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EXPUNGEMENT: A BEGINNING TO REDUCE RECIDIVISM *By Brian Fask*

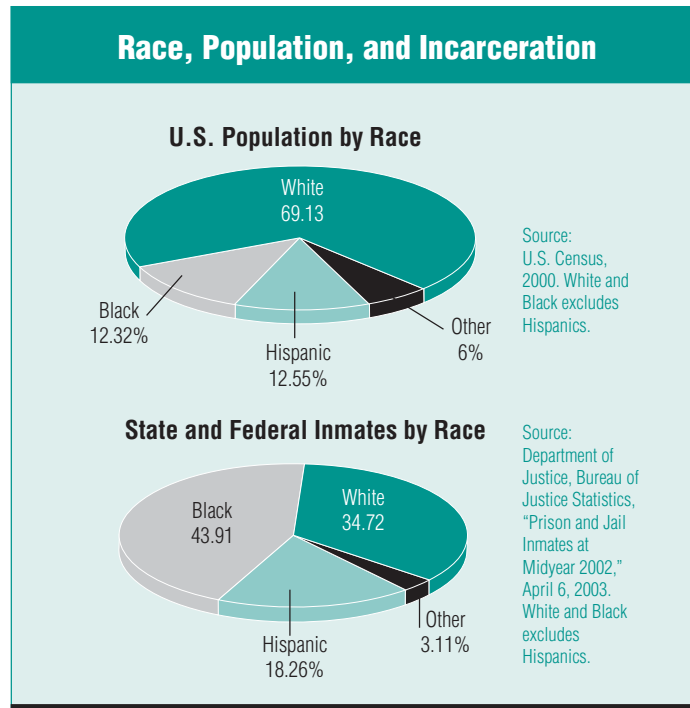
INTRODUCTION

This policy paper will review the numerous barriers to successful reintegration into the community that are faced by large numbers of citizens with criminal records in the nation and in Illinois. The paper will explain how the expungement and the sealing of such records could open doors to successful reintegration. Expungement legislation passed and pending in Illinois will be examined, and recommendations for future direction will be detailed.

CONTEXT

According to the U.S. Department of Justice, the number of inmates in U.S. prisons and jails has exceeded 2 million for the first time in history. As of June 30, 2002, state and federal prisons contained 1.35 million prisoners and local jails an additional 665,000. Illinois prisons currently house 38,000 prisoners.

Not only does the United States imprison more people than any other nation, our incarceration rate of 702 inmates per 100,000 residents is also the highest in the world. According to the Sentencing Project, a research group that advocates alternatives to prison, these levels of incarceration have increased despite sharp drops in violent crime rates since 1994. In



"Throwing Away the Key," *In These Times* (March 2004), Salim Muwakkil states, "Our nation's penal system is a grotesque charade that has abandoned all pretense of penitence or any notion of rehabilitation. It has become instead, an apartheid system used to warehouse surplus populations that society has forsaken."

Research shows a large racial disparity among inmates and those convicted. The "war on drugs" and "tough on crime" policies, which increased both the number of convictions for drug offenses and the length of prison sentences, have

unequally impacted African American and Hispanics, compared to whites. *The Chicago Reporter* reviewed 110,219 criminal cases in Cook County Circuit Court that occurred between 1995 and 2000. Researchers found that 46 percent of blacks convicted on drug-related charges were sentenced to prison, compared to 30 percent of Hispanics, and only 20 percent of whites.ⁱ In addition, whites were three times more likely to be given some type of conditional probation, which upon successful completion would result in expungement from their record. Of all males, an

estimated 28 percent of blacks, 16 percent of Hispanics and only 4.4 percent of whites will serve time in prison in their lifetime.ⁱⁱ The incarceration rate of African American women has tripled since the 1980s to eight times that of white women.

Those responsible for the massive increase in prison populations seem not to have anticipated the time when imprisoned individuals would eventually come home. In 2001, state and federal prisons released 630,000 inmates. Every year, approximately 25,000 prisoners are released in Illinois, with over 52 percent returning to the Chicago area. The prisoners return with few resources and few remaining ties to family and supportive networks. They predominantly enter five inner-city communities which are critically short on jobs paying a living wage, affordable housing, and substance abuse treatment programs.ⁱⁱⁱ

Given the dearth of resources in those communities, even those without criminal records have difficulty becoming gainfully employed and finding affordable housing. Gainful, not just employment, being a key factor to truly reducing recidivism.^{iv} Having a criminal record adds another formidable barrier to successful integration into society. These factors help explain why Illinois now has a record-high recidivism rate of 54 percent.

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BARRIERS

Having a criminal record can exclude an individual from a variety of resources and options needed to transition and reintegrate successfully into a community:

Jobs—In Illinois, there are over 98 professional and occupational statutes that govern state licensure. Many of these restrict people from receiving licenses if they have criminal convictions. The result of this is that ex-offenders have barriers to becoming licensed for 65 professions and occupations. These include hospital workers, barbers, beauticians, nail technicians and many others that don't require high school diplomas.^v

In addition, no federal or state law prohibits employers from asking job applicants if they have ever been convicted of an offense, and employers may legally consider an applicant's conviction(s) when making hiring decisions.

Housing—Public housing agencies can deny access to those with certain convictions, including those with drug-related offenses, and landlords can deny access altogether to those with criminal records.

Education—Pell grants for secondary education and the advancement of inmates have been eliminated. Those with a first-time drug offense must wait one year before being eligible for student loans and those with three offenses are barred for life, despite research by the Federal Bureau of Prisons showing that the more education received, the less likely an individual is to be rearrested or re-imprisoned.^{vi}

Public Assistance—Under federal law, people with certain drug-related felonies can be barred from receiving cash assistance and food stamps.^{vii} In Illinois, lawmakers chose to only impose the bar on cash assistance, but not food stamps.

EXPUNGEMENT

Expungement is the act of erasing or deleting, for individuals who meet specific criteria, criminal arrest and/or conviction information maintained by various federal, state, and local law enforcement agencies. Currently in Illinois, very few crimes—class A and B misdemeanors and arrests without convictions—are expungable from a person's record. This limited expungability resulted from State Representative Connie Howard's legislation that passed in 2002. Currently the only crimes that are expungable are first-time cannabis and steroid offenses, along with certain traffic violations. The process can take from six months to a year, it costs over \$100 in fees, expungement may be denied, and a person must show proof to the five separate state agencies that hold the records.

RECOMMENDATIONS

The following recommendations are offered:

Arrests that do not result in a conviction should automatically be expunged. Employers should not be allowed access to records of arrests that did not lead to convictions. Also, the government should show faith in its own rehabilitation program and remove restrictions for employing those with criminal records.

All prisoners should be provided, as a component of their discharge, with paperwork and materials needed to undertake the expungement process and to access other services. They should receive state identification cards, birth certificates, social security cards, and preliminary paperwork for access to records to expedite the process. While they reintegrate into the job market, ex-prisoners should receive benefits and resources such as food stamps, transitional housing, and other related services for exiting offenders.

Expungement of a record takes six months to one year. The process should be evaluated, and every attempt should be made to shorten this time frame. State legislators and Governor Blagojevich should support SB 3007, sponsored by Senator John Cullerton. By allowing appeal to a judge to get records sealed, this bill would assist many persons who have successfully served their time for nonviolent misdemeanors and nonviolent class 4 felonies such as prostitution and drug offenses. Approval of such a request would remove a major barrier to obtaining jobs while reducing recidivism.

SUMMARY

Expungement and the sealing of certain records would be a good step toward reducing recidivism and aiding ex-prisoners in getting jobs and other resources. Even though a dearth of living-wage jobs and affordable housing exists, expungement and sealing of certain records would put ex-prisoners in a

better position to compete for whatever resources are available.

In the long run, the creation of more jobs paying a living wage, credible job training, substance abuse treatment programs, and affordable housing will allow expungement to work while decreasing the number of individuals entering the prison system in the first place.

- i Loury, Alden. "Battling Bias in the Drug War: Black Offenders Face Stiffest Drug Sentences." *The Chicago Reporter*, P3-5, 10-11, (January, 2001).
- ii Matthews, S. & Casarjian, A. Council of Advisors to Reduce Recidivism Through Employment (C.A.R.R.E.): "Government Personnel Policies Impacting the Hiring of Ex-Offenders." *Safer Foundation*, Policy Paper #3, (July, 2002).
- iii The Urban Institute. "Number of Prisoners Released by Illinois More Than Doubles in Two Decades; Many Head to Distressed Chicago Neighborhoods." (April 17, 2003). <http://www.urban.org>
- iv Uggen, Christopher. "Ex-offenders and the Conformist Alternative: a Job Quality Model of Work and Crime." In *Social Problems*, v.46. (February, 1999).
- v Matthews, S. & Casarjian, A.
- vi Heinrich, Svenja. "Reducing Recidivism Through Work: Barriers and Opportunities for Employment of Ex-offenders." *Chicago Workforce Development Partnership*, (September, 2000).
- vii Mukamal, Debbie A. "Confronting the Employment Barriers of Criminal Records: Effective Legal and Practical Strategies." *Journal of Poverty Law and Policy*, 597-606. (January-February, 2000).