The Centerpiece to Real Reform - Political, Legal, and Social Barriers to Reentry in California

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The Centerpiece to Real Reform? Political, Legal, and Social Barriers to Reentry in California

EUMI K. LEE

Introduction

Every year, California releases approximately 120,000 prisoners back to the community, all under mandatory parole supervision. Approximately two-thirds of parolees return to California prisons within three years. This “continuous game of ‘catch and release’” is emblematic of the failed parole system that is both a cause and a

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2. California is one of only two states that has a mandatory period of parole upon release. Press Release, Office of the Governor, Gov. Schwarzenegger Unveils Comprehensive Prison Reform Proposal (Dec. 21, 2006), available at http://gov.ca.gov/index.php?print-version/press-release/4972/. Although technically the Board of Parole Hearings can waive parole, “waivers are rare.” Petersilia, supra note 1, at 256-57 (noting that “the parole term function[s] not as an award for good behavior (as it would in an indeterminate sentencing system), but as a period of extended surveillance and services”).

3. This is nearly twice the national average. Petersilia, supra note 1. In 2008, the recidivism rate among felon parolees was 67.7 percent. RATE OF FELON PAROLEES 2008, supra note 1. In stark contrast, the recidivism rate among felon parolees in 1976 was 14.6 percent. Id.

4. Petersilia, supra note 1.
result of the current correctional crisis in California.\(^5\) Given this incredibly high recidivism rate,\(^6\) successful prisoner reentry is of the utmost importance in unraveling this crisis.\(^7\)

Indeed, the failure to integrate back into society is part of the self-reinforcing cycle that underlies the crisis. Prisoners enter the correctional institution, often with existing mental health or substance abuse issues, which are left untreated.\(^8\) Limited rehabilitative programming, if any, is offered while incarcerated.\(^9\)

Upon release, the ex-prisoners return to the community, where they face numerous legal and social challenges in integrating into society;\(^10\) and the great majority of the time, they recidivate.\(^11\) This

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5. Id.; Coleman v. Schwarzenegger, No. CIV S-90-0520 LKK JFM P, 2009 U.S. Dist. LEXIS 67943, at *37, *392-93 (noting “the state’s counterproductive parole system” as one of the causes of the “massive 750% increase in the California prison population since the mid-1970s”). Particular challenges concerning the structure of parole supervision and release are discussed elsewhere in this volume. Hadar Aviram, Dangerousness. Risk and Release, 7 Hastings Race & Poverty L.J. (this issue, Winter 2010).


7. As defined by Joan Petersilia, reentry “includes all activities and programming conducted to prepare ex-convicts to return safely to the community and to live as law abiding citizens.” JOAN PETERSILIA, WHEN PRISONERS COME HOME 3 (2003); Jeremy Travis, another leading expert in the field, describes reentry as “the process of leaving prison and returning to society. Reentry is not a form of supervision, like parole. Reentry is not a goal, like rehabilitation or reintegration. Reentry is not an option. Reentry reflects the iron law of imprisonment: they all come back.” JEREMY TRAVIS, BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY xxi (2005).


9. “Nearly 50 percent of all California prisoners released in 2006 were not assigned to any rehabilitation program or job assignment during their most recent prison sentences . . . .” Cal. Dep’t of Corr. and Rehab., Adult Programs, http://www.cdcr.ca.gov/Divisions_Boards/Adult_Programs/index.html [hereinafter Adult Programs] (last visited Oct. 3, 2009). As part of the recently enacted state budget, the California Department of Corrections and Rehabilitation (CDCR) is instituting a $250 million reduction in rehabilitative programs. CAL. DEP’T OF CORR. AND REHAB., FACT SHEET, ADULT REHABILITATION PROGRAM REDUCTIONS DUE TO FISCAL YEAR 2009-10 STATE BUDGET 1 (2009) [hereinafter FACT SHEET], available at http://www.cdcr.ca.gov/Divisions_Boards/Adult_Programs/docs/Fact_Sheet.pdf.

10. Many of these challenges are products of the “tough-on-crime” agenda for the past two decades. Anthony C. Thompson, Navigating the Hidden Obstacle to Ex-Offender Reentry, 45 B.C. L. REV. 255, 262-76 (2004) (discussing the various repercussions from the “tough-on-crime” initiatives).

cycle of incarceration, reentry into an inhospitable and often hostile society,\(^\text{12}\) and recidivism greatly increases government expenditure,\(^\text{13}\) jeopardizes offender rehabilitation, presents public safety concerns, and detrimentally affects communities that are often already struggling.\(^\text{14}\)

Reentry is not, of course, a new phenomenon.\(^\text{15}\) Prisoners have always returned to their communities. What has changed in the past decades are the sheer numbers. Nationally, there has been an exponential expansion of the prison population since the mid-1970s.\(^\text{16}\) This is particularly true in California where state prisons are “bursting at the seams”\(^\text{17}\) due to a “massive 750 percent increase in the California prison population since the mid-1970s[,]”\(^\text{18}\) which is “the result of political decisions made over three decades, including the shift to inflexible determinate sentencing and the passage of harsh mandatory minimum and three strikes laws, as well as the state’s counterproductive parole system.”\(^\text{19}\) And even in California, where many would prefer to “lock’em up and throw away

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12. Thompson, *supra* note 10, at 273 (noting the social exclusion faced upon reentry that “effectively relegate[s] ex-offenders to the margins of legitimate society, stigmatizing them and further highlighting their separation from law-abiding members of society”).

13. “California 'spends more on corrections than most countries in the world,' but the state 'reaps fewer public safety benefits.'” Coleman, 2009 U.S. Dist. LEXIS 67943, at *37 (quoting Governor Schwarzenegger’s Oct. 4, 2006 Prison Overcrowding State of Emergency Declaration).

14. See, e.g., Petersilia, *supra* note 1 (“Inmates cycle in and out of prison with significant consequences for offender rehabilitation, costs, and public safety.”); Michael Pinard, *An Integrated Perspective on the Collateral Consequences of Criminal Convictions and Reentry Issues Faced by Formerly Incarcerated Individuals*, 86 B.U. L. REV. 623, 634-35 (2006) (“This cycle of reentry and recidivism has raised substantial national and local concerns about community safety and viability.”); Commission on Effective Criminal Sanctions, American Bar Association, *Second Chances in the Criminal Justice System: Alternatives to Incarceration and Reentry Strategies*, at 10 (2007) (“One of the most painful costs of incarceration is that one and a half million children in the United States under the age of eighteen have at least one parent in state or federal prison.”); Petersilia, *supra* note 7, at 8 (noting “[t]he concentration of ex-prisoners in already fragile communities” and its effects on members of these communities).

15. See Gerald Lopéz, Presentation at California Correctional Crisis Conference (Mar. 21, 2009); TRAVIS, *supra* note 7, at xxi (“[T]he problem posed by inmates being released from prison and struggling to make successful transitions is not science fiction. Nor is it new. What is new, though, is the scale of the current problem.”); Thompson, *supra* note 10, at 256.


18. Id. at *392.
19. Id. at *392-93.
the key,” 95 percent of state prisoners will in fact eventually return to the community.\(^{20}\)

Given its magnitude, reentry has become “the new buzzword in correctional reform[.]”\(^{21}\) In California, state and local politicians have begun focusing on reentry programs as a possible solution to break the cycle of recidivism, and reentry has been heralded as “The Centerpiece of Real Reform” by the California Department of Corrections and Rehabilitation (“CDCR”) and Governor Arnold Schwarzenegger.\(^{22}\) The issue of reentry has continued and will continue to be on the forefront of political debate since the recent federal court decision in *Coleman v. Schwarzenegger* and *Plata v. Schwarzenegger*, which requires the state to address its massive overcrowding by reducing its prison population by almost 40,000 in the next two years.\(^{23}\)

This overview will provide a brief discussion of recent state efforts to institute various reentry programs and the unaddressed “collateral consequences” that released prisoners face upon reentry in California. The depth and breadth of this issue goes well beyond

\(^{20}\) Adult Programs, *supra* note 9.


\(^{23}\) *Coleman*, 2009 U.S. Dist. LEXIS 67943, at *394-95 (ordering that “in no more than two years[,]” the population of CDCR’s adult institutions “reduce to ‘137.5% of their combined design capacity’”). Earlier estimates of the numbers that would be released after the tentative decision in *Coleman* ranged from 36,200 to 58,000. Compare Don Thompson, *Judges Tentatively Order Calif. Inmates Released*, S.F. GATE, Feb. 9, 2009, http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2009/02/09/state/n154650S96.DTL (last visited Nov. 3, 2009), with Michael Rothfeld, *Judges Indicate They May Order Prison Population Reduced by 58,000*, N.Y. TIMES, Feb.10, 2009. However, whether California will actually release anywhere close to this number of prisoners is in question. State politicians are already seeking other means of reducing the numbers of individuals who are in prison, including commutation of the sentences of “select deportable criminal aliens.” Cal. Dep’t of Corr. and Rehab., *CDCR Prison Population Reduction Package by the Numbers 1* (2009) [hereinafter CDCR POPULATION REDUCTION PACKAGE BY THE NUMBERS], available at http://www.counties.org/images/users/1/AOJ%20CDCR%20Pop%20Reduc-%20By%20the%20Numbers%207.27.09.pdf. In addition, CDCR has been using thousands of “temporary out-of-state inmate transfers” as “the most immediate means to reduce overcrowding.” Cal. Dep’t of Corr. and Rehab., *Prison Reforms: Achieving Results 2*, available at www.ccpoa.org/reports/prison_reforms_08.pdf.
these two aspects, and this overview does not reflect all of the complexities that are naturally intertwined. However, this overview hopes to provide a brief discussion of some of the political and social complexities surrounding this issue and some insight into the barriers for successful reentry in California.

I. Reentry Programs in California

The past few years have seen several prison reform efforts by Governor Arnold Schwarzenegger that involved reentry programs. In May 2007, the Governor signed Assembly Bill 900 ("AB 900"), authorizing $7.7 billion to relieve "the significant overcrowding problem" faced by the California correctional system through "prison construction and rehabilitation initiatives."24 Of the $7.7 billion, $2.6 billion was allocated to construct 16,000 beds in "secure reentry facilities" where prisoners could complete their final months up to a year of their sentence.25 These reentry facilities would be staffed by CDCR officers and include "24-hour confinement, secure perimeters, and no in or out privileges."26 The facilities would be located in the community that the prisoner would be released into in hopes that prisoners would be provided a “continuum of care” from incarceration through parole supervision.27 In his remarks upon


25. Id. In addition, the measure allotted $50 million for rehabilitation initiatives and $1.2 billion for counties to construct local jail facilities to ease local overcrowding. Id. The funds for county jails are contingent on an identified site for a reentry facility. Id.: see also CAL. PENAL CODE § 15820.917 (codification of the funding preference for counties that would site new reentry facilities). The state legislature recently passed AB 320, which would amend section 15820.917 and provide “coequal funding preference to counties that assist the state in either siting reentry facilities or providing existing beds and program space in county jails for use as reentry facilities.” A.B. 320 enrolled, available at http://info.sen.ca.gov/pub/09-10/bill/asm/ab_0301-0350/ab_320_bill_20090921_enrolled.pdf.


signing of the bill, Governor Arnold Schwarzenegger described it as "a monumental shift" in how the state manages its prisons.\(^{28}\)

Despite these intentions, it remains to be seen whether AB 900 provides any change in the landscape of California's criminal justice system and reentry. Progress has been slow regarding the construction of these facilities, and it is unclear whether the number of intended beds will actually come to fruition.\(^{29}\) As of May 2009, none of the facilities had been built, although CDCR was "moving forward with the conversion of the former Northern California Women's Facility (Stockton) to a reentry facility[]" that would include 500 beds.\(^{30}\) The likelihood of construction is also brought into question because of the issuance of the *Coleman* and *Plata* decision and the possible effects on the allocation of the AB 900 funds.\(^{31}\) Even if construction moves forward with the AB 900 allocation, "[b]ased on the department's estimate, the $2.6 billion provided in AB 900 will support about half the number of reentry beds assumed in the measure."\(^{32}\) Thus, only approximately 8,000 of the announced 16,000 beds would in fact be created.

Beyond these funding difficulties, the efficacy of such government-created, secure reentry centers is uncertain. Unlike earlier state reentry programs, which allowed prisoners to work and visit family in the community while they lived in centers, the current proposal is slated to bring the programming into the reentry center, rather than the prisoner into the community.\(^{33}\) Thus, the exposure of


\(^{29}\) "AB 900 has stalled. No prison or jail beds have been constructed." Assem. 320, Bill Analysis, S. Public Safety Comm., 2009-10 Leg., Reg. Sess. (Cal. 2009), available at http://info.sen.ca.gov/pub/09-10/bill/asm/ab_03010350/ab_320_cfa_20090910_113803_sen_floor.html.

\(^{30}\) LEGISLATIVE ANALYST'S OFFICE, *supra* note 24, at 2.

\(^{31}\) *Id.* at 4. In its decision, the three-judge panel in *Coleman* noted that the reentry facilities could not serve as a possible solution for the immediate overcrowding problems. Coleman v. Schwarzenegger, No. CIV S-90-0520 LKK JFM P, 2009 U.S. Dist. LEXIS 67943, at *234-39 ("Any beneficial effects of defendants' planned re-entry facility construction are simply too distant to make such construction a meaningful remedy for the emergency-like conditions in California's prisons.")

\(^{32}\) LEGISLATIVE ANALYST'S OFFICE, *supra* note 24, at 2.

\(^{33}\) The proposed reentry centers "would actually resurrect prior efforts to provide services to offenders" known as the Community Correctional Reentry Centers ("CCRCS") that CDCR operated until 2003. Lin & Turner, *supra* note 27, at 17. Unlike the present incarnation, prisoners in CCRCS were given in-and-out privileges and, thus, were permitted "to enter the community during the day to work or visit family members." *Id.* In 2003, this program was
the prisoners to their communities and families will be limited. Moreover, it remains to be seen if these facilities will provide the "continuum of care" that they aspire to offer. In order to provide this "continuum of care," CDCR, local authorities, social service providers, and community-based organizations will have to coordinate their efforts closely. As commentators have noted, "[t]he nature of collaboration between correctional agencies and social services is important to facilitating continuity of treatment, reducing redundant duties, and easing the financial costs borne by each agency." As these government entities and community-based organizations face tight fiscal times, such collaboration will stretch already limited resources. Finally, as noted in a study published by CDCR, "[t]here is a limited amount of published information or research and evaluation findings regarding secure reentry facilities." The CDCR study reviewed eight states who had established similar secure reentry facilities to those proposed in AB 900; among the eight states, the recidivism rates (and the populations served) ranged enormously from 2.5 percent to 66.1 percent.

renamed the Halfway Back program and was "specifically redesigned as an intermediate sanction for parole violators." Id. The Halfway Back program was terminated by CDCR in April 2005, "because the department was unable to establish performance benchmarks and did not analyze available program data." Id. In 2005, the Halfway Back program was replaced by the presently existing Parolee Service ("PSC") program. Id.

34. Lin & Turner, supra note 27, at 7. In addition, the involvement of all community stakeholders in the planning and implementation of these facilities is necessary; these stakeholders include "institutional staff, community corrections staff, police, the judiciary, service providers, community support agencies, [] victim advocates[,]" the formerly incarcerated, their families, and their advocates; Id. at 18 (examining the U.S. Department of Justice-sponsored Reentry Partnership Initiative and noting that "a 'one size fits all' approach to reentry is inappropriate); see also López, supra note 15; Gerald P. López, Living and Lawyering Rebelliously, 73 FORDHAM L. REV. 2041, 2048-62 (2005) (describing the "rebellious vision of problem solving" and its application in the creation of the Center for Community Problem Solving).

35. Lin & Turner, supra note 27, at 7.

36. LITERATURE REVIEW: SECURE REENTRY FACILITIES, supra note 26; see also Lin & Turner, supra note 27, at 9 ("There is currently only a limited body of research related to prisoner reentry programs, and to date, experts have not reached any sort of consensus about whether such programs 'work[,]'").

37. LITERATURE REVIEW: SECURE REENTRY FACILITIES, supra note 26. Alabama’s Life Skills Influenced by Freedom and Education Tech Transition Center for Women, which assists female parolees and probationers, had the lowest recidivism rate of 2.5 percent. Id. at 6. Ohio’s Community Based Correctional Facilities, which provide "comprehensive programming for offenders on felony probation," had the highest recidivism rate of 66.1 percent for arrest by high risk level. Id. at 4-5. This drastic difference in recidivism rates could be attributed to various factors, including the types of populations served by each program, the nature of programs offered, and the nature of the facilities, and further study of these programs is necessary.
Recently, during the 2009 budget stalemate, the Governor proposed alternative custody options for “lower-risk offenders” as part of the budget reduction package aimed at reducing the prison population.\(^3\) Prisoners with twelve months or fewer remaining to serve, or those who were elderly or medically infirm would be eligible to serve the last twelve months of their sentence “under house arrest with GPS monitoring.”\(^3\) House arrest would have included “placement in a residence, local program, hospital or treatment center.”\(^3\) It was estimated that this adjustment would reduce the prison population by 6,300 prisoners.\(^4\) The proposal was rejected by the Assembly with opponents expressing concern that their counties would be clogged with criminals.\(^4\) As expressed by Representative Joel Anderson of El Cajon, “I don’t want your state-sponsored jail-break on my hands.”\(^4\)

Reentry is not only being considered at the state level. City and county officials throughout the state are exploring reentry at their local level. The Reentry Council for the City and County of San Francisco was recently formed as a partnership between fourteen entities, including the Public Defender’s Office, the District Attorney’s Office, local social service providers, and local enforcement authorities. Each of these entities has a member on the Council; the remaining third of the Council is comprised of formerly incarcerated individuals. The Council, which meets monthly, focuses on examining the barriers faced by ex-prisoners and creating the best practices to meet their housing, employment, and social needs as they return to the community.\(^4\) Similarly, the San Diego Reentry Roundtable was established in 2002 to address the large number of people returning to San Diego following their

\(^{38}\) CDCR POPULATION BY THE NUMBERS, supra note 23.
\(^{39}\) Id.
\(^{40}\) Id.
\(^{43}\) Pordum, supra note 41.
The San Diego Reentry Roundtable worked extensively on Senate Bill 618, which focused on providing services to inmates to help them seamlessly transition out of custody and into the San Diego community. In 2008, the City of East Palo Alto with the support of CDCR and the local police department implemented a parole reentry program known as the East Palo Alto Community Based Coalition ("CBC") that provides for pre-release assessment and planning, transitional living accommodations, a day reporting center that offers classes and reentry services, and transitional living accommodations. In addition, CBC focuses on forging partnerships between police and CDCR parole officers and creating partnerships with community organizations and service providers to provide services to parolees.

The fate of reentry programs in California is tenuous. Construction of the secure reentry facilities under AB 900 has already been delayed more than two years. With the state budget crisis, the $250 million reduction in rehabilitative programs already allotted for this fiscal year, and local entities similarly facing budget difficulties, it is doubtful whether reentry will remain a "centerpiece" of the reform once planned.

II. Barriers to Successful Reentry

Beyond the lack of structured government programming, individuals leaving California's correctional facilities face numerous challenges to successful reentry. From the outset, many are

48. FACT SHEET, supra note 9 ("This sum represents over a third of last year's budget for adult programs . . . ").
49. In recent years, numerous academics, policy analysts, and organizations have focused on the various challenges to reentry. See, e.g., BARRIERS TO REENTRY? THE LABOR MARKET FOR RELEASED PRISONERS IN POST-INDUSTRIAL AMERICA (Shawn Bushway et al. eds., 2007) [hereinafter BARRIERS TO REENTRY]; Commission on Effective Criminal Sanctions, American Bar Association, Second Chances in the Criminal Justice System: Alternatives to Incarceration and Reentry Strategies, at 10 (2007). The Legal Action Center has conducted an extensive state-
returning to their communities with the same mental health and substance abuse issues that they had when they entered the California prison system. These conditions, which went largely untreated in prison, "continue to plague them upon reentry into their communities." Similarly, the California prison system is unable or unwilling to provide job training or education to many of those who are in need of these skills and knowledge. Because "[t]he vast majority of California prisoners do not receive the rehabilitation they need[,]" they already exit the prison system without "the tools that they need for successful reintegration."

With at most $200 of "gate money" in their pocket, former prisoners return to the community and attempt to navigate a barrage of collateral consequences from their criminal conviction and hidden obstacles to their ability to successfully reintegrate. As one commentator explains: "Collateral consequences, as they have been termed, include the range of social and civil restrictions that flow, sometimes without prior warning, from a criminal conviction."
The restrictions include "a mixture of federal and state statutory and regulatory laws, as well as local policies."\(^{57}\) Collateral consequences operate in many arenas, including ineligibility for public or government-subsidized housing,\(^{58}\) restrictions in employment and licensure,\(^{59}\) temporary or permanent ineligibility for public benefits,\(^{60}\) along with the loss of civil rights and other barriers.\(^{61}\)

Beyond these legal barriers, hidden social barriers make successful reentry challenging and often impossible, as illustrated by the high recidivism rate in California. For example, employers are often unwilling to hire ex-prisoners and landlords are often unwilling to rent property to them, out of fear that they are untrustworthy, dangerous, or irresponsible.\(^{62}\) These barriers reinforce each other. The inability to find secure and stable housing will affect an ex-prisoner's ability to apply for jobs as he or she will not have an address and phone number, thus raising concerns of instability for potential employers.\(^{63}\)

A. Housing

Stable housing is instrumental for successful reentry.\(^{64}\) Unfortunately, it is difficult for ex-prisoners to secure adequate,
stable housing after their release. Private housing opportunities are limited, because ex-prisoners lack the funds for the security deposit and are often unable to afford the monthly rent. Rental applications routinely request employment status, credit history, and prior residences. Many ex-prisoners have limited work and credit history as a result of their time in correctional facilities. In addition, owners often deny rental applications based on the fact that an individual has a criminal background.

In addition, public housing is often not an alternative for ex-prisoners. Public housing officials are empowered to evict individuals “who engage in certain activity detrimental to the public housing community[.]” Many public housing officials have interpreted this provision as allowing for eviction of individuals who simply have a criminal history. Not only are individuals unable to obtain public housing, but people who live in public housing often have to sign agreements with public housing officials stating that they will not have ex-prisoner visitors, so ex-prisoners generally cannot stay with their family members who live in public housing.

parolees . . . as their biggest challenge.”) Petersilia, When Prisoners Come Home, supra note 7, at 120.


66. Archer & Williams, supra note 64, at 540.

67. Thompson, supra note 10, at 279; Lynn M. Clark, Landlord Attitudes Toward Renting to Released Offenders, 71 FED. PROBATION 20 (2007) (discussing indicia of “trustworthiness” that landlords weigh in reviewing application and discussing the additional concern of tort liability); Landlords in California can specifically ask whether the applicant has a criminal history. DAVID BROWN ET AL., THE CALIFORNIA LANDLORD’S LAW BOOK: RIGHTS & RESPONSIBILITIES 243 (13th ed. 2009). Pursuant to section 290.46 of the California Penal Code, information about registered sex offenders is made available to the public via an internet website. CAL. PENAL CODE §290.46 (West 2009); see also Office of the Attorney General, Megan’s Law Home, http://www.meganslaw.ca.gov/ (last visited Nov. 1, 2009).


70. Thompson, supra note 10, at 278; see also 42 U.S.C. § 13661 (placing restrictions on federal housing assistance for those individuals with drug convictions and individuals who are substance abusers); Legal Action Center, Housing Laws Affecting Individuals with Criminal Conviction, available at http://lac.org/doc_library/lac/publications/housing_laws.pdf.

71. Thompson, supra note 10, at 279; SOLOMON ET AL., supra note 65, at 82. See also Fox Butterfield, Freed From Prison, but Still Paying a Penalty, N.Y TIMES, Dec. 29, 2002 (anecdotal description of the effects of these policies), available at http://www.fedcrimlaw.com/visitors/PrisonLore/NYT-CollateralConsequences.htm.
B. Employment

Employment is also an important component to the successful reentry and reintegration of released prisoners into society. Released prisoners face numerous impediments to gainful employment caused by their limited work histories and job training, as well as employers' reluctance to hire individuals with criminal records. In a study conducted in 2001, 600 employers in Los Angeles County were surveyed about their willingness to hire ex-offenders. The results showed that over 40 percent of employers indicated that they would "definitely" or "probably" be unwilling to hire an applicant with a criminal record for a job not requiring a college degree. As the study summarized: "For employers, a criminal history may signal an untrustworthy employee who may break rules, steal, or deal poorly with customers." Employers' reluctance to hire ex-prisoners is also driven by a concern regarding liability for negligent hiring. These fears and concerns have led many employers to ask applicants to check a box in employment

72. Commission on Effective Criminal Sanctions, American Bar Association, Second Chances in the Criminal Justice System: Alternatives to Incarceration and Reentry Strategies, at 10 ("The ability to get and maintain employment has been identified as a reliable predictor of a criminal offender's ability to successfully reenter society after a term in prison and remain law-abiding."); see generally BARRIERS TO REENTRY.

73. Archer & Williams, supra note 64, at 535; Jennifer Leavitt, Comment, Walking a Tightrope: Balancing Competing Public Interests in the Employment of Criminal Offenders, 43 CONN. L. REV. 1281, 1282-83 (2002) (discussing the stigmatization of felons and the reinforcing nature of the stigma). In California, employers can request criminal record information for many misdemeanor and felony convictions or incarceration arising therein that has occurred within the past ten years; CAL. PEN. CODE § 11.105.3(a) (West 2009); CAL. WEL. & INST. CODE 15660 (West 2009). It is estimated that "one out of five adults in the United States now has a criminal record that will show up on a routine employment background check." Statement of Laura Moskowitz, National Employment Law Project, Statement on Employment Discrimination Against Individuals with Arrest and Conviction Histories [before EEOC], (Nov. 20, 2008), available at http://www.nelp.org/page/-/SCLP/EEOCMoskowitz.pdf.


75. How Willing Are Employers to Hire Ex-offenders?, supra note 74, at 41. An additional 36.4 percent of those surveyed stated that it would depend on the nature of the crime.; The Effect of an Applicant's Criminal History, supra note 74, at 123.

76. How Willing Are Employers to Hire Ex-offenders?, supra note 74, at 41.

77. Id.; Leavitt, supra note 73, at 1301.
applications if they have ever been convicted of a crime. In response, All of Us or None, a mobilization of formerly incarcerated people, and its founder, Dorsey Nunn, began the “Ban the Box” campaign “to call[] for the elimination of the questions about past convictions on initial public employment applications.” As described by Mr. Nunn, a conference panelist and the co-Director of Legal Services for Prisoners with Children, these types of questions in employment and housing applications constitute “structural discrimination” that affects every aspect of an ex-prisoner’s life. The campaign has been successful in several cities in California, including San Francisco and Oakland.

Occupational licensing restrictions also present a significant barrier for ex-prisoners. These occupational licensing laws vary from state to state. In California, there are “approximately 50 different agencies licensing businesses and professions,” from barbering and cosmetology to automotive repair to funeral directors to insurance adjustors. A licensing board may deny a license on the grounds that an individual has been convicted of a crime or

78. All of Us or None is “a national organizing initiative started by formerly-incarcerated people to fight against discrimination faced after release and to fight for the human rights of prisoners.” All of Us or None, About Us, http://www.allofusornone.org/about_us (last visited Nov. 3, 2009).
79. All of Us or None, Ban the Box, http://www.allofusornone.org/campaigns/ban-the-box (last visited Nov. 3, 2009).
84. CAL. BUS. & PROF. CODE § 7403 (West 2009) (barbering and cosmetology); CAL. BUS. & PROF. CODE § 9884.22 (West 2009) (automotive repair); CAL. BUS. & PROF. CODE § 7708 (West 2009) (funeral directors and embalmers); CAL. INS. CODE § 15025 (West 2009) (insurance adjustors).
"[d]one any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another[].\) The crime or act must be "substantially related to the qualifications, functions or duties of the business or profession for which application is made." An individual cannot be denied a license "solely on the basis" of conviction if he or she has obtained a certificate of rehabilitation for a felony or met "the criteria of rehabilitation" developed by the licensing board for misdemeanors. Each licensing board has broad discretion in developing criteria regarding whether the crime or act was substantially related to the qualifications and in developing the criteria of rehabilitation for misdemeanors. Even if an individual expunges his or her record of the conviction, state and local licensing agencies will still consider the conviction.

C. Public Benefits

Criminal convictions also can affect an individual’s ability to receive benefits, the denial of which has a “direct and potentially devastating impact” on the ex-offender and their family. There is a federal lifetime ban from Temporary Assistance for Needy Families (“TANF”) and food stamps for anyone convicted of a drug-related felony after August 22, 1996. States have been given the right to modify or opt-out of the ban. California modified the federal blanket ban in 2004, permitting individuals who were convicted of possession to become eligible upon enrollment, completion, or

85. CAL. BUS. & PROF. CODE § 480(a)(1), (2) (West 2009). Similar standards apply for suspension and revocation of licenses; CAL. BUS. & PROF. CODE § 490 (West 2009).
86. CAL. BUS. & PROF. CODE §§ 480(a), 490 (West 2009); see also Petropoulos v. Dep’t of Real Estate, 142 Cal. App. 4th 554 (2006) (noting the codification of the substantial relationship test in sections 480 and 490); Slote, supra note 83 (summarizing cases applying the substantial relationship test).
87. CAL. BUS. & PROF. CODE § 480(b) (West 2009); see also CAL. PENAL CODE § 4852.01 et seq. (2009) (certificate of rehabilitation). Unlike other states, California explicitly prohibits the denial, suspension, and revocation of a license "on the grounds of a lack of good moral character[]." Compare CAL. BUS. & PROF. CODE § 475 (West 2009), with Thompson, supra note 10, at 281 (discussing good moral character statutes).
88. CAL. BUS. & PROF. CODE §§ 481, 482 (West 2009); see also Slote, supra note 83 (noting that the criteria developed under section 481 varies "widely from agency to agency").
89. CAL. PENAL CODE § 1203.5 (West 2009).
90. Archer & Williams, supra note 64, at 539.
91. 28 U.S.C. § 862a(a).
placement on the waiting list of a "government-recognized drug treatment program." However, the ban remains in place for individuals convicted of drug offenses involving sales, manufacturing, and transporting of a controlled substance or marijuana. Denial of benefits makes “it virtually impossible for [ex-offenders] to meet their daily needs without returning to a life of crime.”

D. Other Collateral Consequences

Beyond housing, employment, and public benefits, released prisoners face additional collateral consequences upon release from the California correctional system. There is political disenfranchisement. Neither prisoners nor released prisoners on parole following felony convictions are eligible to vote. In addition, no person with a felony conviction may enlist in the military. There may also be an effect on the family as restrictions are placed on ex-prisoners’ ability to become foster or adoptive parents.

In summarizing the findings of its report on the state legal

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93. CAL. WEL. & INST. CODE § 18901.3(d)(1)-(5) (West 2009) (enumerating five methods through which a person convicted of possession may become eligible for food stamps).
94. CAL. WEL. & INST. CODE § 18901.3(a)-(c) (West 2009).
95. Archer & Williams, supra note 64, at 539; Beyond TANF benefits and food stamps, prisoners’ Social Security Insurance and Social Security Disability Insurance benefits are typically discontinued upon entry into the California correctional system. 20 C.F.R. § 404.468; see also Social Security Administration, 2009 Annual Report, Appendix, V.A.2.d (discussing effects of institutionalization on eligibility) [hereinafter SSA 2009 Annual Report], available at http://www.ssa.gov/OACT/ssi/SSI109/History.html/383027. Unless there is a partnership between the individual prison or jail and the Social Security Administration, released prisoners are forced to reapply for these benefits post-release. This process can take from months to years. Social Security Administration, Understanding Supplemental Security Income: SSI Spotlight on Prerelease Procedure, available at http://www.ssa.gov/ssi/spotlights/spot-prerelease.htm; SSA 2009 Annual Report, Table V.CI (showing 6,311 Social Security Insurance claims from 2007 pending as of February 2009).
96. CAL. CONST. art. 2, § 4; Flood v. Riggs, 80 Cal. App. 3d 138, 155 (1978). A certificate of rehabilitation and pardon also restores the right to vote and the right to possess firearms. CAL. PENAL CODE § 4852.17 (West 2009). States have complete discretion regarding whether an individual with a criminal record can vote, and states vary greatly on the scope of the ban from no restrictions to a lifetime bar. After Prison: Roadblocks to Reentry, supra note 50, at 14.
98. CAL. HEALTH & SAFETY CODE § 1522 (West 2009); CAL. FAM. CODE § 8811 (West 2009).
barriers facing those with a criminal record, the Legal Action Center described the magnitude of these barriers as follows:

People with criminal records face a daunting array of challenges. Without a job, it is impossible to provide for oneself and one’s family. . . . Without affordable housing or food stamps or federal monies to participate in alcohol or drug treatment, it is harder to lead a stable, productive life. Without the right to vote, the option to adopt or raise foster children, or access to a college loan, it is harder to become a fully engaged citizen in the mainstream of society. Taken as a whole, the roadblocks examined in this study paint a grim picture of a nation that, through a patchwork of state and federal laws, is actively undermining efforts toward the reintegration of people with criminal records. In doing so, this long series of unreasonable roadblocks to basic survival and responsible citizenship compromises everyone’s safety and the safety and well-being of our communities.99

Conclusion

Despite the state’s efforts, it is clear that the reentry programs established by AB 900 have not become the “Centerpiece of Real Reform” that they were promised to be. Not one secure reentry facility has been built under AB 900.100 And given the enormity and immediacy of the California prison crisis, these facilities will not address the pressing needs recognized by the Coleman and Plata decision.101 More fundamentally, even if built, the reentry facilities set forth in AB 900 would not address the systemic bias and collateral consequences faced by individuals released from California prisons. Without the implementation of community-based reentry programs and the reform of state and federal laws that

101. “Any beneficial effects of [the state’s] planned re-entry facility construction are simply too distant to make such construction a meaningful remedy for the emergency-like conditions in California’s prisons. Moreover, it is unlikely that the number of re-entry facilities that would be constructed would be sufficient to remedy the overcrowding problems in any event.” Id. at *23.
impose these collateral consequences, the self-reinforcing cycle of incarceration, parole, and recidivism will continue unabated.

Breaking this cycle and ensuring successful integration into the community does not solely benefit the formerly incarcerated. Successful integration benefits the community from which the individual came — by rebuilding families and the infrastructure of that community, and thereby improving public safety and reducing the costs to society at large. As one report noted, successful reentry ensures that: "an individual, whose crime and incarceration disrupted the social fabric and imposed upon the community the costs of the crime and punishment, will add value to the community and serve as a constant reminder that we are indeed a nation of second chances for those who violated the law."\textsuperscript{102} Achieving that success will require collaborative efforts by all stakeholders to fundamentally reorient how we as a society treat the formerly incarcerated. It is that social and legal transformation that will be the real centerpiece to meaningful reform.