



**NEW YORK  
CITY BAR**

**Statement to the Justice and Civil Rights Transition Team Regarding Issues Facing  
Persons Released from Correctional Facilities**

**The Association of the Bar of the City of New York  
Committee on Corrections**

**December 2008**

The United States Department of Justice, Bureau of Justice Statistics reported that 2,293,157 prisoners were held in federal or state prisons or local jails at the end of 2007. Hundreds of thousands of prisoners are released from incarceration each year. Upon release, these individuals enter into a society that is hostile to their presence and where they face unreasonable prohibitions and limitations which prevent them from entering the job market and otherwise becoming productive members of society. The resultant inability to make successful transitions from prison life is readily demonstrated by high (60%) recidivism rates showing the failure to provide rehabilitation and services both inside the prisons and upon release.

This failure has a high incumbent cost to society, in terms of the increased costs of prosecution and incarceration and in terms of the individual and the family that he or she is unable to support. Undoing these restrictions makes economic as well as social, moral and ethical sense. Many of these unreasonable hurdles have been erected by the federal government. Therefore, we urge the Obama Administration to consider the following reentry measures as our recommendations to ease the transition of the previously incarcerated into society.

The Association of the Bar of the City of New York (the "Association"), founded in 1870, is a private, non-profit organization of more than 23,000 attorneys, judges and law professors, and is one of the oldest bar associations in the United States. The Association's Corrections Committee welcomes this opportunity to urge that the incoming Administration make the following essential changes in vitally important matters affecting the reentry of hundreds of thousands of Americans from prison to home and family after release:

1. The implementation and funding of re-entry programs that help incarcerated people adjust to life outside prison walls should be supported and expanded. There is a need for strong re-entry programming that connects people to medical and mental health treatment, housing, employment, public assistance, Medicaid, family and community. These are vital for successful reintegration to society and concomitant reduction in recidivism.
  - a) Permit Medicaid, Medicare and SSI benefits to be easily restored upon release from prison (and in the case of Medicaid, easily available at release if the inmate did not have Medicaid on entry).

- b) Eliminate overbroad and unfair HUD regulations that have permitted public housing authorities to bar project housing and Section 8 rental assistance applicants who have criminal records -- and their families -- instead of engaging in an individual assessment of each applicant based on relevant factors:
    - i. Seriousness and nature of the criminal conviction
    - ii. Relevance of that conviction to the tenancy
    - iii. Length of time that has passed since the conviction, and
    - iv. Evidence of rehabilitation.
  - c) Amend HUD regulations, which currently permit rejection of applicants based on non-criminal convictions (such as Disorderly Conduct in New York State). The regulations should require that only criminal convictions be considered.
  - d) Eliminate the current absolute prohibition of education grants through federal financial aid for people who have been convicted of possession or use of an illegal drug while receiving financial aid.
  - e) Eliminate the lifetime ban on Temporary Assistance for Needy Families (TANF) and food stamp eligibility for people with drug felony convictions. While some states have opted out of this ban, a number have not, causing serious financial hardship (and the possibility of renewed criminal activity) on families.
2. The previously incarcerated should be provided with the opportunity for gainful employment. Basic changes need to be made to give those released from prisons the opportunity to compete for jobs for which they may well be qualified and for which there is no basis for their *per se* exclusion.
- a) Amend the Fair Credit Reporting Act to *reinstate* the requirement that commercial Consumer Reporting Agencies (“CRAs”) (i.e. background screening agencies) refrain from reporting criminal conviction history information more than seven years old. This requirement was in place until 1998, but was deleted with imposition of the Consumer Reporting Employment Clarification Act of that year. Further, amend the Fair Credit Reporting Act to prohibit CRAs from reporting non-criminal conviction information (e.g. for Disorderly Conduct convictions in New York State), no matter how recent. Failure to impose these limits -- and failure to regulate the employment background screening industry in general -- severely limits workers' ability to find employment and/or to advance in their professions.
  - b) Create a federal standard based on the Equal Employment Opportunity Commission (EEOC) policy guidance on the use of criminal background checks for employment purposes when screening for arrest and conviction.
  - c) Amend the Work Opportunity Tax Credit (WOTC), authorized by the Small Business Job Protection Act of 1996 (Public Law 104-188). Congress should increase the WOTC tax credit for individuals with criminal records to match the tax credit

available for individuals who qualify as Long-term Family Assistance recipients.

Currently, under the WOTC program, employers who hire low-income individuals with criminal records can only reduce their federal income tax liability by up to \$2,400 per qualified new worker (in contrast to \$3,500 first year and \$5,000 second year for Long-term Family Assistance recipients).

- d) Reauthorize the Workforce Investment Act (WIA, Public Law 105- 220) and include provisions for hard to serve populations, including individuals with criminal histories, through the WIA one-stop system.
3. Previously incarcerated individuals should be provided with adequate support to facilitate the transition from prisoner to productive member of society. An important means of accomplishing that is to fund the Second Chance Act, enacted in April 2008. The Act authorizes vital grants to states and federal programs totaling \$330 million over two years, including:
- a) Mentoring programs for adults and juveniles leaving prison;
  - b) Drug treatment during and after incarceration, including family-based treatment for incarcerated parents;
  - c) Education and job training in prison;
  - d) Alternatives to incarceration for parents convicted of non-violent drug offenses;
  - e) Supportive programming for children of incarcerated parents; and
  - f) Early release for certain elderly prisoners convicted of non-violent offenses.

**Conclusion:**

We welcome the opportunity to work with the Presidential Transition Team and the Obama Administration on these vitally important reentry issues. Please contact us if you have questions, would like more information, or would like to see further support for the matters we have raised above. You may reach the Committee by contacting Alan Rothstein, the Association's General Counsel, at 212-382-6623 or arothstein@nycbar.org.

Thank you very much for your attention and concern.