thenicholsonfoundation.org/sites/default/files/Integration_Healthcare_Seton_Hall_report.pdf).

59 Ibid.

60 Ibid.

connections to find needed services.

### *Best Practices and Models*

In terms of assistance in navigating the healthcare system, several prisons and jails successfully piloted the use of peer navigators and peer mentors. Collectively referred to as “peer supports,” these individuals were previously incarcerated, successfully navigated reentry, and received specialized training to guide and counsel others while maintaining strict confidentiality.<sup>61</sup> In Georgia, the Forensic Peer Mentor Program provides peer support to individuals near release and after reentry.<sup>62</sup> The program is state-funded and peers hold certifications in counseling individuals with addiction and mental health needs.<sup>63</sup> With their knowledge of the local reentry process, such peers appear well prepared—personally and professionally—to assist individuals in navigating the healthcare system upon release. In New York City, the Odyssey House—a nonprofit organization that provides addiction treatment and recovery services—has partnered with the Edgecombe Residential Treatment Facility to develop reentry plans for individuals roughly forty-five days before their anticipated release.<sup>64</sup> During this forty-five days peer supports are provided through a “bridge mentor” who works with an individual to develop a reentry plan before release.<sup>65</sup> The individual then works with a “peer mentor” to navigate health and other needs for up to six months following release.<sup>66</sup> These programs have also been supported by “peer lines” that enable those in reentry to reach out to peer support via hotline as well as Medicaid reimbursement for their services. Such programs have highlighted the role that peer supports can play for individuals nearing release and after reentry.

In terms of integrated care, studies have demonstrated how meeting mental and physical health needs in a coordinated and efficient manner improve

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61 Money, Nisha, Monique Moore, David Brown, Kathleen Kasper, Jessica Roeder, Paul Bartone, and Mark Bates. “Best Practices Identified for Peer Support Programs.” PsycEXTRA Dataset, January 2011. <https://doi.org/10.1037/e534162013-001>.

62 Hensley, Erica, and Georgia Health News. “Peer Mentors: A Lifeline To Ex-Inmates With Mental Health, Drug Issues.” 90.1 FM WABE, January 31, 2018. <https://www.wabe.org/peer-mentors-lifeline-ex-inmates-mental-health-drug-issues/>.

63 Ibid.

64 Umez, Chidi, Jan De la Cruz, Maureen Richey, and Katy Albis. “Mentoring as a Component of Reentry: Practical Considerations from the Field.” The National Reentry Resource Center. CSG Justice Center, 2017. <https://csgjusticecenter.org/nrrc/publications/mentoring-as-a-component-of-reentry-practical-considerations-from-the-field/>.

65 Ibid.

66 Ibid.

healthcare outcomes and are often cost-saving or, at the least, cost-neutral.<sup>67, 68, 69</sup> Several states have found ways to integrate such care. Agencies in California overseeing addiction and mental health care were consolidated under the agency in charge of Medicaid.<sup>70</sup> In Arizona, the provision of integrated care was made possible by a single license for both mental and physical healthcare.<sup>71</sup> For context, in New Jersey tentative steps have been taken toward such integration. For example, the state has introduced a shared space waiver that enables a facility licensed for physical health care to obtain a license for mental health care (but not the converse).<sup>72</sup>

In terms of access to previous medical records, New York has been at the forefront of creating a statewide HIE – known as the Statewide Health Information Network for New York (SHIN-NY) – that allows for secure exchange of electronic patient files between all hospitals as well as over 100,000 non-hospital healthcare providers.<sup>73</sup> The New York Department of Health oversees the SHIN-NY.<sup>74</sup> Participation requires patient consent, and all patients may opt-out at any time.<sup>75</sup> Ultimately, the introduction of SHIN-NY has credited with 36 percent reduction in radiology studies (e.g. x-rays, CT scans, MRIs) and a 52 percent decrease in lab tests as well as notable declines in avoidable hospitalizations and readmissions.<sup>76</sup> Other states—including California, Delaware, Indiana, Vermont, and Wisconsin—have taken similar steps to develop statewide HIEs.

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67 Jacobi, John V., Tara Adams Ragone, and Kate undefined Greenwood. "Integration of Behavioral and Physical Health Care: Licensing and Reimbursement Barriers and Opportunities in New Jersey." Seton Hall University School of Law, March 31, 2016. [https://thenicholsonfoundation.org/sites/default/files/Integration\\_Healthcare\\_Seton\\_Hall\\_report.pdf](https://thenicholsonfoundation.org/sites/default/files/Integration_Healthcare_Seton_Hall_report.pdf).

68 Ibid.

69 Ibid.

70 Bachrach, Deborah, Stephanie Anthony, and Andrew Detty. "State Strategies for Integrating Physical and Behavioral Health Services in A Changing Medicaid Environment." The Commonwealth Fund, August 2014. [http://www.integration.samhsa.gov/news/State\\_Strategies\\_for\\_Integrating\\_Physical\\_and\\_Behavioral\\_Health\\_Services\\_Sept\\_2014.pdf](http://www.integration.samhsa.gov/news/State_Strategies_for_Integrating_Physical_and_Behavioral_Health_Services_Sept_2014.pdf).

71 Ibid.

72 Jacobi, John V., Tara Adams Ragone, and Kate undefined Greenwood. "Integration of Behavioral and Physical Health Care: Licensing and Reimbursement Barriers and Opportunities in New Jersey." Seton Hall University School of Law, March 31, 2016. [https://thenicholsonfoundation.org/sites/default/files/Integration\\_Healthcare\\_Seton\\_Hall\\_report.pdf](https://thenicholsonfoundation.org/sites/default/files/Integration_Healthcare_Seton_Hall_report.pdf).

73 "The Case for Payer Participation in Health Information Exchange." New York eHealth Collaborative, April 2018. <http://www.nyehealth.org/nyec16/wp-content/uploads/2018/04/The-Case-for-Payer-Participation-in-Health-Information-Exchange-April-2018.pdf>.

74 "The Case for Payer Participation in Health Information Exchange." New York eHealth Collaborative, April 2018. <http://www.nyehealth.org/nyec16/wp-content/uploads/2018/04/The-Case-for-Payer-Participation-in-Health-Information-Exchange-April-2018.pdf>.

75 "The Case for Payer Participation in Health Information Exchange." New York eHealth Collaborative, April 2018. <http://www.nyehealth.org/nyec16/wp-content/uploads/2018/04/The-Case-for-Payer-Participation-in-Health-Information-Exchange-April-2018.pdf>.

76 Joshua R Vest, Lisa M Kern, Michael D Silver, Rainu Kaushal, for the HITEC investigators, The potential for community-based health information exchange systems to reduce hospital readmissions, *Journal of the American Medical Informatics Association*, Volume 22, Issue 2, March 2015, Pages 435–442, <https://doi.org/10.1136/amiajnl-2014-002760>; Kern, L.m., T.r. Campion, M.d. Silver, R. Kaushal, and J.r. Vest. "Association between Use of a Health Information Exchange System and Hospital Admissions." *Applied Clinical Informatics* 05, no. 01 (2014): 219–31. <https://doi.org/10.4338/aci-2013-10-ra-0083>.

## Action Items

To overcome barriers to mental and physical healthcare after reentry, the Commission recommends:

1. Introducing peer supports into all prisons, jails, and transitional settings;
2. Establishing a “peer line” through which those in reentry can access peer support particularly for addiction treatment needs through a hotline;
3. Providing Medicaid reimbursement of peer support services;
4. Creating a single integrated license for the provision of addiction, mental health, and physical health care services;
5. Allowing reimbursement of multiple types of care services during a single visit; and
6. Accelerating the creation of a statewide HIE in New Jersey.

## II. Addiction Treatment

For individuals in reentry, securing treatment for addiction is—by far—their most pressing need upon release. While the causes of this may be complex, few things are more likely to kill an individual within days of release than a drug overdose. To better understand why this is and what solutions are possible, it is helpful to trace the journey of an individual with an active addiction through reentry.

With the opioid crisis now tearing through communities in our state faster than the HIV/AIDS epidemic at its peak,<sup>77</sup> individuals who are arrested are likely dependent on opioids such as oxycodone, heroin, or fentanyl. Upon incarceration access to these drugs will be abruptly curtailed. Without the drug, they will experience profound withdrawal—a constellation of symptoms ranging from severe body aches, chills, flushing, nausea, vomiting, and diarrhea—that is figuratively and literally gut-wrenching. Over days to weeks, their tolerance to opioids will wane, and their cravings for opioids will increase.

Although there are medications—buprenorphine, methadone, and naltrexone—that are effective at managing opioid withdrawal and cravings, the vast majority of correctional facilities in the country do not offer them. An investigative report by *The New York Times* found that fewer than 31 out of the over 5,100 prisons and

77 Lopez, German. “Drug Overdose Deaths Were So Bad in 2017, They Reduced Overall Life Expectancy.” Vox, November 29, 2018. <https://www.vox.com/science-and-health/2018/11/29/18117906/opioid-epidemic-drug-overdose-deaths-2017-life-expectancy>.

jails in the country offer these medicines—known as medication-assisted treatment (MAT)—to inmates.<sup>78</sup> The vast majority of those in prison or jail in New Jersey do not have access to MAT. This lack of access persists even though MAT has been proven to cut the risk of opioid overdose in half while also doubling the chance of recovery.<sup>79</sup>

As a result, upon release, those with opioid use disorder invariably relapse, overdose, and—all too often—die. A study published in *The New England Journal of Medicine* found that the risk of opioid overdose death during the first two weeks following release from prison or jail was 129 times greater than that of the general population.<sup>80</sup> Moreover, that estimate relied on data that is nearly two decades old—well before the flood of highly potent synthetic opioids like fentanyl into the drug supply—suggesting that the risk of opioid overdose death for those in reentry is almost certainly higher today than at the time of the study. Coupled with several of the other barriers to reentry detailed in this report, it is clear that reliable and robust access to addiction treatment and recovery services is one of the most pressing needs for those behind the wall and in reentry.

## **Addiction Treatment Behind the Wall**

### *Barriers to Entry*

A substance use disorder (SUD) is a medical condition in which the use of a substance negatively impacts the ability of an individual to live a healthy and productive life.<sup>81</sup> If that substance is alcohol and negatively impacts one's life (e.g. resulting in car accidents, family discord, job loss, or liver failure), then the associated condition is referred to as alcohol use disorder by healthcare providers. If that substance is an opioid and it similarly negatively impacts one's life, then the associated condition is referred to as opioid use disorder (OUD) by healthcare providers. Colloquially, these conditions are what many refer to as addictions.

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78 Williams, Timothy. "Opioid Users Are Filling Jails. Why Don't Jails Treat Them?" *The New York Times*. The New York Times, August 4, 2017. <https://www.nytimes.com/2017/08/04/us/heroin-addiction-jails-methadone-suboxone-treatment.html>.

79 Connery, Hilary Smith. "Medication-Assisted Treatment of Opioid Use Disorder." *Harvard Review of Psychiatry* 23, no. 2 (2015): 63-75. <https://doi.org/10.1097/hrp.0000000000000075>.

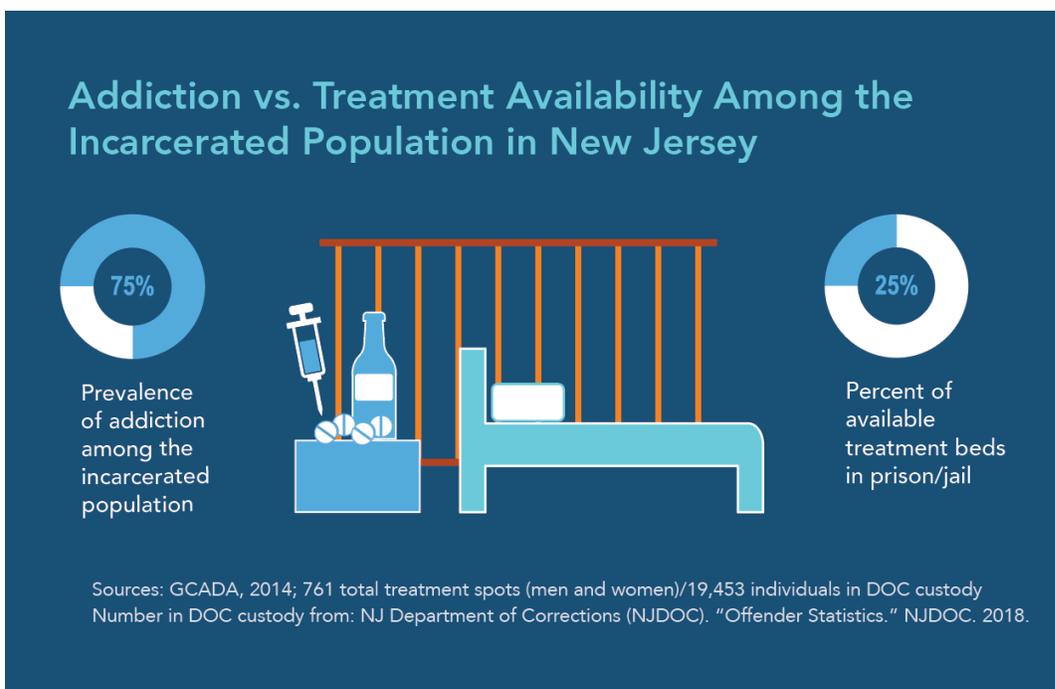
80 Binswanger, Ingrid A., Marc F. Stern, Richard A. Deyo, Patrick J. Heagerty, Allen Cheadle, Joann G. Elmore, and Thomas D. Koepsell. "Release from Prison – A High Risk of Death for Former Inmates." *New England Journal of Medicine* 356, no. 2 (November 2007): 157-65. <https://doi.org/10.1056/nejmsa064115>.

81 "Mental Health and Substance Use Disorders." Substance Abuse and Mental Health Services Administration (SAMHSA), April 13, 2019. <https://www.samhsa.gov/find-help/disorders>.

The prevalence of SUDs among those behind the prison or jail wall is high. Studies estimate that approximately three-quarters of those in state prisons suffer from SUDs,<sup>82</sup> and roughly one-quarter of those in state prisons suffer from OUD.<sup>83</sup> Moreover, studies suggest that the prevalence of SUDs and OUD is similar—if not higher—among the local jail population. The Bureau of Justice Statistics estimates that approximately two-thirds of those in jail suffer from a SUD,<sup>84</sup> and other experts find that as many as four out of five individuals in jail may have been under the influence of a substance, increasingly an opioid, when violating the law.<sup>85</sup>

These findings—particularly the number of those behind the wall with OUD—have several striking implications. First, opioids are potent drugs, and synthetic opioids such as fentanyl and carfentanyl are exceptionally potent drugs, with amounts as tiny as a grain or two of sand often resulting in overdose and death.<sup>86</sup> Recent statistics in New Jersey reflect the dangers these drugs pose. Between 2016 and 2017, New Jersey experienced a nearly 30 percent rise in overdose deaths (one of the five highest increases in the nation).<sup>87</sup> In 2018, the number of

overdose deaths in New Jersey climbed to over 3,100.<sup>88</sup> The flood of synthetic opioids into the drug supply is believed to be a key driver in the rising rates of overdose deaths, with deaths from fentanyl in New



82 GCADA, 2014.

83 Rich, J. & Satel, S. "Access to Maintenance Medications for Opioid Addiction is Expanding." Slate. 8 May 2018.

84 "Jail-Based Medication-Assisted Treatment," in The National Commission on Correctional Health Care, [Page 5], last modified October 2018, <https://www.ncchc.org/filebin/Resources/Jail-Based-MAT-PPG-web.pdf>.

85 Lilo H. Stainton, "State Expands Addiction Treatment for Prisoners," NJ Spotlight, last modified August 9, 2018, <https://www.njspotlight.com/stories/18/08/08/state-expands-addiction-treatment-for-prisoners/>.

86 Prekupec, Matthew P., Peter A. Mansky, and Michael H. Baumann. "Misuse of Novel Synthetic Opioids." *Journal of Addiction Medicine* 11, no. 4 (2017): 256–65. <https://doi.org/10.1097/adm.0000000000000324>.

87 "New Jersey Opioid Summary." National Institute on Drug Abuse (NIDA), May 22, 2019. <https://www.drugabuse.gov/opioid-summaries-by-state/new-jersey-opioid-summary>.

88 2018 NJ Suspected Drug Overdose Deaths. NJ Cares. Department of Law and Public Safety. <https://www.njcares.gov/pdfs/2018-NJ-Suspected-Overdose-Deaths-01.14.19.pdf>

Jersey exceeding the national average in recent years.<sup>89, 90</sup>

Second, the scourge of synthetic opioids increasingly concentrates the risks of an overdose in communities of color. An analysis of data from the Centers for Disease Control (CDC) by the *New York Times* found that opioid overdose deaths rose 45.8 percent for those who identified as white, 52.5 percent for those who identified as Hispanic, and 89.3 percent for those who identified as black between 2014 and 2016.<sup>91</sup> The increase was steepest among African-Americans between ages 45 and 64, with experts attributing the trend almost entirely to the increased availability of fentanyl.<sup>92</sup> Ultimately, such trends have made opioid overdose one of the leading causes of death among minorities, surpassing other common causes such as heart disease.<sup>93</sup>

Third, the dangers of synthetic opioids are particularly stark for those in reentry. As detailed above, the vast majority of those with OUD are forced to withdraw during incarceration. During this time, their tolerance wanes, and their cravings increase. Upon release, they invariably relapse, overdose, and—all too often—die. Studies estimate that roughly three-quarters of those with SUDs relapse within three months of release.<sup>94</sup> Coupled with a drug supply now flooded with highly-potent opioids, the risk of opioid overdose death within the first two weeks of release alone is over 129 times greater than that of the general population.<sup>95</sup> Such findings are all the more devastating in light of the fact that medication-assisted treatment (MAT)—the use of medications such as buprenorphine, methadone, and naltrexone to stem withdrawal, mitigate the loss of tolerance,

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89 New Jersey Fentanyl Death Statistics. Queried from CDC Wonder API. Data reported as Underlying Cause of Death, ICD-10 codes: X40-X44, X60-X64, X85, Y10-Y14; and Multiple Cause of Death, ICD-10 codes T40.4. <https://www.livestories.com/statistics/new-jersey/fentanyl-deaths-mortality>.

90 Curtis, Kaya, Forkey, Katie, Reynolds, Will. 3 Waves of the Rise in Opioid Overdose Deaths. New Jersey Opioid Addiction Report: A Modern Plague. 2018; 9. Accessed November 13, 2018. [http://njreentry.org/wp-content/uploads/2018/09/Published\\_9\\_24.pdf](http://njreentry.org/wp-content/uploads/2018/09/Published_9_24.pdf).

91 Bebinger, Martha. What Explains The Rising Overdose Rate Among Latinos? National Public Radio. 2018. Accessed November 13, 2018. <https://www.npr.org/sections/health-shots/2018/05/16/609814648/what-explains-the-rising-overdose-rate-among-latinos>.

92 Goodnough, Abby and Katz, Josh. The Opioid Crisis is Getting Worse, Particularly for Black Americans. The New York Times. 2017. Accessed November 13, 2018. <https://www.nytimes.com/interactive/2017/12/22/upshot/opioid-deaths-are-spreading-rapidly-into-black-america.html>.

93 Griffith, Clairmont, La France, Bernice, Bacchus, Clayton, and Ortega, Gezzer. The Effects of Opioid Addiction in the Black Community. Howard University Hospital and Howard University College of Medicine, Washington, US. International Journal of Collaborative Research on Internal Medicine & Public Health. Vol. 10 No. 2. 2018. Accessed November 13, 2018. <http://internalmedicine.imedpub.com/The-effects-of-opioid-addiction-on-the-black-community.pdf>.

94 Stainton, Lilo H. "State Expands Addiction Treatment for Prisoners." State Expands Addiction Treatment for Prisoners - NJ Spotlight, August 9, 2018. <https://www.njspotlight.com/stories/18/08/08/state-expands-addiction-treatment-for-prisoners/>.

95 Binswanger, Ingrid A., Marc F. Stern, Richard A. Deyo, Patrick J. Heagerty, Allen Cheadle, Joann G. Elmore, and Thomas D. Koepsell. "Release from Prison – A High Risk of Death for Former Inmates." *New England Journal of Medicine* 356, no. 2 (November 2007): 157-65. <https://doi.org/10.1056/nejmsa064115>.

and keep cravings at bay—have been shown to cut the risk of overdose in half and double the chance of recovery for those with OUD.<sup>96</sup>

Addiction treatment and recovery services are sorely lacking despite the clear need for such services behind the wall. There does not appear to be a standardized and universal approach to screening for SUDs upon intake to prison or jail. Statistical evidence indicates that upwards of three quarters of the prison population has an acute familiarity with drugs and alcohol. Considering the scope of addiction within the incarcerated population, it has been suggested the clinical assessment, treatment, and provision of ongoing monitoring in accordance with SAMSA “best practices” ought to be provided. Even in those prisons and jails that do offer MAT, the ability to provide it effectively appears to be limited by the failure to screen and treat co-occurring conditions such as hepatitis that could complicate the medical treatment of OUD.

Officials currently estimate that less than 800 individuals behind the wall are on MAT in a prison system of over 19,000 (likely over a quarter of whom have OUD and nearly three-quarters of whom have some form of SUD). The relative lack of MAT extends to other transitional settings overseen by the New Jersey Department of Corrections such as Residential Community Release Programs (RCRPs)—a network of twenty facilities with over 5,000 beds in which those behind the wall are transitioned into a residential community setting with supervision and an individualized treatment plan for six to twelve months before release—and is even more pronounced in local jails (whose population roughly equals that of state prisons).<sup>97 98 99</sup>

### ***Best Practices and Models***

To better meet the need for addiction treatment and recovery services behind the wall, several states have implemented systems to universally screen for SUDs and provide effective, evidence-based treatment behind the wall.<sup>100</sup> One of

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96 Connery, Hilary Smith. “Medication-Assisted Treatment of Opioid Use Disorder.” *Harvard Review of Psychiatry* 23, no. 2 (2015): 63–75. <https://doi.org/10.1097/hrp.0000000000000075>.

97 <https://reentrycoalitionofnj.org/about-reentry/>

98 Lilo H. Stainton, “State Expands Addiction Treatment for Prisoners,” *NJ Spotlight*, last modified August 9, 2018, <https://www.njspotlight.com/stories/18/08/08/state-expands-addiction-treatment-for-prisoners/>.

99 “DOH, DOC Commissioners Tout Medication-Assisted Treatment for Inmates.” Department of Health, August 6, 2018. <https://nj.gov/health/news/2018/approved/20180806a.shtml>.

100 *Ibid.*

the best-studied examples of such efforts come from Rhode Island.<sup>101</sup> The Rhode Island Department of Corrections (RIDOC) contracted with CODAC Behavioral Healthcare<sup>102</sup>--the state's largest and oldest nonprofit outpatient treatment provider for OUD--to screen individuals for OUD upon incarceration, provide evidence-based interventions, and ensure continued treatment upon release.<sup>103</sup> Central to their approach was establishing reliable and robust access to MAT to those behind the wall and upon release, including access to buprenorphine, methadone, and naltrexone. The results have been impressive, with a study by Greene and colleagues published in the *Journal of the American Medical Association* finding a 60.5 percent decrease in the risk of opioid overdose death upon release as a result of these changes.<sup>104</sup> Moreover, Rhode Island is one of only a few states in the nation that appears to have turned the tide on the opioid crisis among the general population. Many have cited its introduction of MAT behind the wall as essential to doing so.

Additional, yet more limited, examples of such efforts can be found in California and Massachusetts. In California, officials launched a pilot program where individuals with OUD in Sacramento County Jail were eligible to receive a naltrexone injection--a form of MAT which blocks the effects of opioids for 30 days--five weeks before release and then again one week before release.<sup>105</sup> A reentry officer must ensure that the individual has an appointment to receive his or her third shot of naltrexone in the community three weeks after release.<sup>106</sup> The reentry officer continues to check in with the individual and ensure that he or she can receive additional shots of naltrexone every month for up to six months post-release.<sup>107</sup> Based on the outcomes of the initial pilot project, the initiative was expanded and made available to all eligible individuals in Sacramento County Jail.<sup>108</sup>

In Massachusetts, officials launched a similar program in Franklin County

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101 Hsu, Andrea, and Ari Shapiro. "Rhode Island Prisons Push to Get Inmates The Best Treatment For Opioid Addiction." NPR. NPR, November 19, 2018. <https://www.npr.org/sections/health-shots/2018/11/19/668340844/rhode-island-prisons-push-to-get-inmates-the-best-treatment-for-opioid-addiction>.

102 <https://codacinc.org/about-2/>

103 Howard, Lauranne. "Substance Abuse Treatment Services." State of Rhode Island: Department of Corrections. Accessed August 16, 2019. [http://www.doc.ri.gov/rehabilitative/health/behavioral\\_substance.php](http://www.doc.ri.gov/rehabilitative/health/behavioral_substance.php).

104 Green TC, Clarke J, Brinkley-Rubinstein L, et al. Postincarceration Fatal Overdoses After Implementing Medications for Addiction Treatment in a Statewide Correctional System. *JAMA Psychiatry*. 2018;75(4):405-407. doi:10.1001/jamapsychiatry.2017.4614

105 "Jail-Based Medication-Assisted," [Pages 7-24].

106 Ibid.

107 Ibid.

108 Ibid.

Jail where an estimated 40 percent of the 220 inmates suffered from OUD.<sup>109</sup> There, jail staff worked to make buprenorphine—a form of MAT that helps stave off withdrawal and keep cravings at bay—available to those with OUD.<sup>110</sup> Over the next year, Franklin County experienced a 35 percent decrease in opioid overdose deaths.<sup>111</sup> Notably, Franklin was the only county in the state to do so. Although local officials have yet to conduct formal study of this decrease, the local sheriff firmly believes that increasing the availability of MAT behind the jail wall was critical to curbing opioid overdoses in the community.<sup>112</sup> Other sheriffs appear to have taken notice with seven other county jails in Massachusetts recently announcing that they will begin providing MAT at their facilities.<sup>113</sup> Advocates in the community, such as the local branch of the American Civil Liberties Union, have found the initiative so compelling that they filed a lawsuit to require other correctional facilities to expand access to MAT behind the wall in Massachusetts (with their counterparts in other states doing the same).<sup>114</sup>

One bright spot already within the prison system in New Jersey that incorporates some of the best practices from the initiatives mentioned above in Rhode Island, California, and Massachusetts is the Intensive Recovery Treatment Support (IRTS) Program. Rutgers University Behavioral Health Care currently administers this program in partnership with the New Jersey Department of Corrections and the New Jersey Division of Mental Health and Addiction Services. Through the program, individuals behind the wall with OUD meet with a peer health navigator six months before their release date to develop a plan to manage and treat their addiction upon reentry.<sup>115</sup> While data for the program is still under analysis, its principles reflect best practices, and anecdotal reports suggest it is effective. However, the scale of this program pales in comparison to the need. Currently, 400 individuals in state prisons are participating in the IRTS program, and 200 individuals in state prisons are receiving MAT through the IRTS program in a prison system of over 19,000 (likely over a quarter of whom have OUD and nearly three-quarters of whom have some form of SUD).

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109 Philip Marcelo, "Jails, prisons slowly loosen resistance to addiction meds," Associated Press, last modified August 7, 2018, <https://www.apnews.com/c594ad1b9a3a4dcd8b3bcf30bc1a4157>.

110 Ibid.

111 Ibid.

112 Ibid.

113 DiFazio, Joe. "Massachusetts Sheriffs Expand Opioid Treatment Pilot in Jails." The Patriot Ledger, Quincy, MA, September 6, 2019. <https://www.patriotledger.com/news/20190905/massachusetts-sheriffs-expand-opioid-treatment-pilot-in-jails>.

114 Philip Marcelo, "Jails, prisons slowly loosen resistance to addiction meds," Associated Press, last modified August 7, 2018, <https://www.apnews.com/c594ad1b9a3a4dcd8b3bcf30bc1a4157>.

115 Verbanas, Patti. "Rutgers Provides Hope for Ex-Offenders Navigating Recovery and a Life Beyond Bars." Rutgers Impact - Stories of Purpose, April 10, 2019. <https://impact.rutgers.edu/irts/>.

## Action Items

To meet the need for robust MAT treatment behind the wall, the Commission recommends:

1. Introducing a standardized and universal screen for SUDs in all correctional facilities at the time of intake;
2. Increasing access based upon individualized clinical recommendations to medication-assisted treatment in all prisons, jails, and transitional settings;
3. Increasing access to counseling and wraparound services in all prisons, jails, and transitional settings; and
4. Expanding the IRTS Program to meet the existing need in all prisons, jails, and transitional settings.

## Addiction Treatment Near Release

### *Barriers to Entry*

The period near release represents a critical opportunity to help meet individuals with SUDs secure addiction treatment and recovery services in anticipation of release. Several barriers, however, complicate their ability to do so. For example, the vast majority of prisons and jails in the country only short-term prescriptions that typically constitute no more than a two-week supply.<sup>116</sup> As a result, individuals in reentry are required to secure insurance, establish primary care, and attend a doctor's visit all in a matter of days to avoid running out of medications. Doing so is arguably challenging for those with well-established insurance and primary care. When coupled with the other barriers to reentry detailed later in this report—such as the failure to provide Medicaid cards upon release and the dearth of addiction medicine specialists in the community—the odds of individuals doing so on their own upon release is, at best, unlikely.

### *Best Practices and Models*

A review of programming in the months and weeks before release by the Substance Abuse and Mental Health Services Administration (SAMHSA), a branch of the United States Department of Health and Human Services and a widely-

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116 Substance Abuse and Mental Health Services Administration. Guidelines for Successful Transition of People with Mental or Substance Use Disorders from Jail and Prison: Implementation Guide. (SMA)-16-4998. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2017.

used resource for guidelines to treat SUDs, has brought three best practices into sharp relief: universal screening, comprehensive and individualized treatment, and linkages to continue care in the community.<sup>117</sup> Some of these practices were implicit to the examples mentioned above to treat OUD behind the wall in Rhode Island, California, and Massachusetts.

Embedding these practices into the policies and procedures in the run-up to release is particularly effective. Examples of it can be found in select jails in Georgia, Kentucky, and Massachusetts. In Georgia, the Gwinnett Reentry Intervention Program (GRIP) consists of a partnership between Gwinnett County Jail and roughly thirty community-based organizations to ensure continuity of care – including addiction needs – for those in jail nearing release.<sup>118</sup> In Massachusetts, the After-Incarceration Support System (AISS) coordinated by the Hampton County Jail provides a similar array of services with the help of peer navigators to assist those nearing release in developing individualized treatment plans and linking to providers in the community.<sup>119</sup>

### *Action Items*

To bridge the transition during the weeks prior to release, the Commission recommends:

1. Providing prescriptions for longer courses of MAT where permitted;
2. Connecting all individuals nearing release to coordinators (be they peer navigators or from existing reentry service organizations) to develop a comprehensive and individualized treatment plan prior to release; and
3. Establishing affiliation agreements between all correctional facilities and providers in the community to ensure coordination of care prior to release.

## **Addiction Treatment After Reentry**

### *Barriers to Entry*

Even after meeting the needs and barriers to addiction treatment,

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117 Substance Abuse and Mental Health Services Administration. Guidelines for Successful Transition of People with Mental or Substance Use Disorders from Jail and Prison: Implementation Guide. (SMA)-16-4998. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2017.

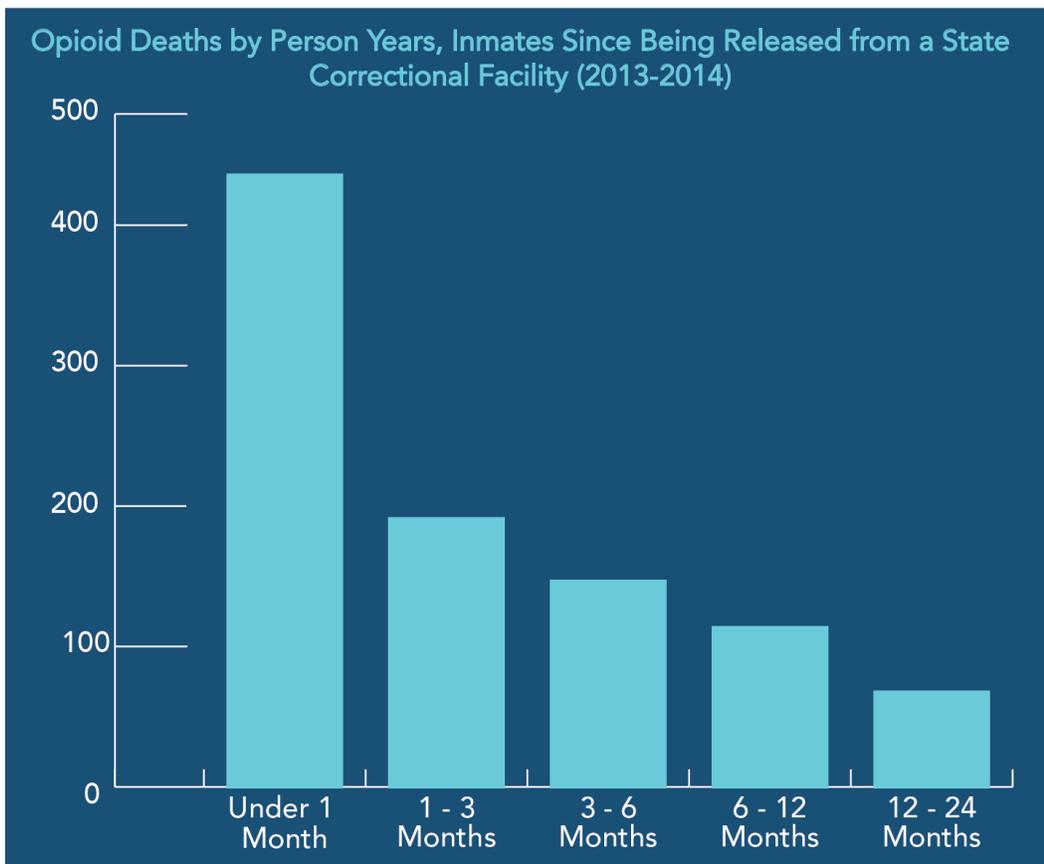
118 Ibid.

119 Ibid.

challenges to accessing it remain after reentry. Chief among these challenges is the dearth of high-quality addiction treatment and recovery services in the community, much less those who accept Medicaid. Reports by the New Jersey Department of Human Services and New Jersey Advance Media estimate that between forty and fifty percent of the demand for these services is unmet.<sup>120, 121</sup> Robust studies by national researchers, however, suggest that the reported need is between five to ten times the reported demand.<sup>122</sup> Regardless of the precise number, the existing availability of addiction treatment and recovery services in New Jersey appears far from sufficient.

Of the facilities that do exist, many do not adhere to best practices. Despite the robust evidence for the role of MAT in treating OUD, few facilities in New Jersey offer all three forms—buprenorphine, methadone, and naltrexone—of MAT to its patients. Moreover, many more facilities do not offer MAT. The induction of MAT behind the wall with continued access upon reentry provides a significant

opportunity to reduce the catastrophic probability of overdose and death. Without MAT, individuals with OUD simply endure withdrawal, have their tolerance wane, and have their cravings increase, and—all too often upon release—relapse, overdose, and die. The notion

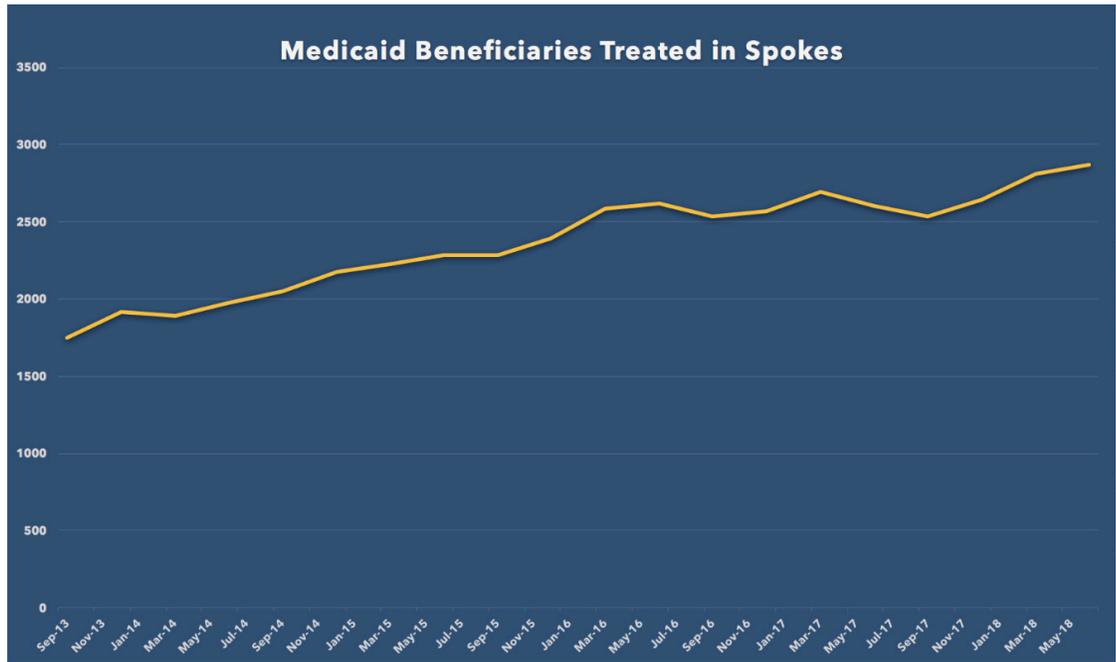


120 "Substance Abuse Overview 2016 Statewide," New Jersey Drug and Alcohol Abuse Treatment, last modified June 2017, <https://www.nj.gov/humanservices/dmhas/publications/statistical/Substance%20Abuse%20Overview/2016/statewide.pdf>.

121 Stephen Stirling, "The ugly truth about substance abuse treatment in N.J.," NJ.com, last modified July 18, 2017, [https://www.nj.com/healthfit/2017/07/state\\_quietly\\_tells\\_the\\_ugly\\_truth\\_about\\_substance\\_abuse\\_treatment\\_in\\_nj.html](https://www.nj.com/healthfit/2017/07/state_quietly_tells_the_ugly_truth_about_substance_abuse_treatment_in_nj.html).

122 Ibid.

that facilities that do not provide MAT likely increases the risk of opioid overdose death for its patients are both ironic and devastating, underscoring the need for evidence-based best practices in such settings.



For those in reentry, the scarcity of high-quality programs and providers is further complicated by the fact that few accept Medicaid (the health insurance that those in reentry are most likely to have). For example, in Essex County—one of the most populous counties in the state with over 800,000 residents and one of the highest rates of opioid overdose death—there appear only to be three MAT providers who accept Medicaid.<sup>123</sup> Anecdotally, these providers describe an overwhelming and unmet need for MAT in their communities, especially for Medicaid beneficiaries, and often remark that there is simply no place to refer individuals for treatment. The lack of places to refer those in need has led to initiatives to encourage starting MAT in the emergency room. While the appeal of emergency room is intuitive as they are open twenty-four hours a day and seven days a week, always have potential prescribers on-site, and cannot turn patients away based on insurance or ability to pay, many emergency room providers are reluctant to jump through the regulatory hoops to prescribe buprenorphine (elaborated in the next section) It also appears these providers are too frequently pulled away by other medical crises competing for their attention to earnestly treat OUD. As a result, those in reentry are likely to struggle to find high-quality addiction treatment and recovery services in the community unless already linked to it before release and otherwise assisted by a reentry program.

123 “Medication Assisted Maintenance Treatment for Substance Use Database,” nj211.oeg, <https://www.nj211.org/resource-search/taxonomy/RX-8450.5000/Essex>.

Where persons have difficulty in finding treatment, especially MAT based treatment, faith-based programs and community organizations can provide their free services. Alcoholics Anonymous and Narcotics Anonymous provide service via more than 118,000 groups worldwide.<sup>124</sup> These groups and the support that they offer, including any other services offered by faith-based organizations in the community, may stymie some of the horrible circumstances surrounding access to other treatment options.

### ***Best Practices and Models***

Cities, states, and countries have pursued several initiatives to increase the availability of MAT for those in the community. One of the most promising approaches has been the hub-and-spoke model. Vermont first developed this oft-cited model and focused on establishing “hubs” capable of treating and coordinating care for individuals with complex addiction needs.<sup>125</sup> Vermont has established nine such “hubs” and ensured that all had substantial experience in treating addictions, dispensed MAT daily, held counseling daily, and provided intensive case management.<sup>126</sup> Hubs also serve as a touchstone for “spokes” in the community—often primary care offices—that provide general medical care but also employ staff who could prescribe MAT and have received additional training in nursing, counseling, and caring for those in recovery.<sup>127</sup>

The management of addiction has begun to mirror that of many other complex conditions such as cancer because of this infrastructure. An individual with a new cancer diagnosis, for instance, is typically admitted to the hospital, undergoes a comprehensive assessment of his or her conditions, has an individualized treatment plan initiated by an experienced team of cancer specialists, and is discharged back into the community to continue treatment with periodic check-ins at their local clinic. Similarly, in Vermont an individual with a new OUD diagnosis is evaluated by the regional hub, undergoes a comprehensive assessment of his or her conditions, has an individualized treatment plan initiated by an experienced team of addiction specialists, and then

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124 “Alcoholics Anonymous FAQ” [https://www.aa.org/assets/en\\_US/p-2\\_faqAboutAA.pdf](https://www.aa.org/assets/en_US/p-2_faqAboutAA.pdf). 2011. Accessed September 15th, 2019.

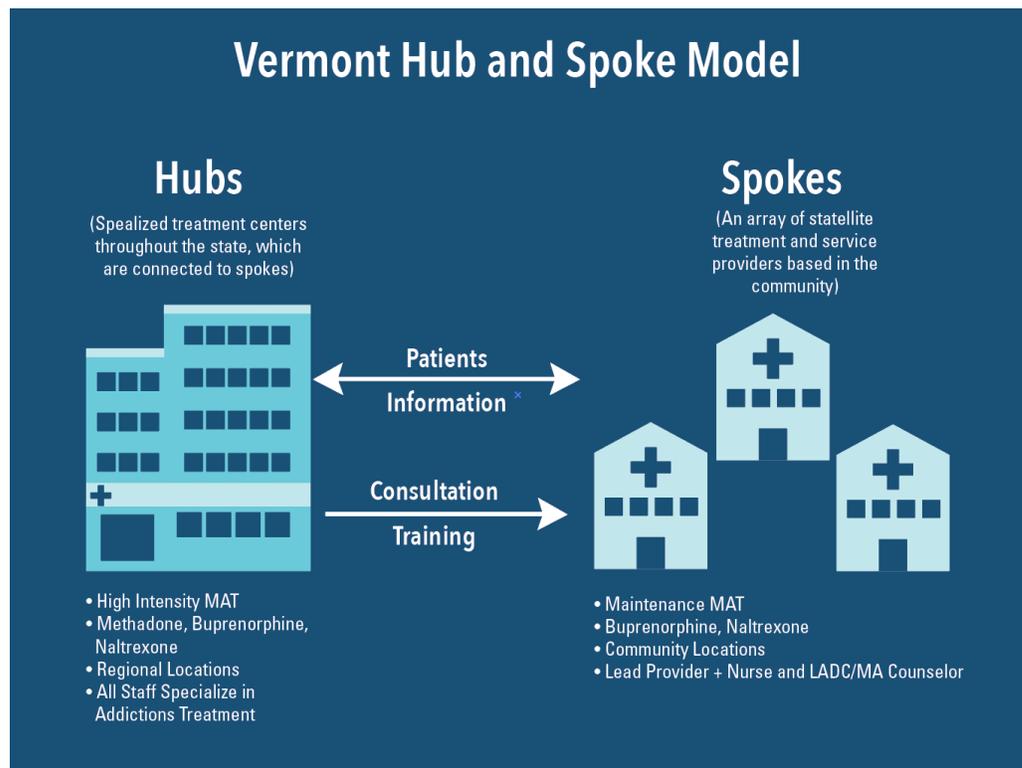
125 “Vermont Hub and Spoke.” State of Vermont Blueprint for Health, April 25, 2019. <https://blueprintforhealth.vermont.gov/about-blueprint/hub-and-spoke>.

126 Ibid.

127 Ibid.

has his or her care transferred back into the community to continue treatment with periodic check-ins at their local spoke. Addiction patients that return to the hub for more intensive treatment just as cancer patients may suffer complications and relapses that require them to return to the hospital for more complex treatment.

The results of the hub-and-spoke model have been impressive. Early analyses found that patients reported a 96 percent decrease in opioid use as well as a reduction in overdoses, family conflicts, and mood symptoms such as anxiety, anger, and depressions.<sup>128</sup> The number of individuals waiting for treatment in Vermont declined.<sup>129</sup> Additionally, the number of patients actively receiving treatment at hubs increased.<sup>130</sup> Individuals with Medicaid, in particular, reported better access to treatment and care,<sup>131</sup> while emergency department visits and police arrests related to opioid use dropped by 90 percent.<sup>132</sup> Analyses suggest that the hub-and-spoke model makes economic sense in addition to its clinical sense. An analysis of Medicaid claims data by the Vermont Department of Public Safety and The Joint Fiscal Office found that increasing access to MAT through this model resulted in more economic productivity and, in turn, tax revenue than the cost of such care.<sup>133</sup> The



128 "Hub & Spoke Model Evaluation 2017," Vermont Department of Health, last modified 2017, [http://www.healthvermont.gov/sites/default/files/documents/pdf/adap\\_HubSpokeEvaluationBrief.pdf](http://www.healthvermont.gov/sites/default/files/documents/pdf/adap_HubSpokeEvaluationBrief.pdf).

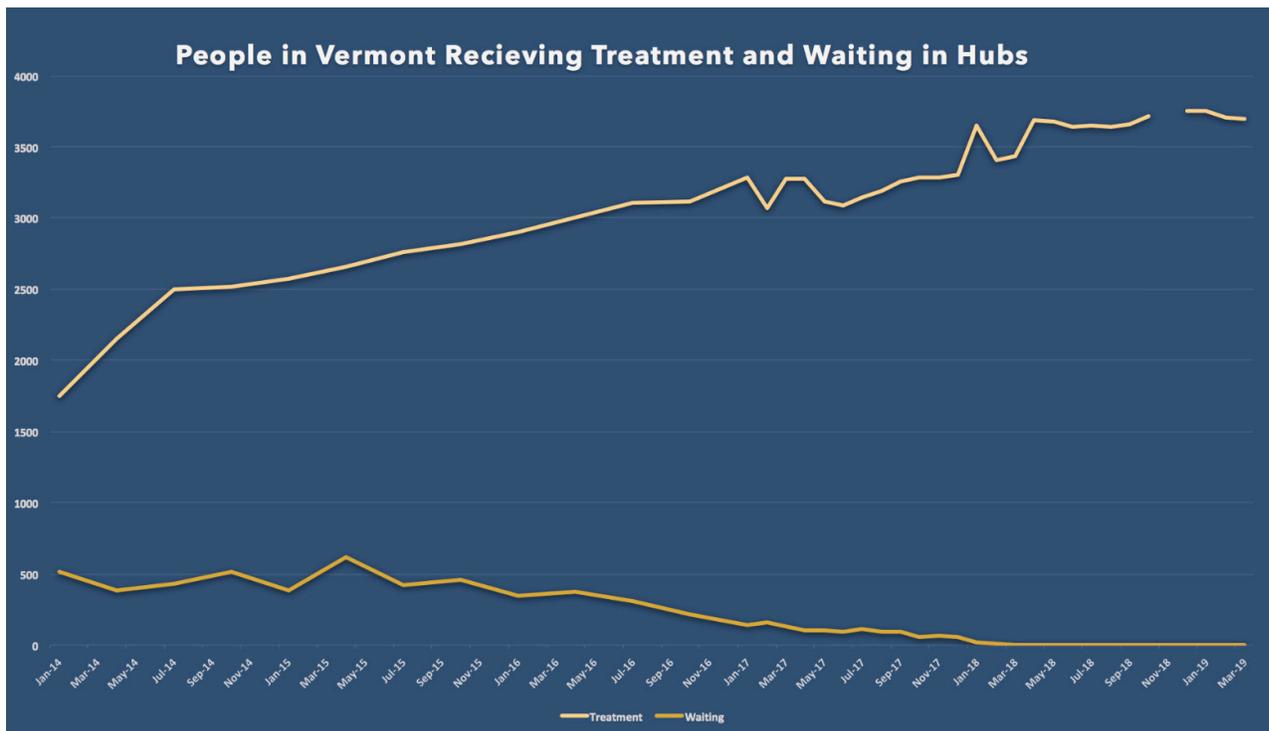
129 "Opioid Use Disorder Treatment Census and Wait List," Vermont Department of Health, last modified March 2019, [http://www.healthvermont.gov/sites/default/files/documents/pdf/ADAP\\_OpioidUseDisorderTreatmentCensusandWaitList.pdf](http://www.healthvermont.gov/sites/default/files/documents/pdf/ADAP_OpioidUseDisorderTreatmentCensusandWaitList.pdf).

130 "Opioid Use Disorder Treatment Census and Wait List," Vermont Department of Health, last modified March 2019, [http://www.healthvermont.gov/sites/default/files/documents/pdf/ADAP\\_OpioidUseDisorderTreatmentCensusandWaitList.pdf](http://www.healthvermont.gov/sites/default/files/documents/pdf/ADAP_OpioidUseDisorderTreatmentCensusandWaitList.pdf).

131 Ibid.

132 "Hub & Spoke Model Evaluation 2017," Vermont Department of Health, last modified 2017, [http://www.healthvermont.gov/sites/default/files/documents/pdf/adap\\_HubSpokeEvaluationBrief.pdf](http://www.healthvermont.gov/sites/default/files/documents/pdf/adap_HubSpokeEvaluationBrief.pdf).

133 Robin Joy and Marcia Bellas, "Vermont Results First: Inventory and Benefit-Cost Analysis for The Department of Health / Division of Alcohol and Drug Abuse Program's Medication Assisted Treatment for Opioid Use Disorder (Hub and Spoke)," in The Vermont Department of Public Safety and The Joint Fiscal Office, last modified December 2017, <https://blueprintforhealth.vermont.gov/sites/bfh/files/VT%20Results%20First%20Inventory%20and%20Benefit-Cost%20Analysis%20for%20percent->



economic benefit is even greater when coupled with the reduction in opioid-related diseases such as hepatitis and crime.<sup>134</sup> Similarly, a robust differences-in-difference analysis—which compared healthcare costs for those with OUD on MAT before and after the creation of the hub-and-spoke—found that healthcare costs dropped as a result of the model.<sup>135</sup> Such findings have compelled other states, such as New Hampshire<sup>136</sup> and West Virginia<sup>137</sup>, to implement similar models adapted to their unique geographies and challenges.

Third, knowing where and why to go to continue care can be challenging. Navigating the healthcare system is difficult, especially when providers may not accept your insurance. For those who have spent significant time behind the wall, there is even greater difficulty. Moreover, past interactions with healthcare providers are less than therapeutic for reasons ranging from the stigma surrounding incarceration—real or perceived—that may affect health professionals or perverse incentives within the correctional system that may discourage seeking healthcare. In the absence of a referral and instruction on where to seek care, too many individuals nearing release do so without having a clear sense of what to do

20the%20Hub%20and%20Spoke%20Model%202017.pdf.

134 Ibid.

135 "2016 Annual Report," in Vermont Blueprint for Health, last modified December 29, 2016, <https://blueprintforhealth.vermont.gov/sites/blueprint/files/BlueprintPDF/AnnualReports/Blueprint2016AnnualReport12.29.16.pdf>.

136 Karen Dandurant, "Hub and Spoke addiction treatment program launches in January," Seacoast, last modified December 27, 2018, <https://www.fosters.com/news/20181227/hub-and-spoke-addiction-treatment-program-launches-in-january>.

137 Erin L. Winstanley et al., "West Virginia's model of buprenorphine expansion: Preliminary results," in *Journal of Substance Abuse Treatment* (n.p., 2019), <https://www.sciencedirect.com/science/article/pii/S0740547219300595>.

next to access care.

Fourth, for those individuals who do manage to overcome these barriers, they do so only to discover that the healthcare provider does not have access to his or her medical records behind the wall creating gaps in his or her medical records. These important gaps in his or her medical records increase the risk of a medical error due to incomplete information. Ultimately, these challenges—the need for a Medicaid card, longer-term prescriptions, referral to a community-based provider, and access to correctional healthcare records—are not unique to New Jersey. Several states have found effective solutions.

### *Action Items*

To address the barriers to addiction treatment faced upon release, the Commission recommends:

1. Implementing a hub-and-spoke model with hubs available in each county;
2. Empowering and supporting pharmacist to provide maintenance dosing of MAT with specialist support on call; and
3. Establishing opioid treatment providers who are open twenty-four hours a day and seven days a week.

## **Licensing and Regulatory Barriers to Addiction Treatment**

### *Barriers to Entry*

The limited availability of MAT and especially buprenorphine is partly rooted in a byzantine and burdensome array licensing and regulatory barriers to its use. As noted above, buprenorphine is a form of MAT and is one of the most promising treatments available for opioid use disorder. Buprenorphine has been shown to cut the risk of opioid overdose in half and double the chance of recovery.<sup>138</sup> Moreover, it is relatively safe and does not require a medical specialist to prescribe it.<sup>139</sup> Despite these benefits, less than 4 percent of physicians can prescribe buprenorphine for opioid use disorder, and nearly half of all counties in the country do not have a single physician who can prescribe buprenorphine

138 Connery, Hilary Smith. "Medication-Assisted Treatment of Opioid Use Disorder." *Harvard Review of Psychiatry* 23, no. 2 (2015): 63–75. <https://doi.org/10.1097/hrp.0000000000000075>.

139 Haffajee, Rebecca L., Amy S.b. Bohnert, and Pooja A. Lagisetty. "Policy Pathways to Address Provider Workforce Barriers to Buprenorphine Treatment." *American Journal of Preventive Medicine* 54, no. 6 (2018). <https://doi.org/10.1016/j.amepre.2017.12.022>.

for opioid use disorder.<sup>140</sup> New Jersey is no exception. The scarcity of prescribers has contributed to the paucity of MAT generally and buprenorphine specifically in correctional settings, forcing certain jails in the region to scramble in search of potential providers.<sup>141</sup>

A close examination of the licensing and regulatory hurdles a healthcare provider must clear before prescribing buprenorphine shows why this paucity exists. To prescribe buprenorphine, healthcare providers must complete an eight-hour in-person course and apply for a waiver (often referred to as an “X waiver” or “Drug Addiction and Treatment Act (DATA) 2000<sup>142</sup> waiver”) from the federal Drug Enforcement Agency (DEA).<sup>143</sup> Processing the application for a waiver typically takes several months. After they receive a waiver, providers may prescribe buprenorphine to no more than thirty patients at a given time during their first year. For nurse practitioners and physician assistants, this limit remains in place indefinitely. Physicians may apply to raise their cap after one year. However, they are still limited to prescribing buprenorphine to no more than one hundred patients at a given time, even after raising the cap. Until recently, waived physicians in New Jersey also had to secure prior authorization—a time-and-labor-intensive process—from Medicaid before starting a patient on buprenorphine. The irony of being able to write prescriptions for seemingly inordinate amounts of highly-addictive opioids such as oxycodone without such barriers while not being able to write prescriptions for one of the most effective treatments for opioid addiction was not lost on many providers. For many, these restrictions simply reinforce the stigma of addiction and make one of the most promising medications for opioid use disorder woefully hard to obtain.<sup>144</sup>

### ***Best Practices and Models***

States around the country have highlighted ways in which these barriers can be reduced, removed, or overcome to ensure sufficient access to buprenorphine.

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140 Ibid.

141 Feldman, Nina. “Philadelphia Jail Scrambles to Find Doctors Who Can Prescribe Addiction Treatment.” WHYY, January 23, 2019. <https://whyy.org/articles/philadelphia-jail-scrambles-to-find-doctors-who-can-prescribe-addiction-treatment/>.

142 “DEA Requirements for DATA Waived Physicians (DWPs).” DEA Requirements for DATA Waived Physicians (DWPs). U.S. Department of Justice - Drug Enforcement Administration, n.d. [https://www.deadiversion.usdoj.gov/pubs/docs/dwp\\_buprenorphine.htm](https://www.deadiversion.usdoj.gov/pubs/docs/dwp_buprenorphine.htm).

143 “MAT Statutes, Regulations, and Guidelines.” Substance Abuse and Mental Health Services Administration (SAMHSA), September 9, 2019. <https://www.samhsa.gov/medication-assisted-treatment/statutes-regulations-guidelines>.

144 Haffajee, Rebecca L., Amy S.b. Bohnert, and Pooja A. Lagisetty. “Policy Pathways to Address Provider Workforce Barriers to Buprenorphine Treatment.” *American Journal of Preventive Medicine* 54, no. 6 (2018). <https://doi.org/10.1016/j.amepre.2017.12.022>.

First, states can encourage schools in the health professions to include specific training about OUD and MAT. Moreover, states can require that completing the eight hours of training required to obtain a waiver to prescribe buprenorphine is part of the curriculum. In doing so, schools can ensure an adequate pipeline of buprenorphine prescribers. The Warren Alpert School of Medicine at Brown University provides a quintessential example of how to accomplish this goal.<sup>145</sup> Second, for those providers already in practice, incentives to complete the required training and obtain a buprenorphine waiver can be put in place. These incentives can range from making it a part of mandatory continuing medical education (CME) requirements to monetary compensation to funding champions to encourage their fellow prescribers to get waived.<sup>146</sup> Third, to support those providers who are waived but have not yet mastered all the nuances of buprenorphine management, implementing Project Extension for Community Healthcare Outcomes (Project ECHO) may represent a convenient, reliable, and robust way to ensure that existing waivers are being used to their full extent.<sup>147</sup> Project ECHO makes use of regular telemedicine sessions that allow an addiction medicine specialist to provide their expert guidance to primary care providers.<sup>148</sup> Such a model might be particularly effective in relatively rural areas where the dearth of buprenorphine-waivered physicians may be more pronounced than more populated locales. Fourth, state officials from several states have begun calling for the full elimination of the buprenorphine waiver requirement and associated patient caps.<sup>149</sup>

### *Action Items*

To increase accessibility of addiction treatment within the state, the Commission recommends:

1. Requiring schools in the health professions to provide training about OUD

145 Mccance-Katz, Elinore F., Paul George, Nicole Alexander Scott, Richard Dollase, Allan R. Tunkel, and James McDonald. "Access to Treatment for Opioid Use Disorders: Medical Student Preparation." *The American Journal on Addictions* 26, no. 4 (October 2017): 316–18. <https://doi.org/10.1111/ajad.12550>.

146 Gordon, Adam J., Greg Kavanagh, Margaret Krumm, Rajeev Ramgopal, Sanjay Paidisetty, Minu Aghevli, Francine Goodman, Jodie Trafton, and Joseph Liberto. "Facilitators and Barriers in Implementing Buprenorphine in the Veterans Health Administration." *Psychology of Addictive Behaviors* 25, no. 2 (2011): 215–24. <https://doi.org/10.1037/a0022776>.

147 Komaromy, Miriam, Dan Duhigg, Adam Metcalf, Cristina Carlson, Summers Kalishman, Leslie Hayes, Tom Burke, Karla Thornton, and Sanjeev Arora. "Project ECHO (Extension for Community Healthcare Outcomes): A New Model for Educating Primary Care Providers about Treatment of Substance Use Disorders." *Substance Abuse* 37, no. 1 (February 2016): 20–24. <https://doi.org/10.1080/08897077.2015.1129388>.

148 Ibid.

149 Haffajee, Rebecca L., Amy S.b. Bohnert, and Pooja A. Lagisetty. "Policy Pathways to Address Provider Workforce Barriers to Buprenorphine Treatment." *American Journal of Preventive Medicine* 54, no. 6 (2018). <https://doi.org/10.1016/j.amepre.2017.12.022>.

and MAT, including the required training to apply for a waiver to prescribe buprenorphine;

2. Introducing incentives for existing prescribed to attend the required training to apply for a waiver to prescribe buprenorphine;
3. Implementing a Project ECHO model to encourage those with waivers to prescribe buprenorphine to use it fully and effectively; and
4. Supporting national advocacy efforts to remove limitations on waivers to prescribe buprenorphine as well as effort to repeal the requirement for such a waiver entirely.

## **NERA Exemption for Mental Health or Addiction Treatment**

### *Barriers to Reentry*

The No Early Release Act (NERA) mandates that individuals charged with certain offenses serve 85 percent of their sentences before being eligible for parole. However, an exemption to address acute mental health or substance use disorders would enable individuals to receive inpatient or community-based intensive outpatient mental health and substance use disorder treatment earlier and complete the remainder of their sentence on parole. Completion of these programs and treatments would facilitate a smoother transition into the community and lower recidivism rates. The reentry population is at an extremely heightened risk of relapse, overdose, and death as a result of lack of addiction treatment; this population is also at an increased risk when experiencing a mental health condition. As treatment for these types of disorders requires long-term and continuous services, beginning intensive treatment sooner, rather than waiting for the 85 percent completion requirement will allow for better integration of care. Although some prisons offer substance use disorder treatment, these plans are not as comprehensive in addressing co-occurring disorders and using evidence-based practices in altering treatment to the individual's specific needs, as it is typical of services offered in traditional rehabilitation centers.<sup>150</sup>

### *Best Practices and Models*

Pennsylvania implemented community-based Intensive Outpatient (IOP) and Non-Hospital Residential (NHR) programs designed to reduce the likelihood of recidivism by reducing the participants' substance dependence. This practice

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150 "Prisoners and Addiction." Drug Rehab. Accessed August 23, 2019. <https://www.drugrehab.com/addiction/prisoners/>.

provides both the necessary treatment and reduces prison overcrowding. Inmates that met the criteria for substance use disorder could volunteer to participate in these programs if they have served at least half of their sentence and had between six months and one year remaining on their prison terms.<sup>151</sup> Research into the outcomes of this program found that the recidivism rate was reduced by 12 percent.<sup>152</sup>

### *Action Items*

The Commission recommends repealing NERA and instead modifying sentences if an inmate meets clinical standards for transfer to inpatient or outpatient treatment services for mental health or substance use disorder.

### **Expand Swift, Certain, and Fair** *Barriers to Reentry*

Nationally, over 75 percent of parolees are rearrested within five years of release.<sup>153</sup> Violations present severe barriers to transitioning back into the community; these violations are fairly common as about one-third of those on parole and probation violate the terms of their supervision.<sup>154</sup> These high failure rates prevent individuals from fully integrating and forming lasting routines upon release from incarceration.

Additionally, as many drug convictions result in probation, probation departments are often overwhelmed with tremendous caseloads. As an alternative to consistently sanctioning violations, such as failed drug tests or missed probation appointments, probation officers and courts often allow repeat violations to go unsanctioned.<sup>155</sup> A system that enforces consistent and swift punishments with fair sanctions more effectively induces behavioral changes and promotes successful reintegration.<sup>156</sup>

151 "Intensive Outpatient Program (IOP) and Non-Hospital Residential (NHR) Program." Crime Solutions. October 10, 2017. Accessed August 23, 2019. <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=565>.

152 Zanis, David A., Frank Mulvaney, Donna Coviello, Arthur I. Alterman, Barry Savitz, and William Thompson. "The Effectiveness of Early Parole to Substance Abuse Treatment Facilities on 24-Month Criminal Recidivism." *Journal of Drug Issues* 33, no. 1 (January 1, 2003): 223-35. doi:10.1177/002204260303300109.

153 "Why Swift Certain & Fair?" Swift Certain Fair. Accessed August 23, 2019. <http://www.swiftcertainfair.com/why-swift-certain-and-fair/>.

154 Ibid.

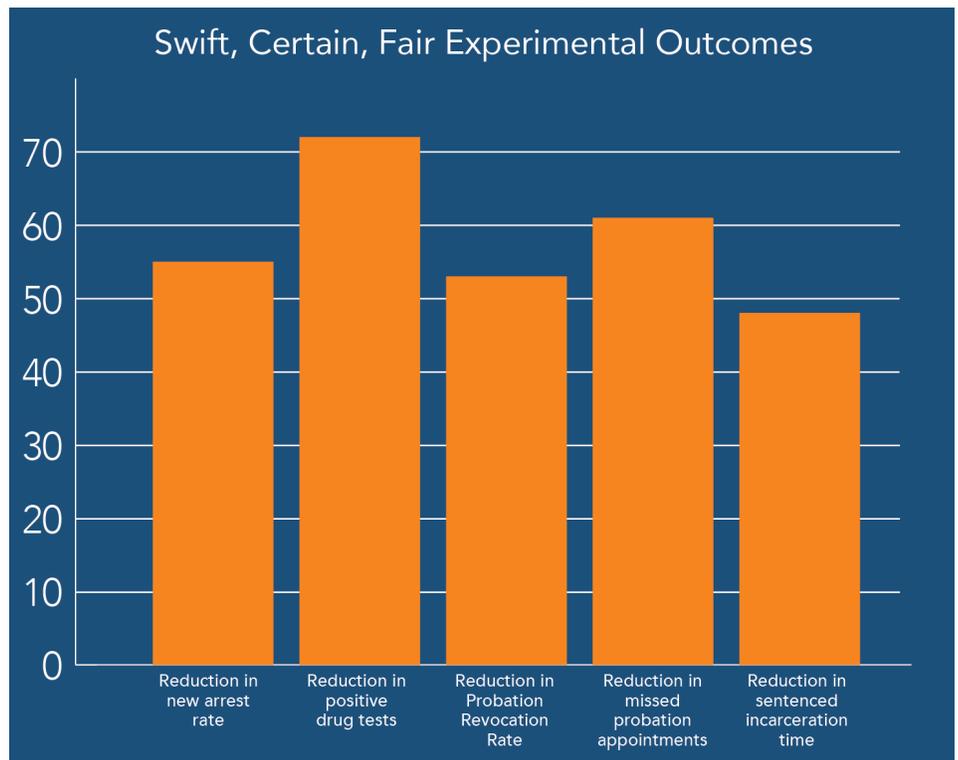
155 "Evaluation of HOPE Probation." August 1, 2008. Accessed August 23, 2019. <https://www.pewtrusts.org/en/research-and-analysis/reports/0001/01/01/evaluation-of-hope-probation>.

156 Ibid.

## Best Practices and Models

The theory of Swift, Certain, and Fair (SCF) for opioid-involved individuals focuses on immediate sanctions following the violation, consistency, and predictability of the consequences of a violation through a clearly-defined contract of expectations and punishments, and the avoidance of harsh punishment that impedes employment and reintegration upon recovery.<sup>157</sup> This methodology is cost-effective as the supervision structure is less intense for the most compliant individuals and more intense for those with more violations; therefore, resources are allocated to individuals with the most need.<sup>158</sup> Additionally, increasing the effectiveness of community supervision could decrease prison intakes by 30 to 40 percent by reducing technical parole violations.<sup>159</sup>

Washington, D.C. conducted an experiment testing the three methods of drug use intervention programs. First, Washington D.C. tested a standard docket acted as the control and continued to intervene in its routine manner using twice-weekly drug tests and judicial monitoring.<sup>160</sup> Second, the city treatment docket used a comprehensive treatment program that provided community programs to build self-esteem and skillsets.<sup>161</sup> Finally, it instituted a sanctions docket intervened with a SCF approach that penalized failed drug tests using a swift and certain approach and encouraged offenders



157 "Why Swift Certain & Fair?" Swift Certain Fair. Accessed August 23, 2019. <http://www.swiftcertainfair.com/why-swift-certain-and-fair/>.

158 Ibid.

159 Taxman, Faye S. "Chapter 12: Parole: Moving the Field Forward Through a New Model of Behavioral Management." SAGE Knowledge. Accessed August 23, 2019. [https://www.corwin.com/sites/default/files/upm-binaries/33009\\_12.pdf](https://www.corwin.com/sites/default/files/upm-binaries/33009_12.pdf).

160 Ibid.

161 Ibid.

to enter treatment.<sup>162</sup> The study found that participants in the sanction docket were significantly less likely than those on the standard docket to be re-arrested in the one year following the intervention program.<sup>163</sup> These participants were less likely to use drugs upon pretrial release and in the year following sentencing.<sup>164</sup> Participants reported that agreeing to consequences and expectations in advance provided a feeling of control.<sup>165</sup> Overall, the decrease in arrests of those in the sanctions docket resulted in a savings of \$2 for every \$1 spent on program funding and a total net benefit of \$713,570.<sup>166</sup> When SCF was implemented in Maryland, it calculated a return between \$2.30 and \$5.70 for every dollar in program costs.<sup>167</sup>

HOPE, a large-scale SCF program in Hawaii, touted significant improvements. The program involves regular random drug test and swift delivery of sanctions. Offenders receive notification of sanctions within days of the violation; jail terms do not exceed three days. Approximately 50 percent of the participants never received a sanction as they never violated after their initial warning hearing. The program is responsible for a reduction of failed drug tests of over 80 percent.<sup>168</sup> Other states implemented programs modeled in SCF methodology reported similar successful results: Alaska's PACE program saw a 48 percent decrease in failed or missed drug tests,<sup>169</sup> and Washington State's WISP program saw a 70 percent reduction in positive drug tests and, despite utilizing jail time as a sanction, the amount of jail time dropped by 63 percent.<sup>170</sup>

## Action Items

The Commission recommends expanding New Jersey's use of Swift, Certain, and Fair methodology in drug courts for opioid involved individuals.

162 Ibid.

163 Ibid.

164 Harrell, Adele, Shannon Cavanagh, and John Roman. "Evaluation of the D.C. Superior Court Drug Intervention Programs." National Institute of Justice. April 2000. Accessed August 23, 2019. <https://www.ncjrs.gov/pdffiles1/nij/grants/181894.pdf>.

165 Ibid.

166 Ibid.

167 Harrell, Adele, John Roman, Avinash Bhati, and Barbara Parthasarathy. "The Impact Evaluation of the Maryland Break the Cycle Initiative." Urban Institute Justice Policy Center. June 2003. Accessed August 23, 2019. <https://www.urban.org/sites/default/files/publication/59331/410807-The-Impact-Evaluation-of-the-Maryland-Break-the-Cycle-Initiative.PDF>.

168 Hawken, Angela, and Mark Kleiman. "Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE." U.S. Department of Justice. December 2009. <https://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>

169 Carns, T. W., & Martin, S. (2011). Anchorage PACE probation accountability with certain enforcement: A preliminary evaluation of the Anchorage pilot PACE project. Alaska Judicial Council.

170 Hawken, A. (2013). "WISP: What have we learned? Presentation to the Seattle City Council."

## **Federal Barriers to General Assistance**

### *Barriers to Entry*

Section 115 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“Welfare Act”), prohibits those convicted of felonies involving the possession, use or distribution of a controlled and dangerous substance from receiving both welfare benefits and federally-funded food stamps. Disqualifying a member of a family from applying for assistance severely hinders the family’s ability to secure assistance. If the family does happen to secure assistance, it is minimal because of the disqualified and ineligible member of the family.

This ban has detrimentally affected the addicted reentry population—those formerly incarcerated. Though states may opt out of the enforcement of Section 115, New Jersey has enacted a lifetime ban very similar to that of Section 115. With the exponential increase in felony offenses due to the opioid epidemic, this lifetime ban seriously hinders the quality of life of those formerly incarcerated looking to reintegrate back into the community successfully. “Cutting individuals off from assistance when they need it most—upon release from prison or during criminal probation—virtually compels them to return to drugs for lack of any other options.”<sup>171</sup> Currently, of the twenty-eight states with general assistance programs, New Jersey is one of only four states that deny benefits to individuals with drug convictions.

### *Best Practices and Models*

In 2015, California lifted the lifetime ban on receiving general assistance for those convicted of felony drug offenses. Before this, thousands of Californians were unable to receive basic public benefits due to their past criminal history. The California Association of Alcohol and Drug Program Executive has worked to lift this ban since its adoption. By eliminating the ban, California was able to boost consumer spending, stimulate local businesses and promote job growth.<sup>172</sup>

New Jersey passed the “Women and Families Strengthening Act” in 2010, which repealed the drug conviction ban for SNAP and TANF benefits, recognizing the need to assist individuals who have paid their debt to society and are

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171 Cynthia Godsoe, *The Ban on Welfare for Felony Drug Offenders: Giving a New Meaning to Life Sentence*, Vol. 13, *Berkeley Journal of Gender, Law & Justice*, p. 257, 1998.

172 <http://www.drugpolicy.org/blog/california-lifts-ban-public-assistance-people-drug-convictions>

struggling to reenter as productive citizens. This repeal, however, did not apply to general assistance under the Work First New Jersey program. Senator Sandra Bolden Cunningham has introduced legislation that revises the drug offender limitations on receiving general assistance.<sup>173</sup>

### *Action Items*

To ensure that the addicted formerly incarcerated population has the best possible chance to successfully reintegrate into society, the commission recommends:

1. Enacting into law “Revises treatment requirement for convicted drug offenders receiving general assistance benefits under Work First New Jersey program” (S60, Cunningham), which would lift the lifetime restriction and allow the addicted formerly incarcerated to receive basic public benefits.

## **III. Employment and Training**

Crucial to those returning from incarceration to their communities is employment. Employed individuals are significantly less likely to return to incarceration post-release as employment enables successful reintegration. However, employment, for various reasons, is often difficult or out of reach for those seeking reentry. Minimizing these difficulties offers the best chance for individuals to recidivate and offers societal benefits such as cost savings, increased tax revenue, and less provision of additional services.

The barriers to quality employment are staggering and often limit the ability of a recently incarcerated individual from obtaining employment, let alone discouraging the individual from even seeking such a quality of life improvement. One such barrier is the stigma associated with formerly incarcerated persons. Many employers will not even look at a candidate for a position if a conviction is present to say nothing of other additional disqualifications. Additionally, requirements of, for example, parole may hinder employability as schedules and requirements, such as curfew, often interfere with potential employment opportunities. Unfortunately, a lack of employment is often substituted with

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<sup>173</sup> <https://legiscan.com/NJ/bill/S601/2016>

other means to provide a living for oneself or family through criminal activity. Employment that enables individuals to provide for themselves and families prevents this return to criminal activity.

Another barrier to employment is education. Many former inmates do not have the educational opportunities required for an effective return to society. Educational programs can exist in many forms, from vocational training to even college courses. Unfortunately, the opportunities within prison facilities to integrate such programs that provide significantly higher employability are considerably lacking. There is a lack of consistency about the programs that individual facilities offer, even within New Jersey itself. As a result, 67 percent of individuals attempting to return to communal life do not even possess a high school diploma or GED, which, if provided with opportunity, one could earn while incarcerated with relative ease.

Further complicating matters are licensing requirements combined with these educational programs. First, a large portion of state-issued licenses contain Good Character Requirements—discussed in the Legal section of this report—that have unclear guidelines. Second, the programs of education that formerly incarcerated individuals are offered often teach skills that are only useable in employment if one can pass the Good Character Requirements. There exists a sad irony in this unfortunate situation.

These barriers can be knocked down by transforming existing or adding additional programs and supports to those already in place. Evaluating the best practices of other locations, New Jersey can effectively reinvent the employability of those seeking reentry into the community. By adopting these best practices, individuals will be able to successfully reintegrate and avoid recidivism while living as successful and productive members of the community.

## **Education and Training During Incarceration**

### **Vocational Training**

#### *Barriers to Reentry*

The New Jersey Department of Corrections (NJDOC) offers a Career and Technical Education Program that teaches inmates vocational skills, and awards inmates with certifications upon completion. In 2015, only 3,366

industry certifications were granted.<sup>174</sup> But, the inmates who received certificates represented only 22 percent of the prison population. In 2001, a study determined that only 23 percent of New Jersey's prisoners participated in an academic or vocational training program.<sup>175</sup> The participation percentage was identical to that of 1995.<sup>176</sup> Thus, from 1995 to 2015 there has been no significant change in the scope of implementation of educational and training programs. The number of inmates participating in vocational programs should be significantly higher because employability is a major detriment of successful reentry. Employability prevents recidivism.

Prison employment preparedness programming lacks consistency between facilities. Dependent on private organizations or individual grants for state funding, these programs do not possess the resources to provide vocational training for every inmate, with extensive waitlists for some programs.<sup>177</sup> As participation is voluntary, attending a class can be competitive.<sup>178</sup> As the median sentence length in New Jersey prisons is six years, all inmates should be leaving prisons with a GED, have begun working towards an advanced degree, and/or have received vocational training that will allow them to be competitive in the workforce.<sup>179</sup>

### ***Best Practices and Models***

A study conducted by the RAND Corporation analyzed the effectiveness of correctional education. The study found that individuals who participated in correctional programs for vocational training were 43 percent less likely to recidivate than those who did not.<sup>180</sup> This estimate controlled for other variables such as differences in motivation between correctional education recipients and non-recipients.<sup>181</sup> The study also found that inmates who participated in vocational

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174 Lanigan, Gary M. "Annual Report." State of New Jersey Department of Corrections, 2015. [https://www.nj.gov/corrections/pdf/annual\\_report/2015\\_Annual\\_Report.pdf](https://www.nj.gov/corrections/pdf/annual_report/2015_Annual_Report.pdf).

175 Travis, Jeremy, Sinead Keegan, and Eric Cadora. "A Portrait of Prisoner Reentry in New Jersey." Urban Institute, February 1, 2017. <https://www.urban.org/research/publication/portrait-prisoner-reentry-new-jersey>.

176 Ibid.

177 Anthonissen, Eric. "Incarceration, Education, Emancipation." The Atlantic. Atlantic Media Company, July 13, 2015. <https://www.theatlantic.com/education/archive/2015/07/incarceration-education-emancipation/398162/>.

178 Ibid.

179 "Frequently Asked Questions." State of New Jersey Department of Corrections, 2019. <https://www.state.nj.us/corrections/pages/FAQ.html>.

180 Davis, Lois M., Robert Bozick, Jennifer L. Steele, Jessica Saunders, and Jeremy N. V. Miles, Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults. Santa Monica, CA: RAND Corporation, 2013. [https://www.rand.org/pubs/research\\_reports/RR266.html](https://www.rand.org/pubs/research_reports/RR266.html). Also available in print form.

181 Ibid.

training were 28 percent more likely to obtain employment upon release than those individuals who did not receive vocational training.<sup>182</sup>

Providing vocational training and educational programming is a cost-effective practice in reducing recidivism. The reduced likelihood of re-incarceration creates significant savings for corrections. A \$1 investment in prison education decreases incarceration costs by \$4 to \$5 during the first three years following release.<sup>183</sup> Re-incarceration costs were \$8,700 to \$9,700 less per inmate who received education or training while imprisoned.<sup>184</sup> Additionally, a study by the RAND Corporation found that employers are approximately 21 percent more likely to hire a technically qualified individual in the reentry population if he or she also possessed a post-conviction certificate that verified work performance history.<sup>185</sup>

Research into best practices for corrections-based educational and vocational training indicates that longer and more extensive programs focusing on in-demand skills—preferably determined through input from employers—and follow-up with individuals upon release are the most effective practices.<sup>186</sup> Third Way, a national think tank, formulated seven guiding principles for effective workforce training programs and when implemented in correctional programs are conducive of lasting economic growth. These principles are to “actively engage local business, use labor market data to drive decisions, treat education like a job, connect people to careers, provide wrap-around student services, tap innovative funding sources, embrace evaluation.”<sup>187</sup>

As occupational training affects the employability of inmates upon release, the Department of Labor and Workforce Development (LWD) is deeply connected to the facilitation of these programs. Allocating funding from LWD to DOC allows

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182 “Education and Vocational Training in Prisons Reduces Recidivism, Improves Job Outlook.” RAND Corporation, August 22, 2013. <https://www.rand.org/news/press/2013/08/22.html>.

183 Davis, Lois M., Robert Bozick, Jennifer L. Steele, Jessica Saunders, and Jeremy N. V. Miles, *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults*. Santa Monica, CA: RAND Corporation, 2013. [https://www.rand.org/pubs/research\\_reports/RR266.html](https://www.rand.org/pubs/research_reports/RR266.html). Also available in print form.

184 “Education and Vocational Training in Prisons Reduces Recidivism, Improves Job Outlook.” RAND Corporation, August 22, 2013. <https://www.rand.org/news/press/2013/08/22.html>.

185 Hunt, Priscillia, Rosanna Smart, Lisa Jonsson, and Flavia Tsang, *Incentivizing Employers to Hire Ex-Offenders: What Policies Are Most Effective?*. Santa Monica, CA: RAND Corporation, 2018. [https://www.rand.org/pubs/research\\_briefs/RB10003.html](https://www.rand.org/pubs/research_briefs/RB10003.html).

186 Glassheim, Barbara. “A Guide to Evidence Based Prisoner Reentry Practices v. 1.” Michigan Prisoner Reentry Initiative (MPRI), June 2011. <https://www.sccmha.org/userfiles/filemanager/278/>.

187 Mazzara, Alicia, and Gabe Horwitz. “The 7 Habits of Highly Effective Workforce Programs – Third Way.” Third Way, July 7, 2014. <https://www.thirdway.org/report/the-7-habits-of-highly-effective-workforce-programs>.

the state to increase vocational training pre-release for in-demand industries. For example, Indiana’s Department of Corrections established a prison vocational education program under the guidance of the state’s Department of Workforce Development. Their extensive program offers classes led by Department of Education certified occupational specialists including experienced professionals in the fields of business technology, cosmetology or barbering, building trades, culinary arts, and master student/master employee.<sup>188</sup> An additional partnership between Indiana’s DOC and the U.S. Department of Labor (USDOL) created an apprenticeship program that provides useful on-the-job training through facility-based or Indiana Correctional Industries-based programs.<sup>189</sup> USDOL provides a Certificate of Completion to individuals who complete the training and work requirements. This certificate allows inmates to build skills as well as a meaningful work history to be a competitive employee upon release.

Likewise, a Vermont Workforce Development Partnership facilitated a three-year pilot program focused on successful transition into communities through building work history and social, cognitive, and vocational skills. Analysis into the effectiveness of the program concluded that the six-month recidivism rate was reduced by 20 percent among male participants and 40 percent among female participants.<sup>190</sup> The result was a significant improvement in employability; 91 percent of male participants and 92 percent of female participants finding employment within one month, compared to only 64 and 86 percent of the control population, respectively.<sup>191</sup> Additionally, the program increased employment retention as 95 percent of males and 92 percent of females retained employment, compared to 86 and 75 percent of the control group, respectively.<sup>192</sup>

Research indicates that increasing soft skills is essential to enhancing job-readiness. Developing positive habits such as ensuring punctuality, promoting professionalism on the job, and addressing conflicts with coworkers and superiors are crucial for workplace success.<sup>193</sup> Research into best-practices for developing these skills shows that motivational and attitudinal concerns

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188 “Programs.” Indiana Department of Correction. Accessed August 16, 2019. <https://www.in.gov/idoc/2799.htm>.

189 Ibid.

190 “Workforce Development Partnership.” Department of Corrections: Agency of Human Services. Accessed August 16, 2019. <https://doc.vermont.gov/programs/educational-programs/workforce-development-partnership>.

191 Ibid.

192 Ibid.

193 Duran, Le’Ann, Martha Plotkin, Phoebe Potter, and Henry Rosen. “Integrated Reentry and Employment Strategies: Reducing Recidivism and Promoting Job Readiness.” Justice Center: The Council of State Governments, September 2013. [http://csgjusticecenter.org/wp-content/uploads/2013/09/Final.Reentry-and-Employment.pp\\_.pdf](http://csgjusticecenter.org/wp-content/uploads/2013/09/Final.Reentry-and-Employment.pp_.pdf).

are best improved through structured learning experiences, such as soft skill and cognitive skill classes with the goal of a certificate of employability upon completion.<sup>194</sup> Individuals with a moderate level of soft skills could benefit from an apprenticeship or on-the-job programs overseen by program staff.<sup>195</sup>

### *Action Items*

To facilitate comprehensive vocational training during incarceration for every inmate to ensure formerly incarcerated individuals are competitive in the job market, the Commission recommends:

1. Forming a partnership between the New Jersey Department of Corrections and Department of Labor and Workforce Development in which the funding requirements and data on the interests and needs of inmates are shared;
2. Charging the Department of Labor and Workforce Development with identifying those employment opportunities for returning persons, which have minimal barriers, while possessing ample market demand;
3. Charging LWD in consultation with the Department of Corrections with designing training initiatives which comply with “best practices” and provide for certification of skill-based training;
4. Assessing inmates’ eligibility and programing needs upon entrance into the Department of Corrections;
5. Devising an individual plan that outlines goals for their time incarcerated based on their personal interests;
6. Conducting regular assessments of progress made toward achieving their goals;
7. Working with employers to train individuals while incarcerated with the understanding of an employment opportunity upon release, ensuring well-trained employees;
8. Expanding access to basic skills and literacy education that is integrated with vocational training and connected to post-secondary education; and
9. Focusing on improvement of soft skills through job training.

To incentivize participation in educational and vocational training during incarceration, the Commission also recommends:

1. Connecting participation in education and training to parole eligibility;

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194 Ibid.  
195 Ibid.

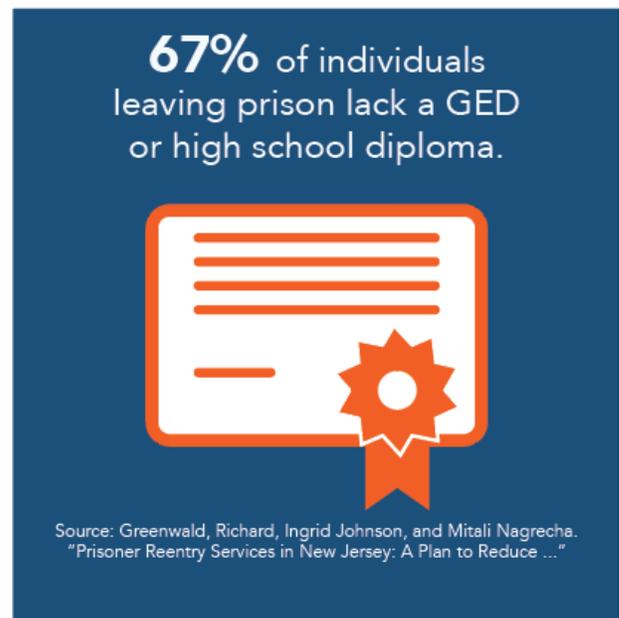
2. Scheduling business service representatives from local job markets to speak in prisons to explain the qualities and qualifications that are valued in the employment market.

## Post-Secondary Education

### *Barriers to Reentry*

Upon release from New Jersey prisons, individuals have an average sixth-grade reading level and fifth-grade mathematics level.<sup>196</sup> Sixty-seven percent of individuals leaving prison lack a GED or high school diploma.<sup>197</sup> Within New Jersey prisons that offer educational programs, waitlists for educational classes can reach three months. This extended period makes it difficult for inmates to obtain access. According to the 2015 New Jersey Department of Corrections Annual Report, only seven correctional facilities operate a post-secondary education program only operates in seven correctional facilities.<sup>198</sup> Only 688 incarcerated individuals were enrolled in degree-bearing college courses in 2015.<sup>199</sup> With a total of 15,193 inmates within New Jersey's prison complexes in that year, that means that only 4.5 percent of inmates were enrolled in post-secondary education programs.<sup>200</sup>

There are various programmatic barriers to providing college courses in correctional institutions. Professors are discouraged because of clearance requirements and resource restrictions. Professors are required to abide by lengthy and involved security protocols to be granted access into the correctional facilities. Such protocols decreased the number of professors that volunteer to teach in these environments. Restrictions on the resources permitted in classrooms further



196 Greenwald, Richard, Ingrid Johnson, and Mitali Nagrecha.

"Prisoner Reentry Services in New Jersey: A Plan to Reduce ..." Manhattan Institute for Policy Research. Accessed August 16, 2019. [https://media4.manhattan-institute.org/pdf/Prisoner\\_Reentry\\_Services\\_in\\_New\\_Jersey.pdf](https://media4.manhattan-institute.org/pdf/Prisoner_Reentry_Services_in_New_Jersey.pdf).

197 Ibid.

198 Lanigan, Gary M. "Annual Report." State of New Jersey Department of Corrections, 2015. [https://www.nj.gov/corrections/pdf/annual\\_report/2015\\_Annual\\_Report.pdf](https://www.nj.gov/corrections/pdf/annual_report/2015_Annual_Report.pdf).

199 Ibid.

200 Offender Statistics. New Jersey Department of Corrections. 2015. [https://www.state.nj.us/corrections/pdf/offender\\_statistics/2015/Total%20NJDOC%20Inmates%202015.pdf](https://www.state.nj.us/corrections/pdf/offender_statistics/2015/Total%20NJDOC%20Inmates%202015.pdf)

hinder the ability of colleges to provide meaningful education in prisons. Professors are extremely limited in their teaching because policies prohibit internet access on computers even during college classes. As a result, inmates cannot be taught basic computer literacy skills by professors. Therefore, tasks such as finding jobs, applying for aid, and becoming self-sufficient upon release is difficult. For example, college representatives cannot help inmates apply for Federal Pell Grants because the application is only accessible online.

### ***Best Practices and Models***

The research indicates access to higher education reduces recidivism and helps rebuild lives. Incarcerated individuals enrolled in college programs have 51 percent lower odds of recidivating compared to incarcerated individuals with lesser levels of education.<sup>201</sup> The Correction Association of New York found that college programs in prison positively affect behavior. In a study, prison administrators reported college programs provided incentives for good behavior, reduced tensions as well as violent interactions, and created a calm, well-spoken leadership within the prison that acted as a calming influence on other inmates.<sup>202</sup> California prisons offering college courses reported reduced violence in prison yards and safer work environments for corrections staff.<sup>203</sup>

Incarcerated individuals must not be resigned to ending their educational careers with a GED. Education is key to building the community. Correctional institutions must act as a rehabilitation facility, requiring as many opportunities to provide self-sufficiency upon release as possible. As students in prisons that receive a college education are more likely to be employed, expanding college access in prisons transforms “offenders” into contributing members of communities, taxpayers, and even leaders.<sup>204</sup> The Manhattan Institute found non-violent offenders that found employment exhibited recidivism rates 20 percent lower than those not gainfully employed. Creating degree pathways for incarcerated individuals who

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201 Davis, Lois M., Robert Bozick, Jennifer L. Steele, Jessica Saunders, and Jeremy N. V. Miles, Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults. Santa Monica, CA: RAND Corporation, 2013. [https://www.rand.org/pubs/research\\_reports/RR266.html](https://www.rand.org/pubs/research_reports/RR266.html). Also available in print form.

202 Anthamatten, Eric. “Incarceration, Education, Emancipation.” The Atlantic. Atlantic Media Company, July 13, 2015. <https://www.theatlantic.com/education/archive/2015/07/incarceration-education-emancipation/398162/>.

203 “Don’t Stop Now.” Corrections to College California, March 2018. <https://correctionstocollegeca.org/assets/general/dont-stop-now-report.pdf>.

204 Davis, Lois M., Robert Bozick, Jennifer L. Steele, Jessica Saunders, and Jeremy N. V. Miles, Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults. Santa Monica, CA: RAND Corporation, 2013. [https://www.rand.org/pubs/research\\_reports/RR266.html](https://www.rand.org/pubs/research_reports/RR266.html). Also available in print form.

want to continue their education is essential for those individuals to find work that is meaningful upon release.

California took significant strides forward in expanding access to college education in prisons. The state increased access to face-to-face, full-credit college courses from one prison to 34 of the 35 prisons.<sup>205</sup> Approximately 4,500 students are enrolled in these college pathway programs every semester.<sup>206</sup> Furthermore, students participating in in-prison college programs have consistently outperformed those students on campus in obtaining high grades and enthusiasm.

Similarly, the Massachusetts Department of Corrections developed and expanded a partnership with the Executive Office of Labor and Workforce Development (EOLWD).<sup>207</sup> Massachusetts bases educational programming on best practices in instruction and standardized curriculum. To participate in vocational training and post-secondary education, inmates must verify their GED or high school diploma. If an inmate does not meet this credential, the prisons offer a continuum of academic programming according to their level and needs. These levels include a three-level Limited English Proficiency Continuum and an Adult Basic Education Continuum that includes a curriculum through twelfth-grade. After completing these requirements, inmates advance to college and career readiness through partnerships with post-secondary educational organizations and vocational training programs.

New Jersey Scholarship and Transformative Education in Prisons Consortium (NJ-STEP), in conjunction with the State Corrections Department and the Parole Board also developed a successful program to provide a college education for incarcerated individuals in New Jersey. NJ-STEP works with four colleges and universities to provide professors in seven of the New Jersey prisons. The universities are Rutgers University, Drew University, Princeton University, and Raritan Valley Community College. The program assists students in registering for courses and completing financial aid paperwork. The recidivism rate is only

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205 "Don't Stop Now." Corrections to College California, March 2018. <https://correctionstocollegeca.org/assets/general/dont-stop-now-report.pdf>.

206 Ibid.

207 Camacho, Jamie. "Historical Overview Brief." Division of Inmate Training and Education. Massachusetts Department of Correction, November 2017. [https://www.mass.gov/files/documents/2017/12/22/Division\\_of\\_Inmate\\_Training\\_Education\\_Historical\\_Overview.pdf](https://www.mass.gov/files/documents/2017/12/22/Division_of_Inmate_Training_Education_Historical_Overview.pdf).

five percent for those enrolled in the program.<sup>208</sup> However, NJ-STEP can only accommodate a very small portion of New Jersey's prison population.

### *Action Items*

To facilitate comprehensive, advanced educational programs that allow for incarcerated individuals to receive credit toward or complete an associates/ bachelor's degree in the field in which they are passionate, the Commission recommends:

1. Coordinating with businesses, community colleges, and peer mentors to provide educational and employment counseling and an individual employment plan prior to release;
2. Developing a partnership between community colleges, vocational schools, and DOC to ensure that training courses carry credit and expand access to accommodate every incarcerated individual that wants continued education;
3. Allowing the use of computers during college courses taught in correctional facilities through monitoring and guard presence;
4. Expanding access to state tuition assistance and scholarships, including the Tuition Assistance Grant (TAG) Program and the Community College Opportunity Grant (CCOG) for individuals who are incarcerated; and
5. Updating and streamlining clearance procedures for professors to encourage participation in a college program.

## **Employment Post-Release Employers Unwilling to Hire Reentry Population**

### *Barriers to Reentry*

For many individuals leaving incarceration, finding and retaining employment is one of the largest barriers to successful reintegration.<sup>209</sup> Research has revealed that 60 to 75 percent of individuals are unemployed up to one year following release.<sup>210</sup> However, obtaining meaningful employment early after

208 Hill, Michael. "NJ-STEP Program Lets Inmates Earn Degrees: Video." NJTV News, January 28, 2016. <https://www.njtvonline.org/news/video/nj-step-program-lets-inmates-earn-degrees/>.

209 Holzer, Harry J., Steven Raphael, and Michael A. Stoll. "Can Employers Play a More Positive Role in Prisoner Reentry?" The Urban Institute, March 20, 2002. <https://www.urban.org/sites/default/files/publication/60761/410803-Can-Employers-Play-a-More-Positive-Role-in-Prisoner-Reentry-.PDF>.

210 "Employment Tax Incentives and Ex-Offender Health." The Network for Public Health Law, November 2017. [https://www.networkforphl.org/\\_asset/nr8gvm/Tax-Incentives-Ex\\_Offenders---Policy-Brief.pdf](https://www.networkforphl.org/_asset/nr8gvm/Tax-Incentives-Ex_Offenders---Policy-Brief.pdf).

release is essential to reducing recidivism and achieving independence. Research studying how wages affect recidivism in the year following release shows that the probability of re-incarceration was eight percent for those who earned more than \$10 per hour, yet 23 percent for those who were unemployed.<sup>211</sup> This finding is consistent with a long-held labor economic theory that suggests employment and criminal offenses are substitutes; an individual unable to find sustainable, legal employment, will instead be forced to engage in illegal activity to make ends meet.<sup>212</sup>

The Federal Work Opportunity Tax Credit (WOTC) allows businesses to receive tax credits for hiring employees who traditionally face barriers to employment.<sup>213</sup> However, the WOTC program seeks to address many affected populations and fails to provide monetary gains that would incentivize the hiring of formerly incarcerated individuals over other affected populations despite studies that prove that those with criminal records face the most difficulty of any group in finding employment.<sup>214</sup> A maximum tax credit of \$2,400 is granted to businesses that hire an ex-felon; however, the same amount is offered for hiring a NJ SNAP recipient, a veteran who has been unemployed for at least four weeks within the year prior, a short-term Temporary Assistance for Needy Families (TANF) recipient, a vocational rehabilitation referral, a Supplemental Security Income (SSI) recipient, or an individual who has been long-term unemployed.<sup>215</sup> Larger maximums are also offered for other target groups with the highest incentives being \$9,000 for a long-term TANF recipient and \$9,600 for a disabled veteran unemployed for at least six months.<sup>216</sup>

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211 Visher, Christy, Sara Debus, and Jennifer Yahner. "Employment after Prison: A Longitudinal Study of Releases in Three States." Urban Institute Justice Policy Center, October 2008. <https://www.urban.org/sites/default/files/publication/32106/411778-Employment-after-Prison-A-Longitudinal-Study-of-Releasees-in-Three-States.PDF>.

212 Doleac, Jennifer L. "Strategies to Productively Reincorporate the Formerly-Incarcerated into Communities: A Review of the Literature." Institute of Labor Economics (IZA), June 2018. <https://www.iza.org/publications/dp/11646/strategies-to-productively-reincorporate-the-formerly-incarcerated-into-communities-a-review-of-the-literature>.

213 "Work Opportunity Tax Credit (WOTC)." State of New Jersey Department of Labor and Workforce Development. Accessed August 16, 2019. [https://careerconnections.nj.gov/careerconnections/hire/hiring/wotc/work\\_opportunity\\_tax\\_credit.shtml](https://careerconnections.nj.gov/careerconnections/hire/hiring/wotc/work_opportunity_tax_credit.shtml).

214 Duran, Le'Ann, Martha Plotkin, Phoebe Potter, and Henry Rosen. "Integrated Reentry and Employment Strategies: Reducing Recidivism and Promoting Job Readiness." Justice Center: The Council of State Governments, September 2013. [http://csgjusticecenter.org/wp-content/uploads/2013/09/Final.Reentry-and-Employment.pp\\_.pdf](http://csgjusticecenter.org/wp-content/uploads/2013/09/Final.Reentry-and-Employment.pp_.pdf).

215 "Work Opportunity Tax Credit (WOTC)." State of New Jersey Department of Labor and Workforce Development. Accessed August 16, 2019. [https://careerconnections.nj.gov/careerconnections/hire/hiring/wotc/work\\_opportunity\\_tax\\_credit.shtml](https://careerconnections.nj.gov/careerconnections/hire/hiring/wotc/work_opportunity_tax_credit.shtml).

216 Ibid.

## Best Practices and Models

Six states provide state-funded tax credits for businesses that hire individuals with criminal records. California offers tax credits equal to 50 percent of qualified wages in the first year of employment with the credit decreasing by 10 percent of wages each year for the next four years.<sup>217</sup> A tax credit of 65 percent of wages paid in the first year of employment, up to \$20,000, is offered to employers that hire an individual convicted of any felony, or is currently on probation, parole, or is participating in a work-release program.<sup>218</sup> Employers in Louisiana, Maryland, and Texas also receive similar tax incentives under state requirements.<sup>219</sup> Apprenticeship programs also allow individuals to build skill sets and earn wages, and many programs also provide apprentices with a certificate or license that enables individuals to work in the field.<sup>220</sup> In May 2019, Maryland enacted a bill to establish the Apprenticeship Career Training Pilot Program for formerly incarcerated individuals.<sup>221</sup> The Department of Labor, Licensing, and Regulation is administering the pilot program as well as offering grants to employers who hire qualified formerly incarcerated apprentices.<sup>222</sup> Connecting these individuals with on-the-job training and networking opportunities is a step toward achieving success upon release. These opportunities are enormously important because, as a 2016 report from the Center for Economic and Policy Research paper estimates, formerly incarcerated men contribute 1.6 to 1.8 percentage points to the national male unemployment rate.<sup>223</sup>

A report on policy Action Items compiled by the State of Georgia to increase employment opportunities for ex-offenders recommends that state agencies set a precedent in hiring formerly incarcerated individuals.<sup>224</sup> The report outlines the many purposes served by allowing these individuals access to state jobs

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217 "State Tax Credits." National HIRE Network. Accessed August 23, 2019. <https://hirenetwork.org/content/state-tax-credits>.

218 Ibid.

219 Ibid.

220 "Apprenticeships." CareerOneStop. February 01, 2017. Accessed August 23, 2019. <https://www.careeronestop.org/ExOffender/GetTraining/TypesofTraining/apprenticeships.aspx>.

221 "MD - HB1167." BillTrack50. Accessed August 23, 2019. <https://www.billtrack50.com/BillDetail/1061446>.

222 "House Bill 1167: Labor and Employment - Apprenticeship Career Training Pilot Program for Formerly Incarcerated Individuals." Department of Legislative Services. 2019. Accessed August 23, 2019. [http://mgaleg.maryland.gov/2019RS/fnotes/bil\\_0007/hb1167.pdf](http://mgaleg.maryland.gov/2019RS/fnotes/bil_0007/hb1167.pdf).

223 Engel, Emily, Steve Kuehl, and Mark O'Dell. "Employment Challenges for the Formerly Incarcerated." ProfitWise News and Views. 2016. Accessed August 23, 2019. <https://www.chicagofed.org/~media/publications/profitwise-news-and-views/2016/pnv-issue2-2016-employment-article2-pdf.pdf>.

224 Schulte, Michael, and Eric Cochling. "Increasing Employment Opposites for Ex-Offenders." Georgia Center for Opportunity. December 2013. Accessed August 23, 2019. <https://georgiaopportunity.org/assets/2014/10/GCO-Report-workforce-web.pdf>.

such as providing qualified individuals with new career opportunities, building skills to change the trajectory of their lives, and also encouraging the private sector to follow the state's lead. Private employers are more inclined to hire these individuals as they witness the state's willingness to take a calculated risk to hire these individuals and the success that results from these hires.

Faith-based organizations, many of whom already offer services to the unemployed, can further offer assistance within the community. Such organizations have an established history within the United States of providing aid to those and helping them get back on their feet. As integrated pillars of the community, faith-based organizations can provide references or direct individuals to employment opportunities. The value in these organizations is that they exist within the community; offering direction for the members of their community seeking effective reentry and avoiding recidivism.

### *Action Items*

To expand the employment opportunities available to formerly incarcerated individuals, the Commission recommends:

1. Establishing higher state-funded tax credits for employers that hire formerly incarcerated individuals that are phased in over time to encourage long-term and stable employment;
2. Instituting an apprenticeship program upon release;
3. Providing pre-apprenticeship programs to accommodate those requiring remedial academic, technical, and soft skills;
4. Limiting restrictions on occupational licenses for individuals with criminal records (See Legal); and
5. Leading by example by mandating a quota or a good faith effort to hire from reentry population for public contractors and state employers.

## **Unable to Fulfill Work Requirements**

### *Barriers to Reentry*

Of the individuals released between 2002 and 2006 that could not secure any employment during their supervised release period, 50 percent committed

a new crime or violated the terms of their supervision and returned to prison.<sup>225</sup> Comparatively, 93 percent of the individuals employed during the entirety of their supervised release period successfully reintegrated into society and did not return to prison.<sup>226</sup> Despite the importance of stable employment during this period, employment restrictions and disruptions caused by parole make it difficult to retain stable employment. Anecdotal evidence shows that strict restrictions on residence and employment make it nearly impossible for some individuals to earn an honest living. Uncompromising curfews present serious barriers to employment as industries most willing to hire individuals from the reentry population, such as construction and factory jobs, often require employees to work during late night or early morning. Parole officers unwilling to make curfew exceptions for employment force individuals to decline opportunities. Parolees often cannot accept a job offer because the work-hours would prevent the individual from reporting.<sup>227</sup> Meetings with parole officers during work-hours can strain parolees' ability to remain employed as these meetings interfere with their ability to work.<sup>228</sup> Additionally, a large percentage of parolees have a suspended driver's license.<sup>229</sup> As 86 percent of Americans drive to their place of employment, and it is common for employers to require proof of a valid driver's license when considering hiring an individual; suspending licenses of parolees makes finding and maintaining employment more difficult.<sup>230</sup>

### ***Best Practices and Models***

As employment during parole, probation, and Residential Community Release Program (RCRP) is a major contributor to reintegration success, some states have reformed their systems by reducing supervision requirements.<sup>231</sup>

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225 "Project H.O.P.E. Re-Entry Initiative." The United States Department of Justice. March 06, 2018. Accessed August 23, 2019. <https://www.justice.gov/usao-sdal/programs/ex-offender-re-entry-initiative>.

226 Ibid.

227 Scott-Hayward, Christine S. "The Failure of Parole: Rethinking The Role of the State in Reentry." Prison Legal News. Fall 2011. Accessed August 23, 2019. [https://www.prisonlegalnews.org/media/publications/scott-hayward\\_the\\_failure\\_of\\_parole\\_rethinking\\_the\\_role\\_of\\_the\\_state\\_in\\_reentry.pdf](https://www.prisonlegalnews.org/media/publications/scott-hayward_the_failure_of_parole_rethinking_the_role_of_the_state_in_reentry.pdf).

228 Simon, Ruth. "'I Don't Want to See Him Fail': A Firm Takes a Chance on Ex-Inmates." The Wall Street Journal. May 14, 2019. Accessed August 23, 2019. <https://www.wsj.com/articles/i-dont-want-to-see-him-fail-a-firm-takes-a-chance-on-ex-inmates-11557845943>.

229 Shade, Damion. "Parole Is Broken in Oklahoma. Here's How We Fix It." Oklahoma Policy Institute. May 2, 2019. Accessed August 23, 2019. <https://okpolicy.org/parole-is-broken-in-oklahoma-heres-how-we-fix-it/>.

230 Aiken, Joshua. "Reinstating Common Sense: How Driver's License Suspensions for Drug Offenses Unrelated to Driving Are Falling out of Favor." Prison Policy Initiative. December 12, 2016. Accessed August 23, 2019. <https://www.prisonpolicy.org/driving/national.html>.

231 Scott-Hayward, Christine S. "The Failure of Parole: Rethinking The Role of the State in Reentry." Prison Legal News. Fall 2011. Accessed August 23, 2019. [https://www.prisonlegalnews.org/media/publications/scott-hayward\\_the\\_failure\\_of\\_parole\\_rethinking\\_the\\_role\\_of\\_the\\_state\\_in\\_reentry.pdf](https://www.prisonlegalnews.org/media/publications/scott-hayward_the_failure_of_parole_rethinking_the_role_of_the_state_in_reentry.pdf).

California implemented an evidence-based policy of allowing individuals with a low risk of reoffending to be on parole without supervision or conditions.<sup>232</sup> The state-based this reform on research that concluded non-supervision of low-risk offenders does not increase recidivism.<sup>233</sup> Research has also found that requiring the participation of these individuals in treatment programs increases the likelihood of reoffending and makes reintegration less successful.<sup>234</sup> Intense supervision often causes individuals to lose or decline job opportunities and disrupt the reformation of family connections.<sup>235</sup> The Washington Department of Corrections also ended the supervision of low-risk parolees.<sup>236</sup>

### *Action Items*

To promote employment retention during supervised release, the Commission recommends:

1. Limiting restrictions and disruptions on employment for individuals on parole and probation and in RCRP and community programs;;
2. Working with individuals to schedule community and reentry program appointments and other requirements around work schedules; and
3. Limiting visits by parole officers and Special Investigations Division to when there is a serious concern.

## IV. Legal

The legal barriers of successful reintegration into the community by formerly incarcerated persons are interdependent upon one another. The effects of one legal barrier build upon another, creating an increasingly deeper hole that the individual is unable to escape. With no hope, there is a significant increase in the likelihood of recidivism among those who face these substantial legal barriers.

Most of these barriers relate to the financial burdens that these individuals face resulting from economic circumstances that have spiraled out of control. Child support debts might continue to accrue while a person is incarcerated,

232 CAL. PENAL CODE § 3000.03 (West 2010).

233 Lowenkamp, Christopher T., and Edward J. Latessa. "Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders." *Topics in Community Corrections*. 2004. Accessed August 23, 2019. [https://www.ncsc.org/~media/Microsites/Files/PJCC/H\\_RiskPrinciple.ashx](https://www.ncsc.org/~media/Microsites/Files/PJCC/H_RiskPrinciple.ashx).

234 Ibid.

235 Ibid.

236 WASH. REV. CODE § 9.94A.500 to 640.

possibly due to a lack of knowledge about the ability to modify or postpone such arrangements. Following incarceration, these debts continue to follow the individual, which also places burdens on the child(ren) receiving those supports. Wages may be garnished for up to 65 percent of a person's earnings, further providing more financial hindrance and disincentive to work that hinders the ability of the individual to reintegrate successfully.

From there, significant fines, fees, and warrants may pile onto the individual. Fines are often attached to various fees. Fees exist for the application to obtain a public defender. Court costs can be added on to an individual's tab. Late fees may then apply, adding to the total. The spiral continues as persons cannot escape the financial burden thrust upon him or her by a system that (1) provides no way out; (2) does not inform individuals of fees such as the public defender application fee; or (3) does not notify individuals of available assistance. The spiral continues.

Additionally, identification requirements often hinder a person's successful reentry into the community. Driver's licenses, for example, are critical to continued and gainful employment as a substantial majority of the population uses individualized transportation for work. Most suspended licenses in New Jersey are unrelated to traffic violations and are the result of some other circumstance such as failure to pay child support and fines. Many employers or service providers also require proper identification. This proper identification is often not provided to individuals upon release. The spiral and cycle continue because debts may prevent a person from obtaining a license. Not having a license may prevent the repayment of substantial debts. Then, those debts continue to accumulate, increasing financial burdens. All of this multiplies the chances of recidivism.

Good Moral Character requirements for state-issued licenses required for employment further exasperate the situation. These often-unclear requirements significantly limit the possible roles for those attempting to return to the community. Additional barriers exist for identified sex-offenders that are strictly monitored no matter the degree of the act that they committed. Obstacles such as how to live within the community, life skills, and other supports prove difficult for persons who max-out on their sentences.

However, this spiral can end, and individuals can reintegrate into the community by adopting changes to the current scheme and enable persons

to climb out the proverbial legal hole. By adopting the best practices of other locations, individuals will be able to reintegrate and avoid recidivism while living as successful and productive members of the community.

## Debts Faced Post Release

### Child Support

#### *Barriers to Effective Reentry*

It is estimated that an incarcerated parent in New Jersey will leave prison with an average of \$20,000 in child support debt.<sup>237 238</sup> Though the payment of child support is essential to the wellbeing of a child, when a parent is involuntarily unemployed as a result of incarceration or otherwise, child support payments require adjustment to balance adequate financial support for the child while preventing permanent disadvantage to the parent. Failure to adjust often results in increased recidivism, which further disadvantages both the parent and the child.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 dictates that child support debt cannot be modified retroactively—under *any* conditions. States, however, can determine if and how to modify child support orders prospectively. In New Jersey, the decision of Superior Court, Appellate Division in *Halliwell v. Halliwell*, 326 N.J.Super. 442 (N.J. Super. Ct. App. Div. 1999) stipulated that an incarcerated, noncustodial parent may file a motion for modification of a child support order because of an inability to make payments.<sup>239</sup> The child support order may be suspended or decreased

An incarcerated parent in New Jersey will leave prison with an **average of \$20,000 in child support debt.**



Source: Ann Cammett, "Making Work Pay: Promoting Employment and Better Child Support Outcomes for Low-Income and Incarcerated Parents," in New Jersey Institute for Social Justice, last modified February 2005.

237 "Child Support and Incarceration," National Conference of State Legislatures (NCSL), last modified March 4, 2019, <http://www.ncsl.org/research/human-services/child-support-and-incarceration.aspx>.

238 Ann Cammett, "Making Work Pay: Promoting Employment and Better Child Support Outcomes for Low-Income and Incarcerated Parents," in New Jersey Institute for Social Justice, last modified February 2005, [http://d3n8a8pro7vhmx.cloudfront.net/njsj/legacy\\_url/213/makingworkpay.pdf?1478622774](http://d3n8a8pro7vhmx.cloudfront.net/njsj/legacy_url/213/makingworkpay.pdf?1478622774).

239 "The Basics of Child Support in New Jersey for Incarcerated Parents," in NJDOC-OTS HOPE Program, [Page 2], last modified April 4, 2011, <https://www.nj.gov/corrections/pdf/OTS/FRARA/ChildSupport/Basics%20of%20Child%20Support%20in%20NJ%20-%20April%204,%202011.pdf>.

in amount until the noncustodial parent is released from prison.<sup>240</sup> Despite the allowance of the modification process through the courts, child support orders are often left to accumulate and remain unmodified during incarceration of the noncustodial parent.

Additionally, child support debt continues to accumulate during incarceration against incarcerated individuals with low income and no assets. Although the accumulation of arrears can be suspended or capped while incarcerated, the inmate must file for modification. Not all inmates are aware that they must actively request this modification. Those aware usually prepare motions themselves due to the lack of funds for legal services. This self-preparation creates other impediments, such as incorrectly or illegibly completed paperwork or forwarding the motion to the wrong court.

Federal law currently permits the state to garnish up to 65 percent of wages to collect unpaid child support and consumer debt.<sup>241</sup> As incarceration creates barriers that increase the likelihood of poverty, many formerly incarcerated parents cannot survive or pay future child support payments upon release because a substantial portion of wages is garnished. Setting a ceiling of 65 percent creates a disincentive to formal employment because the loss of such a large portion of earnings may reduce the incentive to work.<sup>242</sup> This reduced incentive could increase recidivism by promoting work in the illicit market.<sup>243</sup> This often leaves formerly incarcerated parents facing crippling debt in addition to child support payments of up to 65 percent of income on release. Such situations are conducive to creating instability and dependency for both the parent and child.

### ***Best Practices and Models***

Many other states have taken steps to decrease or eliminate the substantial barrier that child support debt creates for reentering individuals. For example, North Carolina has enacted a statute that prevents the accrual of child support debt “during any period when the supporting party is incarcerated, is not on work

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240 Ibid.

241 The Federal Consumer Credit Protection Act (CCPA), [https://www.acf.hhs.gov/sites/default/files/ocse/im\\_01\\_06a.htm](https://www.acf.hhs.gov/sites/default/files/ocse/im_01_06a.htm)

242 McLean, Rachel L., and Michael D. Thompson. 2007. *Repaying Debts*. New York: Council of State Governments Justice Center.

243 Beckett, K., & Harris, A. (2011). On cash and conviction. *Criminology & Public Policy*, 10(3), 509-537. doi:10.1111/j.1745-9133.2011.00726.x

release, and has no resources with which to make the payment.”<sup>244</sup>

In the absence of an automatic legislative suspension of a child support order following sentencing, states have mandated that the Department of Corrections assist incarcerated parents in completing requests to modify child support orders upon prison intake. In Massachusetts, Minnesota, Oregon, and Washington, inmates with child support orders attend a presentation delivered by the Child Support Enforcement agency during processing at the prison.<sup>245</sup> The presentation covers the requisite steps to request a modification of their child support orders. Additionally, Massachusetts staffs the Department of Corrections reception facility with a full-time Child Support Enforcement employee who meets individually with parents and prepares modification requests.<sup>246</sup>

Other states have lowered income percentage ceilings for child support payments: New York has capped the amount for arrears at 40 percent of disposable income, and one-third of the states have capped the ceiling at 50 percent.<sup>247</sup>

All of these models are indicative of the reality that the crippling debt faced by many returning from incarceration in New Jersey is neither necessary nor best practice.

### *Action Items*

To eliminate these barriers that harm both the reentering individual and his/her family, and that increase the likelihood of recidivism while lowering the likelihood of effective reintegration, the Commission recommends three changes to how child support obligations for an incarcerated parent are addressed:

1. Decreasing the maximum percentage of wages that may be garnished in child support payments and permitting judges to amend outstanding child

244 N.C. Gen. Stat. 50-13.10(d)(4)). [https://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_50/GS\\_50-13.10.html](https://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_50/GS_50-13.10.html)

245 Jessica Pearson, “Building Debt While Doing Time: Child Support and Incarceration,” in *Judges’ Journal*, 43rd ed., last modified 2004, <https://csgjusticecenter.org/wp-content/uploads/2007/09/Building-Debt-While-Doing-Time-Child-Support-and-Incarceration.pdf>.

246 Ibid.

247 Paula Roberts, “An Ounce Of Prevention And a Pound Of Cure: Developing State Policy On The Payment of Child Support Arrears By Low Income Parents,” in Center for Law and Social Policy, last modified May 2001, <https://www.safetyweb.org/healthwatchwi/BCR%20Archive/3.%20Research%20Documents%20Relevant%20to%20BCR/An%20Ounce%20of%20Prevention.pdf>.

support obligations;

2. Automatically modifying child support orders through a cap or suspension for incarcerated parents, either legislatively or programmatically during the intake process upon sentence to a term in jail/prison; and
3. Educating incarcerated individuals on the current law regarding the lowering of child support orders during incarceration, and assisting in the modification request process.

## **Fines, Fees, and Warrants**

### *Barriers to Effective Reentry*

New Jersey's excessive use of fines and fees on defendants and the subsequent accumulation of additional fines that extend far beyond the original violation can be overwhelming for defendants, particularly low-income and poor defendants.

First, the original court costs, initial tickets, and citations are coupled with payment plan charges, surcharges, and interest.<sup>248</sup> For defendants with municipal court matters, those who plead guilty to disorderly person offenses, petty disorderly person offenses, traffic violations, and/or municipal ordinances are sentenced to pay fines, which go to a wide variety of state and local funds. Currently, close to 60 various funds have been created in connection with individual statutes.<sup>249</sup> According to N.J.S.A. 2C:43-3(c); N.J.S.A. 40:49-5; N.J.S.A. 40:69A-29, penalties for state offenses heard by a municipal court are usually set by the state. If a defendant pleads guilty to a disorderly person offense, a petty disorderly person offense or a Title 39 traffic violation, the municipality hearing the case solely collects the fine imposed. The mandatory court costs present another burden. While the minimum court cost that a Municipal Court Judge may impose is \$5.50, the norm seems to be the imposition of the maximum \$33.00. While the list of funds provided by the 2018 Supreme Court Committee report on Municipal Court Operations is non-exhaustive, discouragement grows with every fund read. This practice often acts as a starting point for a long-lived cycle of court involvement for individuals with already limited financial resources.<sup>250</sup> Municipal

248 Atkinson, Torie. "A Fine Scheme: How Municipal Fines Become Crushing Debt in the Shadow of the New Debtors' Prisons." *Harvard Civil Rights-Civil Liberties Law Review*. April 24, 2015. Accessed August 23, 2019. [https://harvardcrcl.org/wp-content/uploads/sites/10/2009/06/HLC102\\_crop.pdf](https://harvardcrcl.org/wp-content/uploads/sites/10/2009/06/HLC102_crop.pdf).

249 Ibid.

250 "Municipal Court Operations, Fines, and Fees." Supreme Court Committee. June 2018. Accessed August 23, 2019. <https://njcourts.gov/courts/assets/supreme/reports/2018/sccmcoreport.pdf>.

courts do not receive notification if a defendant was arrested or incarcerated in a superior court. This procedural deficiency allows late fees for failure to pay to accumulate, which may eventually cause the issue of a bench warrant for failure to appear. As an incarcerated defendant, he or she is unable to pay the fine and is unaware of the bench warrant. Failure to pay often follows a suspension of drivers' licenses, incurring additional fines upon release from incarceration. These municipal fines snowball into unmanageable debts. As nonpayment may result in incarceration, the criminal label attaches to persons who have done nothing more than have financial difficulties.

Second, public defender fees often become an unanticipated burden for low-income individuals. Although every defendant is entitled to representation by a public defender despite their ability to afford one, representation is not free.<sup>251</sup> Current New Jersey statute N.J.S.A. 2B:24-17 dictates that municipalities may pass an ordinance requiring defendants to pay a fee up to \$200 to apply for a public defender.<sup>252</sup> This fee can be waived in part or entirety if a defendant establishes inability to pay the registration fee.<sup>253</sup> However, in practice many courts ignore the constitutional responsibility to assess the ability to pay before imposing fines, fees, and costs on indigent defendants.<sup>254</sup> Many defendants are unaware of the registration fee at the start of the case as well as that the service of a public defender must be reimbursed. Not only is the price for merely submitting an application for a public defender burdensome for most defendants, but submission of an application also does not guarantee representation. For defendants who unwittingly submit an application after paying the \$200.00 for a Judge to review, they may fall outside of the indigency guidelines and be disqualified by a small percentage of what it costs to apply for such representation.

Third, failure to appear in municipal court due to incarceration, even to address fines incurred as described above, will often result in a bench warrant and significant debt in fees owed to municipal courts upon release from prison. The current system usually does not address outstanding municipal court warrants during incarceration in state prison until release. Despite the original offense

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251 "Apply for a Public Defender." Office of the Public Defender. Accessed August 23, 2019. <https://www.nj.gov/defender/apply/index.shtml>.

252 "Municipal Court Operations, Fines, and Fees." Supreme Court Committee. June 2018. Accessed August 23, 2019. <https://njcourts.gov/courts/assets/supreme/reports/2018/sccmcoreport.pdf>.

253 Ibid.

254 "Fines & Fees Committee." National Association for Public Defense (NAPD). Accessed August 23, 2019. <https://www.publicdefenders.us/finesandfees>.

accumulating late fees and interest, payment plans predominantly resolve the issue. Further, if a bench warrant is issued due to the failure to appear in court because of incarceration, individuals are disincentivized from receiving necessary services such as obtaining an ID or driver's license, for fear of re-arrest. The result is a cycle of fines, fees, and bench warrants that do not assist in alleviating the financial burden but rather act as another impediment that encourages recidivism.

### *Best Practices and Models*

Many states and municipalities have recognized the disproportionate disadvantage that excessive fines and fees place upon low-income individuals. Accordingly, these states have taken legislative measures to reform the system. San Francisco county implemented Ordinance No. 131-18 that abolished all discretionary fees imposed by the county.<sup>255</sup> Fees eliminated include alcohol content tests in DUI convictions, probation fees, restitution collection fees, and probation booking fees. To accommodate those who are financially unable to pay fines and fees, Oklahoma legislation SB 340 allows a judge to replace the fines or fees with court-ordered community service.

Similarly, Nebraska Bill 259 establishes a new protocol that dictates if a court determines inability to pay, the court can relieve the individual of the financial obligation, modify payment plans, or order community service as an alternative to monetary sanctions.<sup>256</sup> Missouri SB 572 sets caps on minor traffic and municipal ordinance violations. Municipal courts cannot assess fines for these violations if the combined fines and fees will exceed \$225 for minor traffic violations and \$275 for the first municipal violation.<sup>257</sup> The caps increase in amount as the number of violations increase, with the maximum set at \$450.<sup>258</sup> Additionally, if a defendant is determined to be indigent, no fees can be levied on that individual.<sup>259</sup> To address public defender registration fees, Los Angeles voted to eliminate their \$50 registration fee, reasoning that the fee is not worth potentially barring a defendant

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255 "San Francisco Ordinance No. 131-18: Fees and Penalties." Fines and Fees Justice Center. February 1, 2018. Accessed August 23, 2019. <https://finesandfeesjusticecenter.org/articles/san-francisco-abolish-criminal-justice-fees-penalties/>.

256 "Nebraska Legislative Bill 259: Ability to Pay, Nonpayment Incarceration." Fines and Fees Justice Center. March 22, 2019. Accessed August 23, 2019. <https://finesandfeesjusticecenter.org/articles/nebraska-legislative-bill-259-adopt-and-change-competency-and-financial-ability-provisions-relating-to-court-proceedings-as-prescribed/>.

257 "Missouri SB 572: Limits Fees for Violations, Nonpayment Incarceration." Fines and Fees Justice Center. November 26, 2018. Accessed August 23, 2019. <https://finesandfeesjusticecenter.org/articles/missouri-sb-572-limits-fees-debtors-prison/>.

258 Ibid.

259 Ibid.

from representation.<sup>260</sup>

States have recognized the need to incorporate an individual's ability to pay in the assessment of fines. These changes show an overall movement among other jurisdictions towards reforming the court system to be conducive to rehabilitation and promote successful reentry.

### *Action Items*

To address the morass of fines, fees, and bench warrants that often further disadvantage reentering individuals, the Commission recommends:

1. Requiring that all municipal fines be income-based<sup>261</sup> to lower the initial burden on low-income individuals;
2. Requiring that all municipal court matters be settled in the superior court prior to incarceration; and
3. Ensuring that courts state-wide provide clear notice of and education regarding the public defender fee and the process of waiving it in the event of inability to pay.

## **License Suspension for Non-Driving Related Crimes**

### *Barriers to Effective Reentry*

New Jersey statute allows a driver's license to be suspended through judicial action for non-driving related crimes. Possible reasons for a license suspension include failure to pay child support, failure to appear in court or pay fines, or failure to pay surcharges.<sup>262</sup> Less than six percent of all suspended drivers' licenses in New Jersey are for driving-related reasons.<sup>263</sup> Additionally, 59 percent of suspended drivers have zero motor vehicle violation points.<sup>264</sup>

The practice of suspending driver's licenses for failure to pay crimes

260 "L.A. County Ends Public Defender 'registration Fee.'" Los Angeles Times. June 06, 2017. Accessed August 23, 2019. <https://www.latimes.com/local/lanow/la-me-ln-registration-fee-20170606-story.html>.

261 Schierenbeck, Alec. "The Constitutionality of Income-Based Fines." SSRN Electronic Journal, 2018. <https://doi.org/10.2139/ssrn.3127949>.

262 Yusuf Mehta et al., "Restricted-Use Licenses for Suspended NJ Drivers," in New Jersey Department of Transportation Bureau of Research, [Page 3], last modified November 2014, <https://www.nj.gov/transportation/refdata/research/reports/FHWA-NJ-2015-006.pdf>.

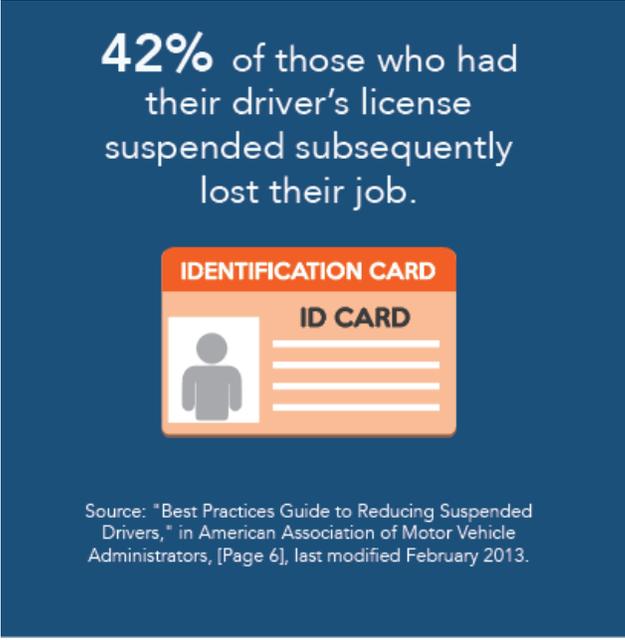
263 Carnegie, Jon A. "Driver's License Suspensions, Impacts and Fairness Study." New Jersey Department of Transportation. 2007. Accessed August 23, 2019. <https://www.nj.gov/transportation/refdata/research/reports/FHWA-NJ-2007-020-V1.pdf>.

264 Ibid.

creates a revolving door within the correctional system. Individuals fail to pay because they cannot afford the original fee. The suspension creates a significant impediment to gainful employment, preventing them from driving to work. Living far from adequate public transportation and the decentralization of employment opportunities in New Jersey may make driving a personal automobile, the only viable means to travel to work. With a suspended license, this is a violation of the law, resulting in the accumulation of more debt and possible incarceration. Additionally, to reinstate a license, a \$100 MVC License Restoration Fee must be paid.<sup>265</sup>

The practice of suspending licenses, when not required for public safety, ultimately results in increased barriers and recidivism because suspension eliminates a critical tool to obtain and maintain both stability and self-sufficiency. The Motor Vehicles Affordability and Fairness Task Force reported that in New Jersey, 42 percent of those who had their driver's license suspended subsequently lost their job.<sup>266</sup> Of those individuals, 45 percent were unable to find new employment and 88 percent of those who were able to find employment experienced a decrease in income.<sup>267</sup> Contradictory to its original intent, the overuse of driver's license suspensions resulted in reduced effectiveness in keeping dangerous drivers off the roads.<sup>268</sup>

Incarceration complicates renewing a driver's license as inmates are unable to travel to an MVC to take a new photograph. Additionally, notices of license expiration or suspension are mailed to the current permanent address on file. As the MVC is unaware of an individual's incarceration, the notices are not received.



**42%** of those who had their driver's license suspended subsequently lost their job.

IDENTIFICATION CARD  
ID CARD

Source: "Best Practices Guide to Reducing Suspended Drivers," in American Association of Motor Vehicle Administrators, [Page 6], last modified February 2013.

265 "Municipal Court Operations, Fines, and Fees." Supreme Court Committee. June 2018. Accessed August 23, 2019. <https://njcourts.gov/courts/assets/supreme/reports/2018/sccmcoreport.pdf>.

266 "Best Practices Guide to Reducing Suspended Drivers," in American Association of Motor Vehicle Administrators, [Page 6], last modified February 2013, <https://www.aamva.org/Suspended-and-Revoked-Drivers-Working-Group/>.

267 Ibid.

268 Ibid.

## Best Practices and Models

Other states enacted regulations regarding the use of license suspension as a sanction. The Ohio Supreme Court ruled that driver's license forfeiture is only permitted for traffic cases that resulted in fines; court costs are excluded.<sup>269</sup> Additionally, courts cannot order a person to appear or issue a warrant for unpaid court costs.<sup>270</sup> As a sanction for failure to pay court costs, courts may order community service.<sup>271</sup>

In 2017, Mississippi reinstated over 100,000 drivers' licenses suspended for failure to pay fines.<sup>272</sup> Additionally, Mississippi is joining four other states, Louisiana, Minnesota, New Hampshire, and Oklahoma, by requiring an ability-to-pay determination before suspension of a driver's license. By only suspending licenses for nonpayment of driving-related offenses or requiring an ability-to-pay determination to be made by the Judge, defendants will be given more deference in determining their fate of possible license suspension.

California has also taken a step toward ceasing the use of court debt license suspension.<sup>273</sup> As of July 2017, AB 103 eliminated California's license-for-payment practice; the practice was deemed as placing an undue burden on those who could not afford to pay.<sup>274</sup> Currently, New Jersey is not one of the 20 states that only permits license suspensions for nonpayment of only traffic court debt.<sup>275</sup>

To address barriers in renewing licenses while incarcerated, allowing inmates to use existing photographs already on file removes another obstacle for assimilation back into the community. Obtaining a driver's license is exceedingly difficult without the proper identification, which most defendants and inmates lack. Additionally, requiring the Department of Corrections to notify the Motor

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269 "Bench Card References: Collection of Court Costs & Fines in Adult Trial Courts." Office of Judicial Services. January 2019. Accessed August 23, 2019. <https://www.supremecourt.ohio.gov/Publications/JCS/finesCourtCosts.pdf>.

270 *Strongsville v. Waiwood* (62 Ohio App. 3d 521 - Ohio: Court of Appeals 1989). [https://scholar.google.com/scholar\\_case?case=8016957900501942647&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=8016957900501942647&hl=en&as_sdt=6&as_vis=1&oi=scholar)

271 "2947.23 Costs and Jury Fees - Community Service to Pay Judgment." Lawriter: Ohio Laws and Rules. Accessed August 23, 2019. <http://codes.ohio.gov/orc/2947.23>.

272 "SPLC Reaches Agreement with Mississippi to Reinstate over 100,000 Driver's Licenses Suspended for Non-payment of Fines." Southern Poverty Law Center. December 19, 2017. Accessed August 23, 2019. <https://www.splcenter.org/news/2017/12/19/splc-reaches-agreement-mississippi>.

273 Salas, Mario, and Angela Ciolfi. "Driven By Dollars - A State-By-State Analysis of Driver's License Suspension Laws for Failure to Pay Court Debt." Legal Aid Justice Center. Fall 2017. Accessed August 23, 2019. <https://www.justice4all.org/wp-content/uploads/2017/09/Driven-by-Dollars.pdf>.

274 *Ibid.*

275 Salas, Mario, and Angela Ciolfi. "Driven By Dollars - A State-By-State Analysis of Driver's License Suspension Laws for Failure to Pay Court Debt." Legal Aid Justice Center. Fall 2017. Accessed August 23, 2019. <https://www.justice4all.org/wp-content/uploads/2017/09/Driven-by-Dollars.pdf>.

Vehicle Commission of an address change ensures an inmate will receive pertinent notice regarding his or her driver's license. Notification is essential for the inmate to keep his or her license in good standing while incarcerated.

### *Action Items*

To support recovery, self-sufficiency, and reintegration upon release, the Commission recommends:

1. Limiting driver's license suspensions to driving-related crimes;
2. Allowing inmates to renew driver's licenses using existing photographs on file; and
3. Requiring Department of Corrections to notify the Motor Vehicle Commission of the change of address upon arrival at the Central Reception and Assignment Facility so renewal notices are received (CRAF).

## **Identification Upon Release**

### *Barriers to Reentry*

The Fair Release and Reentry Act (FRARA) of 2009 mandates that upon release from incarceration, the New Jersey Department of Corrections (DOC) supplies every inmate with a FRARA Portfolio with documents to reenter into the community. However, the only form of identification that DOC must provide is a temporary release photo identification (ID), an insufficient form of identification that serves little use in obtaining any further documents and also fails to qualify as a point of verification for the Motor Vehicle Commission's (MVC) six-points of identification requirement.<sup>276</sup> Most individuals leave DOC's custody without basic supporting documents that would assist in the process of obtaining their MVC Photo ID, including a social security card or birth certificate. Released individuals lack the funds, resources, and transportation to obtain these basic documents. These circumstances present a severe barrier to successful reentry and promote recidivism.

A valid state-issued ID card is essential to access basic necessities to reintegrate and become self-sufficient. Without a New Jersey Motor Vehicle Commission Non-Driver or Driver Photo ID, individuals cannot apply for public

<sup>276</sup> Tharney, Laura C. "Memorandum: Identification Card and License to Drive." Department of Correction. February 11, 2013. <http://www.lawrev.state.nj.us/newprojects/docidPM021113.pdf>.

assistance programs, access healthcare services, secure housing, fill prescriptions, or go before a judge. Finding legal employment is difficult, if not impossible, as most employers require a valid state ID or driver's license. If an individual finds employment, a state-issued ID is required to cash a paycheck or open a bank account.

The process of obtaining supporting documents to receive an MVC Non-Driver Photo ID can be difficult and daunting for individuals incarcerated for long periods of time. Currently, DOC allows inmates to go to the MVC within the prison to obtain IDs every month. However, inmates are only permitted to go 60 days before release. Also, if he or she currently resides in a Residential Community Release Programs (RCRPs), he or she may not participate. Further, only inmates who already have birth certificates and driver's licenses are eligible for this resource, immediately disqualifying the individuals most in need of assistance to obtain identification. Although this provides a significant opportunity to those who already have these documents, it fails to assist those without the necessary documents in obtaining them.

### ***Best Practices and Models***

In Maryland, officials from the DOC and MVC have developed a memorandum of understanding that streamlines the process for former inmates to receive state-issued IDs. This memorandum allows inmates to trade their prison identification cards for state-issued MVC identification cards.<sup>277</sup> Also, Ohio has issued ex-offender identification cards. Upon release, an ex-offender will receive this ID card. At that time, the ex-offender could bring the ex-offender ID card to a local motor vehicle office and exchange it for an Ohio ID or driver's license. The issuance and exchange of the ex-offender ID card program was a collaborative effort between the U.S. Probation Office for the Southern Half of Ohio including Cincinnati, Columbus and Dayton, the Ohio Department of Public Safety and the Ohio Bureau of Motor Vehicles.<sup>278</sup>

A similar inter-agency agreement between the New Jersey DOC and MVC should be established that enables DOC officials to obtain inmates' MVC Non-

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277 Nelson, Marta, and Jennifer Trone. "Why Planning for Release Matters." Vera Institute of Justice. Accessed August 23, 2019. <https://www.vera.org/publications/why-planning-for-release-matters>.

278 "Ohio, Feds Join Forces to Create Ex-Offenders ID Card." Associated Press, February 11, 2017. <https://fox8.com/2017/02/11/ohio-feds-join-forces-to-create-ex-offenders-id-card/>.

Driver's Photo ID and issue the ID's upon release. This would eliminate three barriers to obtaining the ID including (1) the need for supporting documents that most inmates do not have access to immediately upon release; (2) the fees involved with obtaining the ID and the other documents; and (3) transportation barriers in locations with inadequate public transportation as the individual does not possess a valid license.

A recent effort to ease the transition of federal prisoners back into society is the New Pathways Act. Senator Cory Booker and Representative Elijah Cummings introduced this bill to require the Bureau of Prisons to obtain identification for inmates before their release so the individual may more easily acquire needed services post-release. The Act provides guidance for the Bureau of Prisons to assist incarcerated individuals in obtaining identification such as a driver's license, birth certificate, Social Security card, photo ID, or work authorization form.<sup>279</sup>

### *Action Items*

To lower the barriers posed by lack of identification on release from prison, the Commission recommends:

1. Providing every inmate with a New Jersey Motor Vehicle Commission Driver or Non-Driver Photo ID prior to release through a memorandum of understanding or other agreement between the Department of Corrections and the Motor Vehicle Commission;
2. Amend the provision of Fair Release and Reentry Act to make these services opt-out rather than strictly voluntary.
3. Adopting similar legislation to that of the New Pathways Act, mandating that the New Jersey Department of Corrections help incarcerated individuals obtain proper identification prior to their release.

## **Legal Barriers to Employment**

### **"Good Moral Character" Limits on License Eligibility**

#### *Barriers to Reentry*

Nearly one-third of the workforce enforces licensing laws that require Good Moral Character, a provision that unjustly disadvantages those previously

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279 [https://www.booker.senate.gov/?p=press\\_release&id=902#](https://www.booker.senate.gov/?p=press_release&id=902#)

incarcerated.<sup>280</sup> Character-based requirements for licensed occupations create significant barriers to reintegration by limiting the ability to find legal work for economic livelihood. This provision does not increase public safety; it increases recidivism and lowers the ability of reentering individuals to obtain meaningful and legal employment.<sup>281</sup>

In New Jersey, 210 occupations currently require licenses that specifically cite the requirement of Good Moral Character.<sup>282</sup> Obtaining licenses for occupations such as bus and truck drivers, cosmetologists and hair stylists, dental hygienists, emergency medical technicians (EMTs), firefighters, plumbers, real estate agents, and teachers may be difficult or impossible for individuals with criminal records. Ironically, some of these restricted occupations are the same occupations the inmate received training for in prison. The inherent vagueness surrounding the Good Moral Character requirement adds another burden to formerly incarcerated applicants because it is difficult for those individuals to predict disqualification before investing time and resources into certification requirements and applications.<sup>283</sup> The Good Moral Character licensing requirement severely disadvantages these individuals because licensed occupations show promising growth projections. Additionally, these occupations are otherwise highly accessible for those released from prison because many do not require four-year degrees.

### *Best Practices and Models*

The presence of a criminal record should not itself be a basis for denial of an occupational license. A study conducted by the Center for the Study of Economic Liberty analyzed the effects of occupational licensing restrictions and requirements on the three-year recidivism rate—the timeframe when formerly incarcerated

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280 Rhode, Deborah L. "Virtue and the Law: The Good Moral Character Requirement in Occupational Licensing, Bar Regulation, and Immigration Proceedings." *Law & Social Inquiry* 43, no. 03 (Summer 2018): 1027-058. Accessed August 23, 2019. doi:10.1111/lsi.12332.

281 Slivinski, Stephen. "Turning Shackles into Bootstraps: Why Occupational Licensing Reform Is the Missing Piece of Criminal Justice Reform." Center for the Study of Economic Liberty at Arizona State University, 01st ser., no. 2016 (November 7, 2016). <https://research.wpcarey.asu.edu/economic-liberty/wp-content/uploads/2016/11/CSEL-Policy-Report-2016-01-Turning-Shackles-into-Bootstraps.pdf>.

282 "Licensed Occupations in New Jersey." Department of Labor and Workforce Development. Accessed August 23, 2019. [https://www.nj.gov/labor/lwdhome/coei/Licensed\\_index.html](https://www.nj.gov/labor/lwdhome/coei/Licensed_index.html).

283 Haggerty, Jonathan. "How Occupational Licensing Laws Harm Public Safety and the Formerly Incarcerated." R Street. May 31, 2018. Accessed August 23, 2019. <https://www.rstreet.org/2018/05/31/how-occupational-licensing-laws-harm-public-safety-and-the-formerly-incarcerated/>.

individuals are most likely to re-offend.<sup>284</sup> The study concluded that states with the most restrictive licensing burdens experienced an over nine percent increase on average in the three-year recidivism rate.<sup>285</sup> However, those states with the least restrictive licensing burdens saw the rate decline by nearly two and a half percent.<sup>286</sup>

Another study conducted by the United States Sentencing Commission found that individuals with stable employment were 12.8 percent less likely to re-offend.<sup>287</sup> Gainful employment is one of the most influential factors in preventing recidivism; reducing barriers to occupational licenses is essential to the successful reentry of formerly incarcerated individuals.<sup>288</sup>

### *Action Items*

The Commission recommends two changes to licensing requirements:

1. Amend the Good Moral Character requirement for occupational licenses and replace it with individualized assessments of prior crimes as they relate to the nature and requirements of the occupation;
2. Requiring licensing boards to eliminate vague language and specifically list disqualifying crimes, those specifically related to the nature of the occupation; and
3. Preventing municipalities or judges from banning individuals from employment in government services.

## **Legal Barriers for Long-Term Offenders**

### *Barriers to Reentry*

To ensure smooth reintegration, it is important to recognize the various needs of individuals leaving incarceration after long-term sentences—specifically those who have spent 15 years or more incarcerated. These individuals face

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284 This regression controlled for many exogenous variables, such as overall crime rate and employment climate of the state, and remained significant.

285 Slivinski, Stephen. "Turning Shackles into Bootstraps: Why Occupational Licensing Reform Is the Missing Piece of Criminal Justice Reform." Center for the Study of Economic Liberty at Arizona State University, 01st ser., no. 2016 (November 7, 2016). <https://research.wpcarey.asu.edu/economic-liberty/wp-content/uploads/2016/11/CSEL-Policy-Report-2016-01-Turning-Shackles-into-Bootstraps.pdf>.

286 Ibid.

287 "Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines." United States Sentencing Commission. May 2004. Accessed August 23, 2019. [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2004/200405\\_Recidivism\\_Criminal\\_History.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2004/200405_Recidivism_Criminal_History.pdf).

288 "29th Legislature(2015-2016)," n.d. <http://www.akleg.gov/basis/Bill/Detail/29?Root=SB 91>.

different barriers than the rest of the formerly incarcerated populations. For example, these persons have spent more time away from friends and family, further weakening connections and making reintegration into the community more difficult. Those serving long sentences are often max-outs and not offered parole. Lack of guidance towards housing, education, employment, and healthcare leaves these individuals to return to the only life they know—the life they left before incarceration.

Furthermore, because years or decades have passed since these individuals lived in their communities, attempts at reintegration can be overwhelming and create high-anxiety situations detrimental to recovery and stability. Needs of individuals that served long sentences are often underestimated. The system releases these individuals into a society entirely different from that before incarceration. Basic life skills training is essential to smooth the return into society. A study into the challenges of older inmates who served long sentences has identified the two most serious challenges among this group. These challenges are (1) living with less structure and social contacts, and (2) learning new ways of living.<sup>289</sup> Prison life is extremely structured. The loss of the structure long experienced by these persons may result in feelings of distress, shock, and loss.<sup>290</sup> Due to their long absence, the social networks that existed when they left may no longer exist or have undergone substantial change. Additionally, the way of living in place before incarceration may be starkly different from the current system. New technologies may be entirely unbeknownst to individuals who served long sentences. Replacing traditional systems with new technologies such as smartphones or metro cards may be disorienting and overwhelming.

### ***Best Practices and Models***

The lack of reentry programming tailored to individuals incarcerated for 15 years or more decreases the likelihood of successful reentry and promotes recidivism. Legislative initiatives such as the “Earn Your Way Out Act” would require DOC to develop an inmate reentry plan while establishing administrative parole release for certain inmates. Various studies on the effect of analogous reentry programs conclude that implementation of reentry programs correlate

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289 Yeager, David. “Older Inmates Adjust to Life Outside Prison.” *Social Work Today*, January/February 2012, 28. <https://www.socialworktoday.com/archive/012312p28.shtml>

290 Ibid.

with a reduction in the recidivism rate between six and ten percent.<sup>291</sup> This substantial reduction indicates that reentry programming is essential to success in the reintegration of these individuals into the community.

Alameda County in California has created The Homecoming Project.<sup>292</sup> This program aims to provide needed housing for individuals released after serving long sentences. After careful screening and training, formerly incarcerated individuals are matched with homeowners and renters that volunteer to participate. The six-month program pays cash subsidies to homeowners in exchange for a room and actively supports the partnership. The Homecoming Project smooths the transition and eases the apprehension of release after long-term incarceration.

Popular sentiments project that faith-based programming in reentry programs leads to better results than other reentry programs in assimilating individuals back into the community. However, evidence suggests that such gains are available to these organizations because of their relationship to the surrounding community and the already developed social missions of these institutions.<sup>293</sup> These factors suggest that organizational efficiency—as these services are “business as usual”—are what results in improved circumstances for these individuals, including long-term offenders.<sup>294</sup> Therefore, the value of these faith-based organizations in providing a support structure for individuals seeking reentry in the community should not be ignored. These organizations are a valuable asset to those seeking to rejoin the community by providing guidance and community as part of their mission to serve.

### *Action Items*

To ease the difficult transition faced by returning long-term offenders, the Commission recommends:

291 Ndrecka, Mirlinda. *The Impact of Reentry Programs on Recidivism: A Meta-Analysis*. Report. University of Cincinnati. 2014.

<https://cech.uc.edu/content/dam/cech/programs/criminaljustice/Docs/Dissertations/Ndreckam.pdf>

292 Westervelt, Eric. “From A Cell to A Home: Newly Released Inmates Matched with Welcoming Hosts.” NPR. January 16, 2019. Accessed August 23, 2019. <https://www.npr.org/2019/01/16/684135395/from-a-cell-to-a-home-ex-inmates-find-stability-with-innovative-program>.

293 Mears, D.P., et al., *Faith Based Efforts to Improve Prisoner Reentry: Assessing the Logic and Evidence*, *Journal of Criminal Justice*, 2006 available at <https://www.prisonlegalnews.org/media/publications/faith%20based%20rehabilitation%20efforts-journal%20of%20criminal%20justice-2006.pdf>

294 Ibid.

1. Requiring participation in reentry programming for all individuals released through “Earn Your Way Out,” parole or probation;
2. Requiring DOC to provide referrals to reentry programming upon release for all individuals who have maxed-out their sentences; and
3. Automatically qualifying long-term offenders (15 years or more) for Residential Community Release Programs (RCRPs).

## V. Housing

Housing instability is one of the most salient challenges facing formerly-incarcerated individuals returning home and reintegrating into their communities. Housing instability has caused a concentrated homelessness crisis at reentry; formerly incarcerated people are nearly ten times more likely to be homeless than members of the general public. Post-release residential precarity correlates with an increased likelihood of recidivism and is consequential for the health and well-being of individuals.

A criminal history can present serious barriers to securing stable, affordable housing. Landlord and public housing authority discrimination against individuals with criminal histories can decrease access to affordable rental housing. Indirectly, low income and disrupted work histories may also prevent formerly-incarcerated individuals from successfully securing a lease in the private market.

In addition to the indirect and direct forms of discrimination, New Jersey is amid a broader affordable housing shortage. New Jersey has the sixth most expensive housing costs in the nation. Significant housing cost burdens pose greater difficulty for all low- and moderate-income tenants to obtain affordable housing. However, this crisis is demonstrably worse for formerly incarcerated people for the reasons aforementioned.

Given the critical benefits that stable, affordable housing pose for formerly incarcerated individuals and the shortage of affordable housing that exists in New Jersey, the Commission recommends (1) an increase in the production of integrated, affordable, and supportive housing for formerly incarcerated individuals; (2) the creation and promulgation of programs and policies that reduce discrimination against formerly incarcerated tenants in public or federally-assisted housing, and (3) a focus on supportive, wrap-around services for those individuals with chronic health issues or substance abuse disorders or those who served extremely long terms in prison.

## Housing Vouchers

### *Barriers to Reentry*

One of the most sought after commodities for those seeking affordable housing is the housing voucher. Three major programs distribute about 40,000 of the housing vouchers in New Jersey: 11,000 through supportive housing, 4,500 through the State Rental Assistance Program (SRAP), and 23,000 through federal funding.<sup>295</sup> Access provided through Section 8 federal Housing Choice Vouchers equates to about \$230 million in funding.<sup>296</sup> Currently, there is only one voucher available for every four households that qualify.<sup>297</sup> Limited federal funding created a severe shortage of rental assistance.<sup>298</sup> Four in 10 low-income individuals in New Jersey are homeless or pay over half their income on rent.<sup>299</sup>

### *Best Practices and Models*

Given the severe shortage of housing vouchers, expanding the budget for the State Rental Assistance Program (SRAP) is imperative to ensure that formerly incarcerated individuals have access to safe and affordable housing. By increasing funding, the state could improve the number of new vouchers. An increase in the number of vouchers would expand the availability of housing subsidies for the reentry population and decrease competition within the current lottery system. A Justice Policy Institute study reported that the ten states with the largest portion of total expenditures allocated to housing experienced re-incarceration rates below the national average.<sup>300</sup>

Furthermore, the state should consider instituting a pilot voucher program specifically for formerly-incarcerated individuals, which it could then render permanent upon proof of success. The Washington State Department of Corrections began implementing a housing voucher program ten years ago. In this program, formerly incarcerated individuals who could not find post-release housing could request vouchers that would pay up to \$500 per month for up to three months. A recent evaluation of the program found that for every \$1

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295 Janel Winter, DCA

296 Ibid.

297 Ibid.

298 "Federal Rental Assistance Fact Sheets: New Jersey." Center on Budget and Policy Priorities. May 14, 2019. Accessed August 23, 2019. <https://www.cbpp.org/research/housing/federal-rental-assistance-fact-sheets#NJ>.

299 Ibid.

300 "Housing and Public Safety." Justice Policy Institute. November 1, 2007. [http://www.justicepolicy.org/uploads/justice-policy/documents/07-11\\_rep\\_housingpublicsafety\\_ac-ps.pdf](http://www.justicepolicy.org/uploads/justice-policy/documents/07-11_rep_housingpublicsafety_ac-ps.pdf).

spent towards housing vouchers resulted in a net cost savings of \$7 in the form of avoided costs of re-incarceration.<sup>301</sup> The Tacoma Housing Authority (THA) in Washington State runs the College Housing Assistance Program, which provides rental assistance for homeless students enrolled at local colleges. THA reserves a subset of its vouchers for students who have begun their college studies while in prison and continue to study after release. The assistance lasts until graduation or a maximum of three to four years. Initial evaluations of this relatively new program show that 60 percent of students receiving assistance graduated or remained enrolled compared to just 16 percent of their non-assisted peers.<sup>302</sup>

Voucher programs can also be helpful in the provision of supportive housing, or housing with wrap-around services meant to stabilize a person's living environment. Returning Home Ohio began as a pilot program to provide supportive housing opportunities to formerly incarcerated individuals reentering their communities with disabilities—including developmental disabilities, behavioral/mental health disorders, substance abuse disorders—and a history of housing instability. The Ohio Department of Rehabilitation and Correction (ODRC) and the Corporation for Supportive Housing (CSH) paired eligible participants with housing and supportive service providers in five major cities across Ohio. Recipients who met eligibility criteria received coordinated reentry planning with providers before release, but the program also incorporated recipients who released before connecting with providers. Participants not only received case management services, but also received a rental subsidy via a funding pool created by a partnership between CSH, ODRC, and the Ohio Housing Finance Agency.

An evaluation by the Urban Institute demonstrated that participants in Returning Home Ohio received more services more quickly than control-group non-participants and had an extremely low usage of emergency shelters following release. Moreover, participants were 60 percent less likely to recidivate and 40 percent less likely to be rearrested for any crime. The evaluation denoted multiple challenges, including the difficulty in connecting individuals to housing vacancies and the potential costliness of service provision. Nevertheless, because of the

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301 Hamilton, Zachary, Alex Kigerl, and Zachary Hays. "Removing Release Impediments and Reducing Correctional Costs: Evaluation of Washington State's Housing Voucher Program." *Justice Quarterly* 32, no. 2 (2013): 255-87. <https://doi.org/10.1080/07418825.2012.761720>.

302 "College Housing Assistance Program: A Summary." Tacoma Housing Authority, March 18, 2019. [https://www.tacoma-housing.net/sites/default/files/tha\\_college\\_housing\\_assistance\\_program\\_description\\_2019-3-18.pdf](https://www.tacoma-housing.net/sites/default/files/tha_college_housing_assistance_program_description_2019-3-18.pdf).

ongoing success of the program past the evaluation point, RHO was adopted as a permanent program operating out of the Department of Rehabilitation and Correction in 2012.<sup>303</sup>

New Jersey has a local-level voucher program that might provide a model for a state-wide initiative to reserve housing vouchers for the reentry population. CSH partnered with Hudson County to carry out an initiative to identify and permanently house chronically homeless individuals who frequently utilize not just the county correctional facilities but also shelters, hospitals, and other crisis systems. A cost analysis of the program followed 25 clients in the pilot. The analysis found that, in total, the Hudson County Corrections & Rehabilitation Center, Jersey City Medical Center, and shelters costs were reduced from \$850,000 to \$452,000 within a single year of PSH provision, which constituted 47 percent reduction in cost to these public institutions.<sup>304</sup> The County's Coordinated Entry Program, which is run by Garden State Episcopal CDC, identifies individuals. Since then, Hudson County expanded the FUSE pilot using DCA's Statewide Housing First Voucher initiative, which provides permanent rental assistance and seed funding for supportive services for 80 individuals. However, this program is not specifically for those exiting prisons.

Increasing funding for vouchers is the most direct way of helping low-income renters broadly and the reentry population more specifically. Every \$1 million spent on vouchers per year supports approximately 100 vouchers, so a doubling of funding from \$40 to \$80 million should result in the availability of about 400 additional vouchers for income-qualified tenants in New Jersey.

Building on the successes of Housing First voucher programs across the country and in New Jersey, the state should consider instituting a voucher program that will facilitate formerly-incarcerated individuals' transition back into their communities. Wrap-around services are crucial to ensure that affordable tenancy is sustainable.

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303 Fontaine, Jocelyn, Douglas Gilchrist-Scott, John Roman, Samuel Taxy, and Caterina Roman. "Supportive Housing for Returning Prisoners: Outcomes and Impacts of the Returning Home-Ohio Pilot Project." *PsycEXTRA Dataset*, 2012. <https://doi.org/10.1037/e527702013-001>.

304 "NJ DCA, Hudson County Partner with Hospitals to Fight Homelessness with Innovative Supportive Housing Program." CSH, September 21, 2018. <https://www.csh.org/2018/09/nj-dca-hudson-county-partner-with-hospitals-to-fight-homelessness-with-innovative-supportive-housing-program/>.

## Action Items

To increase the number of vouchers and housing units available, the Commission recommends:

1. Increasing SRAP funding from about \$40 million<sup>305</sup> to \$80 million; and
2. Designing a permanent or transitional housing voucher program, with wrap-around supportive and case management services, that would specifically serve the re-entry population.

## Affordable and Supportive Housing Development

### *Barriers to Reentry*

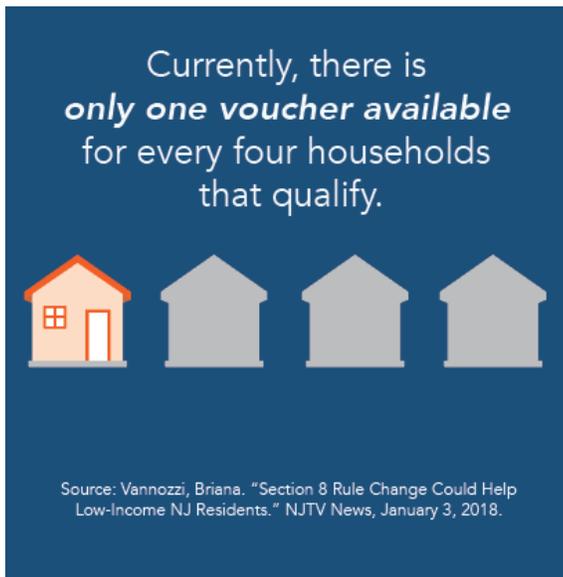
Individuals with criminal records face significant barriers to obtaining housing upon release. Landlords often use criminal background checks to narrow the applicant pool due to the stark disparity between available units and tenants in need. Additionally, many populations of individuals reentering from jails or prisons are ineligible or screened out from affordable housing programs, such as public housing. When formerly incarcerated individuals have a co-occurring mental illness or behavioral health, or substance abuse disorder, they may also need supportive services to maintain housing successfully and otherwise thrive in the community, yet there are few, if any, supportive or recovery housing developments in New Jersey designed specifically to serve the needs of the reentry population.

In addition to the barriers that formerly incarcerated individuals face due to their criminal history, there is a shortage of 7.2 million affordable rental units available to all low-income households in the US.<sup>306</sup> New Jersey has a shortfall of over 200,000 affordable rental homes for extremely low-income renters. The state is the sixth most expensive state in the country for housing. Half of all renters are cost-burdened. These renters pay more than one-third of their gross household income on rent; 72 percent of extremely low-income renters face severe cost burdens meaning that more than half of their income is spent on rent.<sup>307</sup> As a result of this shortfall, the reentry population competes with those without a criminal

305 "State Rental Assistance Program (SRAP)." National Low Income Housing Coalition. May 04, 2016. Accessed August 23, 2019. <https://reports.nlihc.org/rental-programs/catalog/state-rental-assistance-program-srap>.

306 Ibid.

307 "2019 New Jersey Housing Profile." National Low Income Housing Coalition, February 28, 2019. [https://nlihc.org/sites/default/files/SHP\\_NJ.pdf](https://nlihc.org/sites/default/files/SHP_NJ.pdf).



record, deepening their disadvantages.

While the recent investment in the state Affordable Housing Trust Fund is critical for affordable housing development—especially as federal economic recovery and Hurricane Sandy disaster recovery funds dwindle—the state requires an augmented financial commitment to ensure that housing can be readily developed for low-income and formerly-incarcerated populations. In particular, the Special Needs Housing Trust Fund operated out of the New Jersey Housing and Mortgage

Finance Agency (HMFA) requires recapitalization. “Ex-offenders and youth offenders” constitute an HMFA-designed “special needs” population covered under this funding source. The fund was created in 2005 and has been exhausted as of 2019.

A final barrier to new affordable housing development, including supportive housing for the reentry population, is local land use law. Changing exclusionary zoning in a neighborhood to permit affordable development typically requires a use variance. Local zoning boards grant these based on their evaluation of the positive and negative criteria for the variance. The New Jersey Legislature added an “inherently beneficial use” of land definition to the Municipal Land Use Law that would fulfill the positive criteria requirement. The definition includes but is not limited to hospitals, schools, and group homes. While the courts have variously interpreted rent-restricted housing and supportive housing to fall under the “inherently beneficial use” designation, legislators have attempted to pass legislation to explicitly add developments such as cooperative sober living residences and other recovery programs to the definition.

### ***Best Practices and Models***

It is critical to support the production of affordable and supportive housing units that are tailored to the needs of the reentry population, especially to ensure that homes are integrated into communities and accessible to jobs and social services as well as educational and healthcare institutions. Luckily, several

successful models of such housing developments exist across the country.

Several housing programs for the reentry population adopt a Housing First approach to addressing housing instability as formerly-incarcerated individuals disproportionately suffer from mental or behavioral health and/or substance abuse disorders. A recent study estimates that the rate of mental health disorders among the incarcerated population is three to six times that of the general population.<sup>308</sup> Many Housing First programs employ permanent supportive housing (PSH) as an intervention to create a stable housing environment for individuals exiting the justice system, with wraparound services to holistically address their health and social needs.

One of the oldest such projects is St. Andrews Court in Chicago, a 42-unit building that provides PSH for men exiting prison. Of the 42 units, 30 are reserved for homeless ex-offenders with disabilities. The additional 12 units are set aside for Illinois Department of Corrections parolees. A local non-profit provides comprehensive and individualized case management. Services include life skills and financial management classes, substance abuse relapse prevention, and mental health services. The project was developed with federal Low-Income Housing Tax Credits and capital from the Federal Home Loan Bank, HOME funds, and the Corporation for Supportive Housing. Total development cost amount to roughly \$3.6 million, with a cost per unit of approximately \$86,000. Both the Illinois Department of Corrections and HUD McKinney Shelter Plus Care subsidies cover operating costs.

The Corporation for Supportive Housing (CSH) is also a major player in promoting PSH interventions that help break the cycle of homelessness and justice system involvement, especially through its Frequent Users Systems Engagement (FUSE) initiative. In the New York City FUSE I and FUSE II initiatives, CSH partnered with the NYC Departments of Correction and Homeless Services to establish a program that would provide PSH for participants with histories of frequent jail and shelter utilization as well as a substance abuse or psychiatric diagnosis. The FUSE initiative dove-tailed with a larger set of initiatives at the state level surrounding supportive housing development to address a wider epidemic of homelessness. FUSE Participants were placed in affordable units provided by

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308 Ibid.

the New York City Housing Authority and the Department of Housing Preservation and Development as well as units that had been set-aside from Department of Health and Mental Health-funded supportive housing production initiatives.

A recent evaluation found that FUSE participants had strong retention of permanent housing (91 percent of participants remaining in permanent housing at 12 months compared to 28 percent of the comparison group).<sup>309</sup> PSH recipients not only spend approximately 150 fewer days in homeless shelters, on average, than comparison group members, but had significantly reduced jail involvement: PSH recipients spent 40 percent fewer days incarcerated than the comparison group and had fewer jail admissions over the 24 month follow-up period. The evaluation also found that the PSH intervention reduced the total per person average cost of shelter and jail days by 76 percent in the two-year follow-up period; although shelter and jail costs also decreased among the non-PSH comparison group in the follow-up period, it only decreased by 33 percent.

The economics of supply and demand dictate that robust investment in affordable development will help to alleviate housing cost burdens among low-income households.<sup>310</sup> These investments could help formerly incarcerated individuals indirectly by increasing the number of rent-restricted units in the State of New Jersey. To ensure that affordable units continue to be produced at a pace that meets the needs and demand of low-income households, the Commission recommends continued investment in the Department of Community Affairs' Affordable Housing Trust Fund and the recapitalization of the New Jersey Housing and Mortgage Finance Agency's Special Needs Housing Trust Fund. The latter subsidizes developments that provide affordable housing for "special needs" populations, and one category that NJHMFA has acknowledged as special needs is "ex-offenders and youth offenders." Subsidy money is especially key for supportive housing, which requires more upfront investment than general affordable rental housing.

The New Jersey Housing and Mortgage Finance Agency, the Department of Community Affairs, and the Department of Corrections should collaborate to

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309 Aidala, Angela A., William McAllister, Maiko Yomogida, and Virginia Shubert. "Frequent Users Service Enhancement 'FUSE' Initiative." Columbia University Mailman School of Public Health, January 2014. [https://d155kunxf1aozz.cloudfront.net/wp-content/uploads/2014/01/FUSE-Eval-Report-Final\\_Linked.pdf](https://d155kunxf1aozz.cloudfront.net/wp-content/uploads/2014/01/FUSE-Eval-Report-Final_Linked.pdf).

310 Blumenthal, Pamela M., John R. McGinty, and Rolf Pendall. "Strategies for Increasing Housing Supply in High-Cost Cities." Urban Institute, August 2016. [https://www.urban.org/sites/default/files/publication/83656/2000907-strategies-for-increasing-housing-supply-in-high-cost-cities-dc-case-study\\_2.pdf](https://www.urban.org/sites/default/files/publication/83656/2000907-strategies-for-increasing-housing-supply-in-high-cost-cities-dc-case-study_2.pdf).

create a pilot initiative that would fund an affordable development for formerly incarcerated individuals at risk of homelessness, especially those suffering from a mental health, behavioral health, or substance use disorder. Such a pilot could leverage federal Low-Income Housing Tax Credit dollars for construction as well as subsidy money from the participating state agencies to cover operating costs and ensure permanent affordability. The pilot could either operate on a permanent or transitional basis for tenants, depending on the needs of the population.

Designating special needs, supportive, and/or recovery housing as “inherently beneficial uses” of municipal land can help housing projects to overcome local exclusionary zoning ordinances. Given that land use policy can stand as a non-trivial obstacle in the development of affordable housing, such a clarification would go a long way in facilitating projects that would serve the needs of the reentry population.

### *Action Items*

To expand the production of affordable and supportive housing in the state, the Commission recommends:

1. Making continued robust investments in the state Affordable Housing Trust Fund and encouraging the recapitalization of the Special Needs Housing Trust Fund.
2. Piloting well-integrated, affordable, and supportive housing developments for the formerly-incarcerated population using innovative housing finance mechanisms.
3. Explicitly designate special needs, supportive, and recovery housing as of “inherently beneficial use” under the Municipal Land Use Law.

## **Discrimination in Public, Federally-Assisted, and Market-Rate Housing**

### *Barriers to Reentry*

Public housing authorities (PHAs) and owners of both federally-assisted and market-rate housing have broad discretion in disqualifying applicants with criminal records or precluding formerly incarcerated individuals from rejoining

their families.<sup>311</sup> Many individuals released from prisons or jails are ineligible for or have limited access to housing programs serving persons experiencing homelessness if incarcerated for an extended time or are exiting a halfway house or transitional housing program.<sup>312</sup>

Currently, only two explicit disqualifications from public housing exist. Disqualified are those on the registered sex offender list or those previously convicted of manufacturing methamphetamine while living in public housing.<sup>313</sup> However, PHAs also retain significant discretion over who they house. A PHA may also deny admission to any applicant or household member with (1) a pattern of drug or alcohol abuse or (2) is or has engaged in criminal activity that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.<sup>314</sup> Such landlord discretion is even more pronounced in a private market.

### ***Best Practices and Models***

One strategy for reducing discrimination against individuals with criminal histories is master leasing, which allows a third-party (such as a nonprofit homeless shelter, affordable housing provider, or reentry organization) to act as an intermediary between the landlord of a block of rental units and tenants.<sup>315</sup> The housing provider holds a long-term lease and assumes management responsibilities, providing stability and constant cash flow for the property owner in return for below-market prices.<sup>316</sup> Since 2008, Pennsylvania has utilized a system of master leasing to expand affordable housing, which resulted in an expansion of rental units available to the reentry population.<sup>317</sup> The system in Huntingdon, Mifflin, and Juniata counties aims to help individuals moving from shelter settings into permanent housing and have a co-occurring mental health need. Individuals work with a treatment team to find a housing unit that works for their needs, and

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311 Ibid.

312 Ibid.

313 "Criminal Record Barriers to Public Entitlements." Legal Services of New Jersey Law Website. July 5, 2017. Accessed August 23, 2019. <https://www.lsnjlaw.org/Criminal-Charges-and-Convictions/Public-Entitlements-Criminal-Records/Pages/Barriers-Public-Entitlements.aspx>.

314 Ibid.

315 Jakabovics, Andrew, and Allison Charette. "A Master Lease Program Could Increase Stability for Low- and Moderate-Income Renters." How Housing Matters. February 2, 2017. Accessed August 23, 2019. <https://howhousingmatters.org/articles/master-lease-program-increase-stability-low-moderate-income-renters/>.

316 Ibid.

317 Kasun, Kevin. "Master Leasing." Housing Alliance of Pennsylvania. 2013. [https://housingalliancepa.org/wp-content/uploads/2013/10/ML\\_Bloomsburg.pdf](https://housingalliancepa.org/wp-content/uploads/2013/10/ML_Bloomsburg.pdf).

that team works with the landlord to resolve any possible issue or disturbances.

Similarly, Volunteers of America implemented a master lease program, called Moving Forward, in 2013.<sup>318</sup> Currently servicing five counties in New Jersey, the program allows victims of chronic homelessness to engage in a sublease and receive a 70 percent rent subsidy as well as receiving guidance from a case manager. Los Angeles County<sup>319</sup> and Austin, Texas<sup>320</sup> have also begun implementation of a similar system.

Another strategy is to more strictly and affirmatively enforce regulatory guidelines that instruct PHAs and federally-assisted housing providers not to discriminate against individuals with criminal histories. At the federal level, HUD issued a set of guidelines in 2016, stating that rental housing policies that bar applicants with criminal backgrounds may violate the Fair Housing Act (FHA). More specifically, the agency interpreted the FHA in such a way that would render illegal a blanket criminal history policy that fails to distinguish between arrests and convictions.

HUD's regulations made use of the legal principle known as "disparate impact," (DI) which stipulates that a policy may have discriminatory effects—and thereby violate civil rights legislation—without a proven discriminatory intent. HUD's Office of General Counsel relied on the DI principle recently reaffirmed in a 2015 Supreme Court case in issuing their guidelines on criminal backgrounds and private rental policy. The agency asserted that a blanket ban on arrests and convictions would have a discriminatory impact on minority home seekers and people of color since Black and Latino individuals are arrested, convicted, and imprisoned in disproportionate numbers. Specifically, the guidance states that:

"While having a criminal record is not a protected characteristic under the Fair Housing Act, criminal history-based restrictions on housing opportunities violate the Act if, without justification, their burden falls

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318 "Moving Forward." Volunteers of America: Delaware Valley. Accessed August 23, 2019. <https://www.voadv.org/movingforward>.

319 "County to Explore Master Leasing Motels for Interim Housing for Chronically Homeless." The Signal Tribune. June 18, 2019. Accessed August 23, 2019. <https://signaltribunenewspaper.com/42390/news/county-to-explore-master-leasing-motels-for-interim-housing-for-chronically-homeless/>.

320 Hareckmak, J.T., Amelia Koplos, Ann Gill Howard, and Carol Biedrzycki. "Housing the Hardest to Serve: Using Permanent Supportive Housing to Address Chronic Homelessness in the City of Austin." Housing Works Austin. August 2014. [https://austintexas.gov/sites/default/files/files/Housing/Reports\\_and\\_Publications/Community\\_Reports/HardesttoServewebFNL\\_High\\_Res.pdf](https://austintexas.gov/sites/default/files/files/Housing/Reports_and_Publications/Community_Reports/HardesttoServewebFNL_High_Res.pdf).

more often on renters or other housing market participants of one race or national origin over another (i.e., discriminatory effects liability). Additionally, intentional discrimination in violation of the Act occurs if a housing provider treats individuals with comparable criminal history differently because of their race, national origin or other protected characteristic (i.e., disparate treatment liability)."<sup>321</sup>

As such, private landlords who institute blanket bans on applicants with a criminal history, use an arrest record alone to justify applicant denial, or use a conviction record as a basis for denial without considering the nature and severity of the crime committed, violate fair housing law. These landlords can face lawsuits and civil penalties for discrimination. (N.B. Some convictions related to the manufacture and distribution of drugs are exempted under the Fair Housing Act, but drug possession convictions are not.)

Moreover, this guidance does not merely relate to private housing. HUD previously clarified that arrest records cannot constitute the basis for denying admission to, terminating assistance for, or evicting tenants from public and other federally-assisted housing in 2015 because an arrest does not, in and of itself, constitute evidence of criminal activity. That same memo emphasized that HUD does not require PHAs or private owners of federally-subsidized housing to adopt "one strike" policies. The memo also iterated that federal law requires PHAs to notify applicants of the opportunity to dispute accuracy and relevance of their criminal record before denial of admission or assistance as well as before eviction or termination of the tenant's assistance based on their criminal record.

Therefore, both public and private landlords are expected to take a more individualized approach to the consideration of criminal histories to avoid violating the Fair Housing Act as a result of these HUD guidelines. Landlords have the burden of proof to demonstrate how their policies regarding criminal backgrounds distinguish between arrests and convictions.

### *Action Items*

To expand access to affordable housing for those in the reentry population, the

<sup>321</sup> "Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions." U.S. Department Of Housing And Urban Development, April 4, 2016. [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF).

## Commission recommends:

1. Increasing the utilization of master leasing programs by nonprofit organizations in New Jersey that prioritize active individual participation in the design of treatment plans, as relevant.
2. Affirmatively furthering 2015 and 2016 HUD guidance on blanket bans for tenants with criminal history by promoting it at the state level; ensuring that PHAs and landlords in both federally-assisted housing complexes and private, market-rate developments are fully compliant with this guidance through training workshops and compliance monitoring.

## Homelessness

### *Barriers to Reentry*

Uncertainty about housing after release can lead to homelessness. Formerly incarcerated individuals are almost ten times more likely to be homeless than the general public.<sup>322</sup> The interval shortly after release is critical because within this period these individuals are most likely to be homeless.<sup>323</sup> Recidivism rates are higher among new entrants unable to find stable, affordable housing upon release.<sup>324</sup>

The relationship between recidivism and housing instability is not merely incidental or even indirect. Because of the effective criminalization of homelessness, simply *being* homeless can land an individual back in prison. In many municipalities and counties, law enforcement agencies aggressively enforce “offenses” such as sleeping, “camping,” sitting, or lying down in public spaces; panhandling and begging in public; loitering, loafing, and vagrancy; public urination and food sharing; sleeping in vehicles; and other low-level offenses that are more visible when committed in public.<sup>325</sup> As a result, formerly incarcerated persons are unnecessarily and frequently funneled back through the “revolving door” of cyclical incarceration and release due to upstream difficulties in accessing housing.

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322 Couloute, Lucius. “Nowhere to Go: Homelessness among Formerly Incarcerated People.” Prison Policy Initiative. August 2018. Accessed August 23, 2019. <https://www.prisonpolicy.org/reports/housing.html#>.

323 Ibid.

324 “Criminal Justice Reform - Are We Ready?” Reentry and Housing Coalition. Accessed August 23, 2019. <http://www.reentryandhousing.org/>.

325 Ibid.

## *Best Practices and Models*

Many laws and policies that effectively criminalize homelessness are implemented at the local level, but states can enact and enforce legislation to prohibit such criminalization. Several states and territories, including Rhode Island, Illinois, Connecticut, and Puerto Rico, have enacted Homeless Bill of Rights legislation to protect individuals from police harassment and guarantee their freedom to move freely in public places.<sup>326</sup> Several more states including California, Colorado, Michigan, and Pennsylvania are considering such a bill.<sup>327</sup> The Bill of Rights could stipulate that homeless individuals have equal opportunities in employment, medical care, voting, and state and municipal agency programming, and are due a reasonable expectation of privacy in their personal property.<sup>328</sup> The Bill of Rights could also enshrine other positive rights, such as the right to legal counsel and the right to safe, clean public restrooms and hygienic supplies.<sup>329</sup>

Faith-based organizations can provide assistance to those seeking reentry as well, as often these organizations assist those with housing needs as part of their mission. As pillars of the community, these organizations are the front-line of bringing persons back into their own communities. These organizations can provide assistance through their local connections, community contacts, and other services to assist those returning to the community meet their housing needs. However, these organizations cannot solve all problems on their own; improved frameworks and supports from other sources are necessary to meet the needs of all.

### *Action Items*

To reduce the vulnerability of formerly-incarcerated individuals experiencing homelessness to rearrest and recidivism, the Commission recommends:

#### 1. Passing a Homeless Bill of Rights to reduce the criminalization of

326 "No Safe Place: The Criminalization of Homelessness in U.S. Cities." National Law Center on Homelessness & Poverty, February 2019. [https://nlchp.org/wp-content/uploads/2019/02/No\\_Safe\\_Place.pdf](https://nlchp.org/wp-content/uploads/2019/02/No_Safe_Place.pdf).

327 Ibid.

328 "Rhode Island Homeless Bill of Rights." Substance Abuse and Mental Health Services Administration (SAMHSA). Accessed September 20, 2019. <https://www.samhsa.gov/homelessness-programs-resources/hpr-resources/rhode-island-homeless-bill-rights>.

329 Rankin, Sara. "A Homeless Bill of Rights (Revolution)." SSRN Electronic Journal, 2014. <https://doi.org/10.2139/ssrn.2376488>.

homelessness and protect homeless individuals' ability to move freely, exercise their basic civil rights and civil liberties, experience equal treatment under the law, and access public programs and amenities.

## **Long-Term Offenders and Max-Outs**

### *Barriers to Reentry*

Individuals who served long sentences are deeply disconnected and are among those that struggle the most with finding affordable housing upon release.

A population of particular concern in New Jersey is those who have maxed-out their prison sentences. Despite growing evidence and a broad consensus that the period immediately following release from prison is critical for preventing recidivism, a large and increasing number of offenders are maxing-out, serving their entire sentences behind bars, and returning to their communities without supervision or support. These inmates do not have any legal conditions imposed on them, are not monitored by parole or probation officers, and do not receive the assistance that can help them lead crime-free lives.<sup>330</sup> New Jersey has one of the highest max-out rates in the country.<sup>331</sup> Without the transitional services of parole, the max-out population is especially vulnerable to the struggle of finding housing after incarceration.

### *Best Practices and Models*

Advocates and studies have demonstrated that recidivism is significantly lower when housing is an element of the reintegration process.<sup>332</sup> Reentry individuals who served long sentences or maxed-out of their sentences benefit from support services such as transitional housing. The Fortune Academy operated in New York City is correctly viewed as a model of best practice by the Reentry Initiative of the Department of Justice.<sup>333</sup> This model starts all new residents with emergency housing and phases individuals into permanent quarters as space becomes available. Residents are encouraged as they become

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330 "Max Out: The Rise in Prison Inmates Released Without Supervision." PEW Charitable Trusts. June 4, 2014. Accessed August 23, 2019. <https://www.pewtrusts.org/en/research-and-analysis/reports/2014/06/04/max-out>.

331 Ibid.

332 Kester, Kyra. "Housing Sex Offenders in the Community: Results of a Literature Search Conducted for the Washington State Sex Offender Policy Board." Washington State University. June 30, 2009. Accessed August 23, 2019. <http://ilvoices.org/uploads/3/4/1/6/34164648/45-kester-jun2009.pdf>.

333 "Guide for Developing Housing for Ex-Offenders." U.S. Department of Justice. May 2004. <https://www.ncjrs.gov/pdf-files1/203374.pdf>.

more stable to seek out their housing with the Fortune Academy assisting in addition to a network of landlord partners and community connections. The only restriction for acceptance into the Fortune Academy is the agreement of residents to be employed, in treatment, and/or in school for 35 hours per week. To support this requirement, residents also receive personalized support services and treatment. The model is funded by federal low-income housing funds, New York State homeless assistance funds, and rent collected from residents.

### *Action Items*

To better reintegrate those who have served long sentences and maxed out their sentences, the Commission recommends:

1. Ensuring the existence and availability of state-led housing interventions for re-entry populations, especially those that have served extremely long sentences; and
2. Ensuring the inclusion of wrap-around services and personalized case management.

## **Recovery-Focused Housing Models**

### *Barriers to Reentry*

Individuals suffering from Substance Use Disorders (SUDs) and recently released from incarceration often lack a safe environment to call home upon release. This housing instability immediately affects the health, well-being, and safety of these individuals. An incarcerated individual with Substance Use Disorder is 129 times more likely to overdose within the first two weeks of their release than the general population.<sup>334</sup>

In New Jersey, as many as eight out of ten inmates have been diagnosed with Substance Use Disorder, and three-quarters of the approximate 40,000 inmates statewide are expected to relapse within the three months of release. A large cause of this mass relapse is the inability to locate affordable transitional housing and find a safe and recovery-conducive environment for the recently released.<sup>335</sup>

<sup>334</sup> World Health Organization. "Preventing overdose deaths in the criminal-justice system." WHO. 2014.

<sup>335</sup> Stainton, Lilo H. "State Expands Addiction Treatment for Prisoners." State Expands Addiction Treatment for Prisoners - NJ Spotlight, August 9, 2018. <https://www.njspotlight.com/stories/18/08/08/state-expands-addiction-treatment-for-prisoners/>.

Formerly incarcerated individuals suffering from SUDs have different needs upon release, and it is crucial that housing options accommodate individual needs, preferences, and treatment plans, whether those involve sober-living, abstinence-focused models, harm reduction, or Housing First models. Both the National Council for Behavioral Health and HUD recommend that “housing options are available for people at all stages of recovery, including people who continue to use drugs or alcohol.”<sup>336</sup>

No matter the approach, or whether the housing is transitional or permanent supportive, it is critical that recovery-focused housing ensure fidelity to the chosen model. The administration of the recovery housing should also match these programmatic commitments. For instance, a sober-living environment must have adequate oversight: where the model emphasizes abstinence, the state licensure process should ensure that staff and programmatic operations adhere to stated goals (e.g., requiring live-in staff to undergo a more stringent vetting process to make sure they are well-versed in recovery models or ensuring that all sober-living facilities maintain Narcan (naloxone) on premises in case of emergency). For non-abstinence-based Housing First programs, housing and supportive services should not be predicated on sobriety, minimum income requirements, lack of a criminal record, or completion of treatment.<sup>337</sup>

### ***Best Practices and Models***

In Massachusetts, a coalition of nonprofit agencies has set out to inspect and certify the vast amount of sober living homes in the state. Massachusetts Association for Sober Housing, part of the nonprofit coalition responsible for running the certification program, offers incentives for private owners of sober living facilities to receive certification. Receiving certification means ensuring that homes implement regular drug and alcohol testing, adhere to strict zero-tolerance policies, provide habitable living environments, carry adequate insurance, and other best practices. Massachusetts passed legislation that mandates the monitoring and voluntary certification of Massachusetts sober

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336 “Recovery Housing Policy Brief.” HUD Exchange, n.d. <https://files.hudexchange.info/resources/documents/Recovery-Housing-Policy-Brief.pdf>. “Recovery Housing Policy Brief.” HUD Exchange, n.d. <https://files.hudexchange.info/resources/documents/Recovery-Housing-Policy-Brief.pdf>.

337 “Housing First Checklist: Assessing Projects and Systems for a Housing First Orientation.” United States Interagency Council on Homelessness, September 2016.

homes.<sup>338</sup> These requirements are an important example of ensuring that programs purporting to be sober-living environments have adequate oversight.

However, many states (e.g., California) have recognized that Housing First provides an important alternative to sober-living as well as equal promulgation of both models to ensure that individuals have the opportunity to pursue the path to recovery pertinent to the individual's situation. In several studies, Housing First programs, including Recovery Kentucky, serving chronically homeless individuals have been shown to decrease alcohol and drug use.<sup>339</sup>

### *Action Items*

To better reintegrate those who have Substance Use Disorders, the Commission recommends:

1. For sober-living environments, designating the Division of Community Affairs to ensure that programs have adequate oversight to ensure staff compliance with project policies and to ensure that life-saving treatments are available on the premises; and
2. For Housing First programs, designating state agencies with relevant oversight authority to ensure that housing programs are adhering to the model and minimizing barriers to entry.

## **VI. Critical Reentry Legislation**

### **Pending Legislation Supported by the Commission**

#### *Introduction*

The realities facing formerly incarcerated individuals as they seek to reenter into the community are staggering. As illustrated above, there are numerous problems that need to be addressed to better facilitate the integration of these persons into the community. Legal barriers, economic hurdles, and lack of community support hinder progress and success at every turn. However, there are current legislative efforts that the Commission offers support for and encourages adoption to combat the horrendous circumstances facing this population of persons.

338 "Certification." Massachusetts Alliance for Sober Housing (MASH), n.d. <https://mashsoberhousing.org/certification/>.

339 Collins, Susan E., Daniel K. Malone, Seema L. Clifasefi, Joshua A. Ginzler, Michelle D. Garner, Bonnie Burlingham, Heather S. Lonczak, et al. "Project-Based Housing First for Chronically Homeless Individuals With Alcohol Problems: Within-Subjects Analyses of 2-Year Alcohol Trajectories." *American Journal of Public Health* 102, no. 3 (2012): 511-19.; "What Works - Housing First." University of Wisconsin School of Medicine and Public Health, March 7, 2019. <http://whatworksforhealth.wisc.edu/program.php?t1=109&t2=126&t3=89&id=349>.<https://doi.org/10.2105/ajph.2011.300403>.

## Action Items

To support the above recommendations, the Commission recommends and recognizes support for the following pending pieces of legislation at the state level:

1. **Earn Your Way Out Act 2019 (S761/A1986):** Requires the Department of Corrections to develop an inmate reentry plan by instituting a Division of Reentry and Rehabilitative Services.
2. **Expungement Revision Bill 2019 (S3205/A4498):** Revises the procedures and policies of the New Jersey expungement law allowing for a wider availability for expungement of non-violent offenders.
3. **Medicated Eligibility for Incarcerated Individuals 2018 (S1182/A3568):** Requires establishment of processes to identify Medicaid-eligible incarcerated individuals who are awaiting pre-trial release determinations, are being released following period of incarceration, or are undergoing inpatient hospital treatment.
4. **Occupational Licensing for Incarcerated Individuals 2019 (S1589/A3872):** Requires certain standards for professional and occupational boards considering applicants with criminal history records. Specifically eliminates the “good moral character” requirement.
5. **Dignity for Incarcerated Primary Caretaker Parents Act (2019 (S2540/A3979):** Ensures that all incarcerated women in New Jersey receive free feminine hygiene products and prohibits the act of chaining inmates while they are giving birth.

To support the above recommendations, the Commission recommends and recognizes support for the following pending pieces of legislation at the federal level:

6. **The First Step Act (H.R.5682):** Allows inmates to receive “earned time credits” by participating in more vocational and rehabilitative programs and could be used to allow them to be released early to halfway houses or home confinement.
7. **The Next Step Act (S. 697):** Reduces harsh mandatory minimums for nonviolent drug offenses; improves ability of those behind bars to stay in touch with loved ones; provide better training for law enforcement in implicit racial bias, de-escalation, and use of force; reinstates voting rights for formerly incarcerated individuals; and end the federal prohibition on marijuana.
8. **The New Pathways Act (S. 1080):** Amends Second Chance Act of 2007 to require identification for returning citizens, and for other purposes; also provides guidelines for the Bureau of Prisons to obtain proper identification for inmates being released including driver’s license, birth certificate, Social Security card, photo identification, or work authorization form.
9. **The Fair Chance Act (S. 387):** Prohibits Federal agencies and Federal contractors from requesting that an applicant for employment disclose criminal record history information before the applicant has received a conditional offer, and for other purposes.

