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Reentry and Homelessness: Alternatives to Recidivism

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Each year hundreds of thousands of individuals are released from prisons and jails, and the numbers are expected to increase. Yet resources to help those released reenter society are, in many cases, nonexistent. The scarce housing resources available often exclude those with criminal records. As a result, a significant percentage of people leaving prison or jail become homeless upon release.

At the same time, jurisdictions across the country are enacting and enforcing laws that punish homeless people for conduct such as sleeping, sitting, or lying down that they typically must perform in public because of their status. Such measures have been exacerbated by heightened security measures following September 11.¹ This trend increases the chance that homeless people will become involved in the criminal justice system and contributes to a cycle of homelessness and incarceration. As a study of New York prisoners found, “a record of shelter use increases the risks, after release from prison, for both shelter use and reincarceration ... and past shelter use ... also is associated with an increased risk of reincarceration.”² The study concluded that “the crossing over from incarceration to homelessness, and vice versa,

¹See generally NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, PHOTO IDENTIFICATION BARRIERS FACED BY HOMELESS PERSONS: THE IMPACT OF SEPTEMBER 11 (2004), available at www.nlchp.org/Pubs/index.cfm?startRow=16&FA=0&TAB=2.

²Stephen Metraux & Dennis P. Culhane, *Homeless Shelter Use and Reincarceration Following Prison Release*, 3 CRIMINOLOGY AND PUBLIC POLICY 139, 151 (2004).

threatens to transform spells of incarceration into long-term patterns of social exclusion,” thus creating an “institutional circuit.”³

Breaking this cycle requires a major commitment of resources and significant changes in the way that the country views people leaving prisons and jails. Federal, state, and local programs offer resources that can help break the cycle. Existing laws, if implemented, can provide income assistance and housing resources to prevent formerly incarcerated people from becoming homeless. Proposed federal legislation would be a first step toward breaking the cycle. Human rights principles are directly relevant to these issues and serve as an important framework for government policy, best practices, and court decisions.

In this article we explore the cyclical relationship between incarceration and homelessness and the importance of housing in breaking that cycle. We discuss the limited resources and punitive public policies that drive the cycle. We present strategies that advocates can use to help prevent homeless people from entering the criminal justice system and increase housing opportunities for people leaving incarceration. We review, as part of this discussion, human rights principles that can create a framework within which to consider the reentry issue. Among the strategies that we discuss are current federal legislative efforts to improve reentry services that, if implemented, may begin to break this “institutional circuit.”

I. The Increasing Number of Homeless People, Criminalization, and Prisoners Reentering the Community

Large-scale homelessness continues to be one of the nation’s most significant problems. Before Hurricanes Katrina and Rita, an estimated 2.5 million to 3.5 million men, women, and children experienced homelessness each year.⁴ On any given night, more than 800,000 Americans were homeless.⁵ Of this homeless population group, 32 percent was female, and 68 percent was male.⁶ Families constituted 40 percent of the homeless population.⁷ Almost 200,000 veterans were homeless at any given time, and more than one-half million veterans experienced homelessness each year.⁸

According to the U.S. Conference of Mayors’ 2004 survey, emergency shelter requests in the twenty-five cities studied increased by an average of 6 percent between 2003 and 2004.⁹ On average, 23 percent of emergency shelter requests went unmet during the same period.¹⁰ According to 46 percent of the cities surveyed, the length of time that people were homeless increased during 2004, and the average period of homelessness was eight months.¹¹ These, of course, were the statistics before the hurricanes late in the summer of 2005 added several hundred thousand to the homeless population.

The lack of housing leaves many homeless individuals with no place to live but in public places. Many cities have

³*Id.* at 142 (internal quotations omitted).

⁴MARTHA BURT ET AL., HELPING AMERICA’S HOMELESS: EMERGENCY SHELTER OR AFFORDABLE HOUSING? 49–50 (2001).

⁵*Id.*

⁶MARTHA BURT ET AL., URBAN INSTITUTE, HOMELESSNESS: PROGRAMS AND THE PEOPLE THEY SERVE: TECHNICAL REPORT ch. 3, at 3 (1999) (report prepared for Interagency Council on Homelessness).

⁷U.S. CONFERENCE OF MAYORS, A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA’S CITIES: A 25-CITY SURVEY 50 n.17 (2004).

⁸National Coalition for Homeless Veterans, Most Often Asked Questions Concerning Homeless Veterans, www.nchv.org/background.cfm (last visited Nov. 8, 2005) (Who are homeless veterans?). According to a 1996 survey, 23 percent of homeless people were veterans, and 33 percent of all homeless men were veterans. BURT ET AL., *supra* note 6, ch. 3 at 3.

⁹U.S. CONFERENCE OF MAYORS, *supra* note 7, at 4.

¹⁰*Id.*

¹¹*Id.*

Free New Prisoner Reentry Resource Now Available Online

Reentry Net, started in November 2005, is a collaborative education and resource center for individuals and organizations in New York State. Reentry Net, which advocates for people with criminal records and their families, has an online network and resource center that serves criminal defense, civil legal services, social services, and policy reform advocates. A project of the Bronx Defenders and Pro Bono Net, it hosts a growing national reentry research clearinghouse that includes academic research, evaluations of programs and initiatives, and policy reports on the full range of issues that affect the reentry community. For more information, visit www.reentry.net.

responded to the increasing numbers of people living in their public areas by essentially making homelessness illegal. Local governments are fining and jailing homeless people rather than addressing the causes of homelessness. New city ordinances that criminalize performing in public such acts as sleeping, sitting, or lying down—which most homeless people have no choice but to do in public—has been one criminal justice response to homelessness.¹²

In the 1990s police efforts to crack down on “quality-of-life crimes,” such as loitering, trespass, and panhandling, also increased.¹³ The National Law Center on Homelessness and Poverty surveyed forty-nine cities for its 1999 and 2002 civil rights reports and found that 70 per-

cent of the cities enacted new laws criminalizing homelessness in that three-year period.¹⁴ The center’s other findings:

- The number of cities prohibiting “loitering or loafing” in particular public places increased by 22.4 percent. Such laws grant wide discretion to police and often are used selectively against homeless people.¹⁵
- The number of ordinances prohibiting obstruction of sidewalks and public places, another broad kind of law, increased by 16.3 percent.
- The number of cities prohibiting sleeping in selected public places increased by 14.3 percent.
- The number of cities prohibiting begging increased by 10.2 percent. Of the cities surveyed, 79.6 percent prohibited such conduct. When prohibitions against “aggressive” panhandling are included, the figure jumps to 91.8 percent.¹⁶

At least in part because of the increasing criminalization of homelessness, a disproportionate number of homeless people have been incarcerated. A summary of studies on prison use found that, on average, 18 percent of the homeless population reported having served time in prison.¹⁷ This contributed to the explosion of the prison population. The prison and jail population has multiplied by 600 percent since the 1980s and now stands

¹²NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, PUNISHING POVERTY: THE CRIMINALIZATION OF HOMELESSNESS, LITIGATION, AND RECOMMENDATIONS FOR SOLUTIONS iv (2003), available at www.nlchp.org/Pubs/index.cfm?TAB=2&FA=4. For an example of such an ordinance, see SEATTLE, WASH., MUNICIPAL CODE § 15.48.040 (prohibiting lying or sitting down on sidewalks in downtown and neighborhood and commercial areas from 7:00 a.m. to 9:00 p.m.); see also *Berkeley Community Health Project v. City of Berkeley*, 902 F. Supp. 1084, 1086 (N.D. Cal. 1995) (granting preliminary injunction forbidding enforcement of Berkeley’s solicitation ordinance and sitting ordinance).

¹³JOAN PETERSILIA, WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY 123 (2003).

¹⁴NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, *supra* note 12, at iv; see also NATIONAL COALITION FOR THE HOMELESS & NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, ILLEGAL TO BE HOMELESS: THE CRIMINALIZATION OF HOMELESSNESS IN THE U.S. 7 (2002), available at www.nlchp.org/Pubs/index.cfm?TAB=2&FA=4; NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, OUT OF SIGHT, OUT OF MIND? A REPORT ON ANTI-HOMELESS LAWS, LITIGATION AND ALTERNATIVES IN 50 U.S. CITIES i–iii (1999), available at www.nlchp.org/Pubs/index.cfm?TAB=2&FA=4.

¹⁵See *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972) (Clearinghouse No. 7472). The U.S. Supreme Court held that a traditional vagrancy law was void for vagueness. Its broad scope and imprecise terms denied proper notice to potential offenders and permitted police officers to exercise unfettered discretion in the enforcement of the law. See *id.* at 167–71.

¹⁶NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, *supra* note 12, at iv; see also ILLEGAL TO BE HOMELESS, *supra* note 14, at 241–43 (chart showing the types of conduct prohibited in the cities surveyed); OUT OF SIGHT, OUT OF MIND?, *supra* note 14, at ii (summary of the types of quality-of-life crimes prohibited by the cities surveyed).

¹⁷Metraux & Culhane, *supra* note 2, at 141.

at about two million.¹⁸ Women were the most rapidly growing segment of this population: they constituted 9.9 percent of new parolees in 2003 compared to 7.9 percent in 1990.¹⁹ A total of 65 percent of the women in state prisons and 59 percent of the women in federal prisons had children.²⁰ Veterans constituted about 12 percent of the prison population.²¹

More than 90 percent of incarcerated people are eventually released.²² The growth of the prison population has resulted in an explosive increase in the number of people leaving prisons each year. In 2003 approximately 650,000 people left the country's prisons.²³ Millions more were released from jails.²⁴ Although experts caution that providing housing in the first thirty days after release is the most important factor in enabling prisoners reentering the community to reintegrate into the community successfully, offenders often are released with no place to live.²⁵ No

nationwide statistics are available on how many individuals are released without housing, but studies estimate the percentage to be at least 10.²⁶ This rate is higher in urban areas, including San Francisco, "where as many as 30 [percent] to 50 percent of parolees are estimated to be homeless."²⁷ The 2004 U.S. Conference of Mayors' report cited prisoner reentry as a major cause of homelessness in Boston, Cleveland, Los Angeles, Norfolk, and Phoenix.²⁸

The prison population reentering the community has a very high recidivism rate. According to the most recent comprehensive study available, more than 67 percent of prisoners released from prison in 1994 were rearrested within three years, and almost 52 percent were back in prison for a new offense or a violation of the terms of release.²⁹

The lack of housing is one factor causing this high recidivism rate. Once homeless, prisoners reentering the community are

¹⁸RE-ENTRY POLICY COUNCIL, COUNCIL OF STATE GOVERNMENTS, REPORT OF THE RE-ENTRY POLICY COUNCIL: CHARTING THE SAFE AND SUCCESSFUL RETURN OF PRISONERS TO THE COMMUNITY 10 (2005) (citing JUSTICE POLICY INSTITUTE, THE PUNISHING DECADE: PRISON AND JAIL ESTIMATES AT THE MILLENNIUM 1-2 (2000); PAIGE M. HARRISON & JENNIFER C. KARLBERG, BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, BULLETIN NO. 198877, PRISON AND JAIL INMATES AT MIDYEAR 2002, at 1 (2003)).

¹⁹PETERSILIA, *supra* note 13, at 25-26. This increase is due in part to the disproportionate effect on women of the war on drugs. *Id.* at 26.

²⁰*Id.* at 43.

²¹RE-ENTRY POLICY COUNCIL, *supra* note 18, at 64 (citation omitted).

²²PETERSILIA, *supra* note 13, at 22.

²³Office of Justice Programs, U.S. Department of Justice, Learn About Reentry, www.ojp.usdoj.gov/reentry/learn.html (last visited Oct. 28, 2005).

²⁴Telephone Interview by Rebecca K. Troth, Legal Director, National Law Center on Homelessness and Poverty, with Allen J. Beck, Chief of Corrections Statistics, Bureau of Justice Statistics, U.S. Department of Justice (July 11, 2005) (Beck estimating that almost nine million individuals were released from jails in 2003); see also RE-ENTRY POLICY COUNCIL, *supra* note 18, at 3 (citation omitted) (according to a paper written in 2000, more than seven million individuals are released from jails each year).

²⁵PETERSILIA, *supra* note 13, at 8, 121; Metraux & Culhane, *supra* note 2, at 144.

²⁶"More than ten percent of people coming in and out of prisons and jail are homeless in the months before and after their incarceration." RE-ENTRY POLICY COUNCIL, *supra* note 18, at 58 (citation omitted); see also CATERINA GOUVIS ROMAN & JEREMY TRAVIS, URBAN INSTITUTE, TAKING STOCK: HOUSING, HOMELESSNESS, AND PRISONER REENTRY 3 (2004) (citing a 1999 Urban Institute study of returning prisoners in which 18 percent of the returning prisoners reported that they were homeless for at least one month in the year after their release); Metraux & Culhane, *supra* note 2, at 144 (stating that, of the 48,424 persons released from New York prisons to New York City between 1995 and 1998, 11.4 percent entered a homeless shelter within two years).

²⁷JEREMY TRAVIS ET AL., URBAN INSTITUTE, FROM PRISON TO HOME: THE DIMENSIONS AND CONSEQUENCES OF PRISONER REENTRY 36 (2001) (citing California Department of Corrections, Preventing Parolee Failure Program: An Evaluation (1997)).

²⁸U.S. CONFERENCE OF MAYORS, *supra* note 7, at 86.

²⁹Bureau of Justice Statistics, U.S. Department of Justice, Reentry Trends in the U.S.: Recidivism, www.ojp.usdoj.gov/bjs/reentry/recidivism.htm (fifteen-state study of released prisoners in 1983 and 1994) (last rev. Oct. 25, 2002).

at risk of reincarceration for “quality-of-life offenses,” and police end up arresting and jailing “homeless parolees who had few options for housing and work due to the often insurmountable barriers they faced during reentry.”³⁰ A study of individuals released from New York state prisons between 1995 and 1998 found a 23 percent increase in the risk of reincarceration associated with a prerelease shelter stay and a 17 percent increase in the risk of incarceration associated with a postrelease shelter stay.³¹ The Vera Institute of Justice reached a similar conclusion; the institute found that parolees who entered homeless shelters in New York City after leaving state prisons were “seven times more likely to abscond during the first month after release than those who had housing.”³² The cycle is repeated, as homeless individuals with a history of incarceration enter the criminal justice system once again.

II. Driving the Cycle: Limited Resources and Punitive Public Policies

Many barriers, starting with financial resources, stand between people leaving jail or prison and a place to live. Most prisons release individuals with, at most, a bus ticket and a small amount of spending money.³³ The states providing money give from \$25 to \$200, while one-third of

the departments of corrections provide no money at all upon release.³⁴

In the past, prisoners reentering the community could rely some on public benefits as they attempted to become financially stable.³⁵ But cuts in government assistance, culminating in the Clinton administration’s Personal Responsibility and Work Opportunity Reconciliation Act of 1996, have made benefits increasingly unavailable, especially for individuals without a disability.³⁶ The 1996 welfare reform law prohibits anyone convicted of a drug felony from receiving federally funded food stamps or Temporary Assistance for Needy Families.³⁷ Although states may opt out of the ban, seventeen states have adopted the federal ban in whole, and twenty-one states have revised the ban to allow individuals with criminal records to get assistance only if they meet certain conditions, such as participating in treatment programs or being convicted only for drug possession rather than selling.³⁸ Only twelve states do not impose a ban.³⁹

Prisoners who have a disability and are reentering the community may be eligible for Supplemental Security Income (SSI) benefits.⁴⁰ The cash flow from such benefits can help secure housing. However, the Social Security Administration can take three to five months to process an application.⁴¹ Thus the agency may not approve

³⁰PETERSILIA, *supra* note 13, at 123.

³¹Metraux & Culhane, *supra* note 2, at 149.

³²RE-ENTRY POLICY COUNCIL, *supra* note 18, at 55 (citing MARTA NELSON ET AL., VERA INSTITUTE OF JUSTICE, THE FIRST MONTH OUT: POST-INCARCERATION EXPERIENCES IN NEW YORK CITY 9 (1999)).

³³TRAVIS ET AL., *supra* note 27, at 19.

³⁴*Id.* (citing Research Council, American Correctional Association, *ACA’s National Corrections Research Project: A Survey of Correctional Agencies’ Research Topics and Interests*, 25 CORRECTIONS COMPENDIUM 7–19 (2000)).

³⁵PETERSILIA, *supra* note 13, at 125.

³⁶*Id.*; Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 21 U.S.C.A. § 862 (West, WESTLAW through 2005).

³⁷Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 21 U.S.C.A. § 862 (West, WESTLAW through 2005).

³⁸LEGAL ACTION CENTER, AFTER PRISON: ROADBLOCKS TO REENTRY: A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS 12 (2004).

³⁹*Id.*

⁴⁰42 U.S.C.A. § 1381 (West, WESTLAW through 2005).

⁴¹See Social Security Administration, Social Security Online: Answers to Your Questions, http://ssa-custhelp.ssa.gov/cgi-bin/ssa.cfg/php/enduser/std_alp.php?p_sid=8-79_WLh (Category: All, Question 60; Answer ID 159) (last rev. Oct. 27, 2005).

the application until several months after the individual's release. If the agency denies a claim, a request for reconsideration takes several months. More important, a hearing before an administrative law judge can take more than a year. If the applicant appeals the administrative decision, the appeal council takes, on average, eight months to review a denial.⁴² Such delays deny assistance to prisoners reentering the community when they most need assistance.

An unknown number of facilities have "prerelease" agreements with the Social Security Administration; these agreements allow the application process for SSI and food stamp benefits to begin while the prisoner is still incarcerated.⁴³ Under a prerelease agreement, the correctional facility agrees to notify the agency of inmates who are likely to meet SSI eligibility criteria and who are likely to be released within thirty days of the agency's decision.⁴⁴ The correctional facility also agrees to help the inmate gather the necessary evidence, including medical records, to support the claim.⁴⁵ In return, the agency agrees to train jail staff about SSI rules and ensure that application procedures go smoothly.⁴⁶ The agency also agrees to process these

applications quickly.⁴⁷ Upon release, the prisoner goes to the local Social Security Administration office to finalize the claim so that SSI and food stamp payments can begin.⁴⁸ Notably the Bureau of Prisons, which administers the federal system, does not have prerelease procedures, although federal law allows it.⁴⁹

If prisoners were receiving SSI benefits before incarceration and were incarcerated for more than a year, their eligibility is terminated, and they must apply anew.⁵⁰ In that case, unless the facility has a prerelease agreement with the Social Security Administration, months may elapse before the ex-prisoner begins receiving benefits again; this leaves the prisoner reentering the community no resources with which to navigate the first crucial weeks after release.

Formerly incarcerated veterans have a greater chance than nonveterans of securing some assistance shortly after release. Veterans with service-related disabilities receive veterans compensation, and those whose disability is non-service-related receive veterans pension benefits.⁵¹ Individuals receiving pension benefits lose those benefits if they are convicted of a misdemeanor or felony and are incarcerated

⁴²See *id.* (Category: Hearings and Appeals, Question 4, Answer ID 1166).

⁴³See 42 U.S.C.A. § 1383 (West, WESTLAW through 2005); see also Program Operations Manual System (POMS) § SI 00520.900-.930 (dates vary), available at <http://policy.ssa.gov/poms.nsf/subchapterlist!OpenView&Start=1.5.7&RestrictToCategory=05005>. POMS is a primary source of information used by Social Security Administration employees to process claims for social security benefits.

⁴⁴POMS § DI 23530.001 (Jan. 23, 1990), available at <http://policy.ssa.gov/poms.nsf/lnx/0423530001>; see Bazelon Center for Mental Health Law, Restoring Federal Benefits, www.bazelon.org/issues/criminalization/publications/gains/restoringfederal.htm (last visited Oct. 27, 2005).

⁴⁵POMS § DI 23530.001 (Jan. 23, 1990), available at <http://policy.ssa.gov/poms.nsf/lnx/0423530001>; CHRIS KOYANAGI, BAZELON CENTER FOR MENTAL HEALTH LAW, ARRESTED? WHAT HAPPENS TO YOUR BENEFITS IF YOU GO TO JAIL OR PRISON? (2004) (ordering information available at www.bazelon.org/issues/criminalization/publications/arrested/index.html).

⁴⁶KOYANAGI, *supra* note 45.

⁴⁷POMS § DI 23530.001 (Jan. 23, 1990), available at <http://policy.ssa.gov/poms.nsf/lnx/0423530001>; KOYANAGI, *supra* note 45.

⁴⁸Individuals in facilities without a prerelease agreement may still apply for benefits before release, although the process is much easier if procedures are in place. See Social Security Administration, Prerelease Procedure, at www.ssa.gov/notices/supplemental-security-income/spotlights/spot-prerelease.htm (Is there a way to apply for SSI benefits before my anticipated release from an institution?) (last reviewed Aug. 16, 2005); Bazelon Center for Mental Health Law, *supra* note 44.

⁴⁹42 U.S.C.A. § 1383 (West, WESTLAW through 2005).

⁵⁰POMS § DI 28065.001 (May 17, 1999), available at <http://policy.ssa.gov/poms.nsf/lnx/0428065001!opendocument>; see KOYANAGI, *supra* note 45.

⁵¹38 U.S.C.A. § 5313 (West, WESTLAW through 2005).

for sixty days or longer.⁵² Individuals receiving veterans compensation suffer a benefits cut only if convicted of a felony and incarcerated for sixty days or more.⁵³ Veterans benefits resume as soon as the individual documents to the Department of Veterans Affairs the individual's release, although receiving the check may take time.⁵⁴ Under the Homeless Veterans Comprehensive Assistance Act of 2001, the department also runs pilot programs that give reentering veterans transitional housing assistance.⁵⁵

But even with some financial resources, individuals leaving prison or jail often return to communities that lack affordable housing.⁵⁶ Housing prices around the country are increasingly prohibitive for those with limited resources, and the supply is not increasing to meet the demand for affordable housing.

As of December 2004, there was no place in the United States where full-time minimum-wage workers could afford the fair market rent for a two-bedroom unit in their community.⁵⁷ According to the National Low Income Housing Coalition, in 2004 the national "housing wage"—the amount a full-time worker must earn to

afford the rent for a modest two-bedroom home while paying no more than 30 percent of income for housing—was \$15.37, or \$31,970 a year.⁵⁸ That amount represents almost three times the federal minimum wage of \$5.15 per hour.⁵⁹ New construction of affordable housing stock has not kept pace with the loss of such units, and "between 1993 and 2003, the shortfall in affordable and available units remained essentially unchanged at 5.2 million."⁶⁰ Given the little money that most prisoners reentering the community get on release, the lack of government assistance, and the problems that they face finding employment, market-rate housing is especially out of reach for them.⁶¹

And when prisoners reentering the community have the money to rent housing on the private market, background checks can prevent them from securing the housing. All fifty states allow landlords to screen for a criminal background and to deny housing to individuals with a criminal record.⁶² Landlords may access this information in more than half of the states because twenty-eight states allow at least some Internet access to criminal records.⁶³ Landlords seldom rent to

⁵²*Id.*; see Bazelon Center for Mental Health Law, Federal Programs, www.bazelon.org/issues/criminalization/publications/gains/federalprograms.htm (last visited Oct. 28, 2005); KOYANAGI, *supra* note 45.

⁵³38 U.S.C.A. § 5313 (West, WESTLAW through 2005); see Bazelon Center for Mental Health Law, *supra* note 52.

⁵⁴38 U.S.C.A. § 5313 (West, WESTLAW through 2005); Bazelon Center for Mental Health Law, *supra* note 52.

⁵⁵Homeless Veterans Comprehensive Assistance Act of 2001, Pub. L. No. 107-95, 115 Stat. 903 (2001). The Department of Veterans Affairs created the Incarcerated Veterans Transition Program, a joint project with the U.S. Department of Labor. 68 Fed. Reg. 71136-71 (Dec. 22, 2003). The program serves veterans who are at risk of homelessness and are residents of a correctional institution. *Id.* at 71136. The program has seven pilot projects, and data regarding these programs have not yet been published.

⁵⁶NINO RODRIGUEZ & BRENNER BROWN, STATE SENTENCING AND CORRECTIONS PROGRAM, VERA INSTITUTE OF JUSTICE, ISSUES IN BRIEF: PREVENTING HOMELESSNESS AMONG PEOPLE LEAVING PRISON 3 (2003), available at www.vera.org/publication_pdf/209_407.pdf.

⁵⁷NATIONAL LOW INCOME HOUSING COALITION, OUT OF REACH 2004 (2004), available at www.nlihc.org/oor2004/introduction.htm.

⁵⁸*Id.*

⁵⁹Employment Standards Administration, U.S. Department of Labor, Wage and Hour Division: Basic Information 1, www.dol.gov/esa/regs/compliance/whd/whd_fs.pdf (last visited Nov. 4, 2005).

⁶⁰JOINT CENTER FOR HOUSING STUDIES, HARVARD UNIVERSITY, STATE OF THE NATION'S HOUSING 23 (2005).

⁶¹Joan Petersilia, National Institute of Justice, U.S. Department of Justice, *When Prisoners Return to the Community: Political, Economic, and Social Consequences*, SENTENCING & CORRECTIONS, Nov. 2000, at 9, available at www.ncjrs.org/pdffiles1/nij/184253.pdf (reporting that, after one year of release, up to 60 percent of formerly incarcerated individuals are unemployed).

⁶²RE-ENTRY POLICY COUNCIL, *supra* note 18, at 261.

⁶³LEGAL ACTION CENTER, AFTER PRISON: ROADBLOCKS TO REENTRY: A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS 15 (2004).

individuals with criminal backgrounds because of the stigma associated with a criminal record and because of the safety fears generated by renting to people with criminal records.⁶⁴

For prisoners reentering the community, then, “publicly supported housing is the only realistic option for safe and stable places to live.”⁶⁵ Or at least it would be, absent recent changes in public housing laws and policies. Because of efforts in the 1990s to crack down on illegal activity in public housing, government housing assistance is largely unavailable to prisoners reentering the community. Federal law either prohibits public housing authorities from assisting several categories of individuals with criminal records or allows housing authorities to deny housing to various types of individuals with criminal records, effectively denying public housing to prisoners reentering the community.

Federal law prohibits federal housing assistance, including Section 8 vouchers, to people with certain types of criminal histories:

- Individuals who have been evicted from public housing because of drug-related criminal activity are ineligible for federally assisted housing for three years after eviction.⁶⁶ This provision is related to the “one-strike” provision, which allows public housing authorities to refuse to lease to or evict tenants for any “criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, or any drug-related criminal activity on or off such premises, engaged in by a public housing

tenant, any member of the tenant’s household, or any guest or other person under the tenant’s control.”⁶⁷ The Supreme Court upheld the “one-strike” provision in *Department of Housing and Urban Development v. Rucker*.⁶⁸

- Any household with a member who is subject to a lifetime registration requirement under a state sex offender registration program is permanently ineligible for any federally assisted housing.⁶⁹
- Any household with a member who has been convicted of methamphetamine production on public housing premises is permanently barred from such housing.⁷⁰

Federal public housing law also permits public housing authorities to deny housing if a member of the household has, within “a reasonable time” before seeking public housing, engaged in “any drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises.”⁷¹ The statute does not define the “reasonable time” after which the public housing authority should no longer consider the criminal activity. The U.S. Department of Housing and Urban Development (HUD) suggests that public housing authorities “examine applicant history for at least the past three years.”⁷² However, a Human Rights Watch report estimates that housing authorities are more likely to deny housing to people with criminal backgrounds for at least five years.⁷³ Some housing authorities also automatically deny admission to

⁶⁴PETERSILIA, *supra* note 13, at 121; GOUVIS ROMAN & TRAVIS, *supra* note 26, at 7.

⁶⁵HUMAN RIGHTS WATCH, NO SECOND CHANCE: PEOPLE WITH CRIMINAL RECORDS DENIED ACCESS TO PUBLIC HOUSING 16 (2004).

⁶⁶42 U.S.C.A. § 13661 (West, WESTLAW through 2005).

⁶⁷*Id.* § 1437d(l)(6).

⁶⁸*Department of Housing and Urban Development v. Rucker*, 535 U.S. 125 (2002) (Clearinghouse No. 52,806).

⁶⁹42 U.S.C.A. § 13663(a)–(d) (West, WESTLAW through 2005).

⁷⁰*Id.* § 1437n(f).

⁷¹*Id.* § 13661(c).

⁷²U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PUBLIC HOUSING OCCUPANCY GUIDEBOOK 47 n.19 (2003).

⁷³HUMAN RIGHTS WATCH, *supra* note 65, at 33.

individuals who have been arrested but not convicted.⁷⁴

These provisions' precise effect on the ability of formerly incarcerated individuals to secure housing has not been assessed (HUD does not report these data), although the effect is clearly significant. A 1977 HUD survey confirmed that housing authorities were using the law to deny admissions or evict individuals with criminal histories; these individuals included formerly incarcerated individuals trying to rejoin their families.⁷⁵ According to the Urban Institute, "[in 1977], public housing authorities used the one-strike provision to deny the applications of 19,405 individuals, out of a total of 45,079 individuals denied admission for various reasons."⁷⁶ HUD's response to a Freedom of Information Act request revealed that housing authorities denied admission to 46,657 applicants for public housing in 2002 because of "one strike" criteria.⁷⁷ And as Human Rights Watch noted, these numbers do not include the number of people with criminal records to whom housing authorities denied housing vouchers.⁷⁸

Even if housing authorities did not exclude people with criminal records, only one-third of all people eligible for housing assistance actually receive such help.⁷⁹ Hundreds of thousands of people remain on waiting lists, and the wait for conventional public housing or Section 8 vouchers averages one to two years.⁸⁰ Given the waiting

lists for housing assistance, "it is hard for housing providers to be particularly sympathetic to—or even interested in—the plight of people released from prison or jail."⁸¹

III. Human Rights Implications and an Advocacy Framework

The international community has long recognized the human rights implications of releasing prisoners without providing for their reentry into society. Both the failure to plan for housing and the outright denial of housing based on a criminal record raise human rights concerns. Moreover, the dramatic shortfall in available housing resources itself implicates human rights concerns.

The Standard Minimum Rules for the Treatment of Prisoners, which the United Nations adopted in 1955, recognizes the importance of services for prisoners reentering the community.⁸² They provide that "[f]rom the beginning of a prisoner's sentence consideration shall be given to his future after release" and instruct government and nongovernmental agencies to ensure "so far as is possible and necessary" that people leaving jails or prisons have "suitable homes and work to go to . . . in the period immediately following their release."⁸³

Although the Standard Minimum Rules are not a treaty, they are accepted as authoritative guidance internationally.⁸⁴ The rules

⁷⁴*Id.* at 44–45.

⁷⁵GOUVIS ROMAN & TRAVIS, *supra* note 26, at 6.

⁷⁶*Id.*

⁷⁷HUMAN RIGHTS WATCH, *supra* note 65, at 31–32.

⁷⁸*Id.* at 32. Many public housing authorities do not maintain statistics on the number of applicants they reject because of criminal records. *Id.*

⁷⁹*Id.* at 12–13.

⁸⁰*Id.* at 13.

⁸¹RE-ENTRY POLICY COUNCIL, *supra* note 18, at 19.

⁸²Standard Minimum Rules for the Treatment of Prisoners, E.S.C. Res. 663, U.N. ESCOR, 24th Sess., Supp. No. 1, at 11, U.N. Doc. E/3048 (1957), available at www.unhcr.ch/html/menu3/b/h_comp34.htm.

⁸³*Id.*, art. 81.

⁸⁴See, e.g., Alvin J. Bronstein & Jenni Gainsborough, *Using International Human Rights Laws and Standards for U.S. Prison Reform*, 24 PACE LAW REVIEW 811, 818–19 (2004); Human Rights Watch, *International Human Rights Standards Governing the Treatment of Prisoners* (2004), www.hrw.org/prisons/standards.html. The Standard Minimum Rules also give guidance for interpreting relevant treaties, including treaties such as the International Covenant on Civil and Political Rights to which the United States is a party. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (1967).

were incorporated into the 1962 Model Penal Code and the correctional standards that the National Advisory Commission on Criminal Justice Standards and Goals developed in 1973.⁸⁵ A number of states—including Connecticut, Illinois, Minnesota, Ohio, Pennsylvania, and South Carolina—have adopted the Standard Minimum Rules.⁸⁶ The rules thus can be used as a framework to support advocacy for public policy initiatives to improve reentry planning and services. Advocates should draw on the Standard Minimum Rules and the international and domestic support that they have garnered to persuade additional states to incorporate them in their reentry policies.

Courts may be receptive to arguments based on the Standard Minimum Rules, particularly as the U.S. Supreme Court increasingly has indicated its willingness to consider international norms.⁸⁷ In a federal court challenge to prison conditions in Connecticut, the district court relied in part on the Standard Minimum Rules to hold that the state had violated the Eighth Amendment and the due process clause.⁸⁸ Although the Department of Corrections had incorporated the Standard Minimum Rules in its administrative directives, the court also reasoned that the rules likely had achieved the sta-

tus of customary international law and were thus binding for that reason.⁸⁹ The court found them to be, even if not binding, an authoritative statement of basic norms of human dignity and “standards of decency” and thus relevant to the constitutional analysis.⁹⁰

Homelessness and human rights organizations also argue that releasing prisoners into homelessness and denying them housing based on their status violates right-to-housing principles embodied in international documents.⁹¹ The Universal Declaration of Human Rights, adopted by the world community with U.S. leadership in 1948, states: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.”⁹² The most significant elaboration of the right to housing is in the International Covenant on Economic, Social and Cultural Rights.⁹³ The treaty and accompanying committee guidance obligate nations to ensure that the right is exercised without discrimination and to allocate the “maximum of available resources” toward “progressive realization” of the right over time.⁹⁴ The United States’ failure to ensure sufficient housing upon prisoners’ release thus implicates this right.

⁸⁵Susanna Y. Chung, *Prison Overcrowding: Standards in Determining Eighth Amendment Violations*, 68 *FORDHAM LAW REVIEW* 2351, 2389 (2000); see also *Kane v. Winn*, 319 F. Supp. 2d 162, n.52 (D. Mass. 2004) (citation omitted) (noting the importance of the Standard Minimum Rules for the Treatment of Prisoners and taking them into account in deciding a prisoner case).

⁸⁶Chung, *supra* note 85, at 2389; Suzanne M. Bernard, *An Eye for an Eye: The Current Status of International Law on the Humane Treatment of Prisoners*, 25 *RUTGERS LAW JOURNAL* 759, 774 (1994).

⁸⁷See, e.g., *Roper v. Simmons*, 125 S. Ct. 1183 (2005) (Clearinghouse No. 55,796); *Lawrence v. Texas*, 539 U.S. 558 (2003).

⁸⁸*Lareau v. Manson*, 507 F. Supp. 1177 (D. Conn. 1980) (Cabranes, J.), *aff’d* in relevant part, modified and remanded in part, 651 F.2d 96 (2d Cir. 1981) (Clearinghouse No. 31,539).

⁸⁹*Id.*, 507 F. Supp. at 1189 n.9 (citing *The Paquete Habana*, 175 U.S. 677 (1900) (stating that customary international law is part of U.S. common law)).

⁹⁰*Id.* at 1177.

⁹¹See, e.g., Maria Foscarinis et al., *The Human Right to Housing: Making the Case in U.S. Advocacy*, 38 *CLEARINGHOUSE REVIEW* 97, 111 (July–Aug. 2004); *HUMAN RIGHTS WATCH*, *supra* note 65, at 22–23.

⁹²Universal Declaration of Human Rights, G.A. Res. 217 (III), at 71, U.N. GAOR, 3d Sess., Supp. No. 13, U.N. Doc. A/810 (Dec. 12, 1948) (art. 25).

⁹³International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, S. Exec. Doc. D, 95-2 (1978), 6 I.L.M. 368 (1967). The right to adequate housing is in article 11(1), which provides: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and for his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” *Id.*, art. 11(1) (emphasis added).

⁹⁴*Id.*, pt. II, art. 2.

Housing discrimination against individuals with criminal records also implicates rights embodied in the International Covenant on Civil and Political Rights.⁹⁵ As elaborated by the Human Rights Committee, the U.N. body charged with monitoring and interpreting this treaty, the International Covenant on Civil and Political Rights requires that prisoners not be made to suffer punishment additional to that imposed by their confinement.⁹⁶ The treaty also includes a broad prohibition on discrimination based on “status.”⁹⁷

Because the United States has signed but not ratified the International Covenant on Economic, Social and Cultural Rights, the treaty is not binding.⁹⁸ The United States has both signed and ratified the International Covenant on Civil and Political Rights. However, as with most human rights treaties, it was ratified with “reservations” providing that it is not “self-executing.”⁹⁹ Thus this treaty is not judicially enforceable absent implementing legislation.¹⁰⁰ Such treaties nevertheless are relevant and even determinative in certain cases. The Supreme Court held that domestic law must be interpreted whenever possible so as not to conflict with ratified treaties, whether self-executing or not, or with customary international law.¹⁰¹ Moreover, such treaties can be used as advocacy tools and

models for policy reform as advocates are increasingly doing.¹⁰² The National Law Center on Homelessness and Poverty’s resources explain how to use these human rights for advocacy in the United States.¹⁰³

IV. Constructive Ways to Stop the Cycle

While no program or effort can claim to be a panacea to the reentry crisis, we do know what some of the factors are that contribute to the cycle of homelessness and imprisonment. Efforts to ensure that homeless people do not get caught up in the criminal justice system in the first instance are critical to stopping the cycle, as are efforts to ensure that housing and services are available to people upon release from prisons and jails.

A. Halt Criminalization Efforts

Government at all levels still fails to devote adequate resources to the homelessness crisis. Most cities do not have enough shelter space, leaving many homeless people with no choice but to live on the streets. In the National Law Center on Homelessness and Poverty’s 2002 survey of fifty-seven communities throughout the country, no community had adequate shelter space to meet the

⁹⁵International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, S. Exec. Doc. E, 95-2 (1978), 6 I.L.M. 368 (1967).

⁹⁶Human Rights Committee, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, general comment 21, art. 10, ¶ 3 [to the International Covenant on Civil and Political Rights], U.N. Doc. HR/GEN/1/Rev.1 at 33 (1994), available at www1.umn.edu/humanrts/gencomm/hrcom21.htm. While the Human Rights Committee’s interpretation appears to apply to the conditions of confinement, the rationale would be even stronger for those released from confinement.

⁹⁷International Covenant on Civil and Political Rights, art. 26.

⁹⁸Although the United States is not bound by the Covenant, as a signatory to the Vienna Convention, the United States is obliged under the Vienna Convention to “refrain from acts which would defeat the object and purpose of a treaty.” Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679 (1969), 63 A.J.I.L. 875. Thus the United States is bound not to take “retrogressive” actions with respect to the rights protected by the International Covenant on Economic, Social and Cultural Rights. *Id.*, art. 18.

⁹⁹Self-executing treaties are enforceable and override earlier conflicting federal statutes, according to a “last in time rule.” *Igartua-de la Rosa v. United States*, 417 F.3d 145 (1st Cir. 2005). They also override state statutes. *Asakura v. Seattle*, 265 U.S. 332, 341 (1924).

¹⁰⁰U.S. Reservations, Declarations, and Understandings, International Covenant on Civil and Political Rights, 138 CONG. REC. S4781-01 (daily ed. April 2, 1992).

¹⁰¹*Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804).

¹⁰²See Foscarinis et al., *supra* note 91, at 110–11.

¹⁰³See *id.*; see generally NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY & CENTRE ON HOUSING RIGHTS AND EVICTIONS, HUMAN RIGHTS FOR ALL: PROMOTING AND DEFENDING HOUSING RIGHTS IN THE U.S. (2005), available at www.nlchp.org/Pubs/index.cfm?FA=7&TAB=1.

need.¹⁰⁴ Arresting homeless people so that they have criminal records compounds the problems caused by their lack of resources and creates additional barriers to employment and housing.¹⁰⁵

Instead of criminalizing homelessness, governments and businesses should work to prevent and end homelessness. Cities should follow the lead of cities that have developed comprehensive plans to prevent and end homelessness.¹⁰⁶ To address street homelessness effectively, such plans should include outreach, housing, and supportive services. Cities should help homeless people apply for federal benefits, including SSI benefits for disabled homeless people, food stamps, earned income tax credits, and school services for homeless children.

Business groups can be vital partners in implementing constructive approaches. For example, through the Downtown D.C. Business Improvement District in Washington, D.C., businesses helped fund a day center that serves up to 260 people per day; it has indoor seating, laundry, and showers and serves a morning meal. The center partners with local service providers to provide medical, psychiatric, legal, and employment services and housing counseling, substance abuse treatment, and case management. The day center is funded by a tax based on the square footage of property that a business owns.¹⁰⁷

Much of the effort to criminalize homelessness is aimed at the most visible segment of

the homeless population: those suffering from mental illness or addictions, or what some public policy analysts call the “chronically” homeless population.¹⁰⁸ The Bush administration committed to ending “chronic homelessness.”¹⁰⁹ To help meet that commitment, federal funding is needed and should be conditioned on local governments’ agreements not to punish homeless people for conduct necessitated by their status.¹¹⁰

B. Change Public Housing Policies

Because federal law requires public housing authorities to deny housing assistance to only a limited number of people with criminal records, advocates should work to convince their local housing authorities to exercise their discretion fairly. When housing authorities contend that they do not automatically exclude individuals with criminal records, advocates should help monitor whether that is, in fact, the case.

Public housing authorities with limited waiting lists may be more open to housing people leaving incarceration. Even where housing authorities have long waiting lists, they have discretion to admit prisoners who are reentering the community and seek to be reunited with their families where no federal law prohibits the reunion. Housing authorities should not automatically deny such requests unless those individuals are prohibited from tenancy under the federal law.¹¹¹ Consistent with human rights norms, housing authorities should focus instead on the merits of each case.¹¹²

¹⁰⁴ILLEGAL TO BE HOMELESS, *supra* note 14, at 13.

¹⁰⁵See generally Maria Foscarnin & Richard Herz, *The Criminalization of Homelessness: An Overview of Litigation Theories and Strategies*, 29 CLEARINGHOUSE REVIEW 719 (Nov.–Dec. 1995).

¹⁰⁶See generally NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, SOLUTIONS THROUGH ALTERNATIVE REMEDIES: PRACTICAL MODELS TO HELP END HOMELESSNESS (2004), available at www.nlchp.org/Pubs/index.cfm?startRow=26&FA=0&TAB=2.

¹⁰⁷*Id.* at 4; D.C. CODE ANN. § 2-1215.51 (2001).

¹⁰⁸See generally Martha R. Burt, *Chronic Homelessness: Emergence of a Public Policy*, 30 FORDHAM URBAN LAW JOURNAL 1267 (2003).

¹⁰⁹*Id.* at 1276.

¹¹⁰See generally National Law Center on Homelessness and Poverty, *Adding Legal Teeth to Ten-Year Plans to End Homelessness* (2005), www.nlchp.org/FA_HAPIA/10YearPlan6_05.pdf.

¹¹¹See *supra* text accompanying notes 66–71.

¹¹²HUMAN RIGHTS WATCH, *supra* note 65, at 86–92.

Advocates should urge public housing authorities:

- Consider whether the applicant’s criminal record is sufficiently related to the safety of other tenants. Someone with a minor theft record most likely does not represent a real threat, and housing authorities should not automatically exclude such individuals.
- Consider rehabilitation and other mitigating factors before denying eligibility. Individuals who committed a burglary five years before but have had a clean record since should have a chance to demonstrate that they would be good tenants. Similarly, individuals convicted of using a small amount of drugs several years earlier who completed substance abuse treatment should not be automatically excluded.
- Refrain from denying applications on the basis of arrest records. A long arrest record coupled with a troubled background may be a reasonable basis for denying admission. However, an arrest record standing alone does not justify excluding an otherwise qualified applicant.

Advocates should assist prisoners who are reentering the community in appealing public housing denials. The presence of an advocate appears to make a significant difference in the outcome of an appeal, although most prisoners reentering the community are unable to find legal representation.¹¹³ Law firms should consider these pro bono assignments, which mostly involve developing a persuasive account of how the individual has been rehabilitated and why the individual does not represent a safety threat. With minimal training, non-lawyers (including paralegals, law students, and caseworkers) can assist in such appeals.

C. Encourage Prerelease Eligibility Arrangements

To increase the chance that the individual has income to pay for housing upon release, federal law allows soon-to-be-released prisoners to apply for SSI and food stamps.¹¹⁴ Why the Bureau of Prisons has not entered into such an agreement with the Social Security Administration is unclear since advocates have been pressing for such arrangements for years. Conversations with agency officials confirm that the agency and the Bureau of Prisons are considering an agreement, but no reasons for the delay have been offered.¹¹⁵ Advocates should continue to press both agencies until an agreement is in place.

How many prerelease agreements are on the state and local levels is unclear, but there are several examples of strong cooperation between facilities and local Social Security Administration offices. For example, the Texas Council on Offenders with Mental Impairments and the Texas Department of Criminal Justice entered into a prerelease agreement with the regional Social Security Administration office. The Texas Council staff submits benefit applications for SSI, social security disability insurance, and food stamps to the local Social Security Administration office ninety days before an inmate’s release. Inmates typically receive their disability checks quickly upon release.¹¹⁶

Advocates should work with local prisons and jails and Social Security Administration offices to develop similar prerelease procedures, including provisions for housing upon release as well as SSI and food stamps.¹¹⁷ Benefits that are available immediately are indispensable during the crucial first days after release.

¹¹³*Id.*

¹¹⁴See *supra* text accompanying notes 43–55.

¹¹⁵Telephone Interview by Rebecca K. Troth, Legal Director, National Law Center on Homelessness and Poverty, with Ed Bean, Social Insurance Specialist and Lead Project Officer for HOPE Projects, Social Security Administration (Nov. 10, 2005).

¹¹⁶For additional information, see Texas Correctional Office on Offenders with Medical or Mental Impairments, Texas Department of Criminal Justice, Institutional Services, at www.tdcj.state.tx.us/tcomi/tcomi-contcare.htm (last updated Sept. 13, 2004).

¹¹⁷Under the U.S. Department of Justice’s Serious and Violent Offender Reentry Initiative, the department funded reentry programs in every state that contained a housing component as part of the reentry planning. See Office of Justice Programs, U.S. Department of Justice, State Activities & Resources, at www.ojp.usdoj.gov/reentry/sar/welcome.html (last visited Oct. 28, 2005).

D. Develop Housing Resources

Advocacy to increase funding for affordable housing is a long-term effort. However, some federal property resources are now available but underused, and more will be available because of the 2005 base closures. Title V of the McKinney-Vento Homeless Assistance Act requires federal agencies to make available surplus federal real property for use by states, local governments, and nonprofit agencies “to assist the homeless.”¹¹⁸ Those entities receive the federal property at no cost by long-term lease or deed.¹¹⁹ Homeless service providers and local government agencies have used surplus federal property to provide housing, among a host of other services. Between 1988 and 2003, ninety-one properties worth \$105.4 million were transferred under Title V to be used to assist homeless individuals.¹²⁰

Surplus military base property also originally fell under Title V of the McKinney-Vento Homeless Assistance Act.¹²¹ The Base Closure Community Redevelopment and Homeless Assistance Act of 1994 revised Section 2905(b)(7) of the Defense Base Closure and Realignment Act of 1990 and amended Title V to remove military base property from Title V’s requirements.¹²² In the 1994 Base Closure Act, Congress reconciled the communities’ multiple interests in base property reuse and the national priority of helping homeless persons. The 1994 Base Closure Act, in

effect, replaces the priority for homeless uses with a different safeguard—inclusion of homeless service providers in the reuse process and plan and protection of the interests of the homeless community by federal review of base property reuse plans.

Under the 1994 Base Closure Act, the communities affected by the closure must form a local redevelopment authority, which is the authority established by state or local government that the secretary of defense recognizes as the entity responsible for the reuse plan.¹²³ The local redevelopment authority must consider the needs of the homeless community in planning for the redevelopment of the property.¹²⁴ Mobilizing base and other unused federal property to house homeless persons adds to the available housing resources; this helps address the housing crisis and shifts the United States incrementally toward compliance with the human right to housing.¹²⁵

The National Law Center on Homelessness and Poverty plans to provide technical assistance during the property disposal that will go on over the next several years as a result of the 2005 base closures. The center is recruiting law firms to help, on a pro bono basis, homeless assistance providers apply for base closure property. Attorneys with expertise in zoning, real estate law, corporate transactions, and other areas relevant to base closure are especially needed.¹²⁶ Pro bono assistance should

¹¹⁸McKinney-Vento Homeless Assistance Act, 42 U.S.C.A. § 11411(a) (West, WESTLAW through 2005).

¹¹⁹*Id.* § 11411(f); 45 C.F.R. § 12a.9(e)(2) (2004).

¹²⁰E-mail from Richard Butterworth, Office of General Counsel, General Services Administration, to Rebecca K. Troth, Legal Director, National Law Center on Homelessness and Poverty (Aug. 5, 2004) (on file with the National Law Center on Homelessness and Poverty); see generally NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, UNUSED BUT STILL USEFUL: ACQUIRING FEDERAL PROPERTY TO SERVE HOMELESS PEOPLE (2004), available at www.nlchp.org/Pubs/index.cfm?startRow=6&FA=3&TAB=2.

¹²¹42 U.S.C.A. § 11411 (West, WESTLAW through 2005).

¹²²Base Closure Community Redevelopment and Homeless Assistance Act of 1994, Pub. L. No. 103-421, 108 Stat. 4346; Defense Base Closure and Realignment Act of 1990, Pub. L. No. 101-510, 104 Stat. 1821 (codified as amended at 10 U.S.C. § 2687 note (1994)). For ease of reference, all citations to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 are to the Defense Base Closure and Realignment Act of 1990 as it appears in the note following 10 U.S.C. § 2687.

¹²³10 U.S.C.A. §§ 2687 note, 2905(b)(3) (West, WESTLAW through 2005).

¹²⁴*Id.* § 2905(b)(7)(c).

¹²⁵Other countries provide more broadly for the use of unused properties to house homeless people. See NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, HOMELESSNESS IN THE UNITED STATES AND THE HUMAN RIGHT TO HOUSING 58–59 (2004), available at www.nlchp.org/Pubs/index.cfm?FA=7&TAB=2.

¹²⁶if you are interested in volunteering, contact Rebecca K. Troth, rtroth@nlchp.org.

help “level the playing field” and anticipate issues that will arise during negotiation.¹²⁷

E. Enact Legislative Changes

In his 2004 State of the Union Address, President Bush said that “[w]e know from long experience that if [prisoners reentering the community] can’t find work, or a home, or help, they are much more likely to commit more crimes and return to prison.”¹²⁸ During the last four years, the federal government has made some effort to improve reentry services, consistent with that message. For example, the U.S. Department of Justice, through its Serious and Violent Offender Reentry Program, “has made available over \$100 million in grants to states to promote the development or expansion of reentry initiatives.”¹²⁹

Recent bipartisan efforts have sought to expand the Justice Department’s pilot reentry programs to create a national reentry initiative. Cong. Danny Davis (D-Ill.) introduced in 2003 the first bill that addressed the housing barriers faced by prisoners reentering the community and that would have provided tax credits for “housing, job training, and other essential services to ex-offenders through a structured living environment designed to assist the ex-offenders in becoming self sufficient.”¹³⁰ Cong. Rob Portman

(R-Ohio) and Cong. Davis followed with the Second Chance Act of 2004, which was broader and addressed a number of barriers to reentry.¹³¹ However, that bill authorized little money and was essentially a first step toward developing reentry legislation.¹³² Similar bills were introduced in the Senate in the 108th Congress, but none achieved passage.¹³³

In the next Congress, Congressman Portman introduced the Second Chance Act of 2005: Community Safety Through Recidivism Prevention, H.R. 1704.¹³⁴ With Congressman Portman’s departure to become U.S. trade representative, Cong. Chris Cannon (R-Utah) became the bill’s lead Republican sponsor. Congressman Davis became the lead Democratic champion. The 2005 house bill is similar to the 2004 bill. It authorizes little funding (\$55 million a year, including \$15 million for mentoring programs) and is just an initial step.¹³⁵ The house bill provides:

■ **Demonstration Grants:** The bill reauthorizes the reentry demonstration project with enhanced focus on jobs, housing, substance abuse treatment and mental health, and children and families. Under the \$40 million grant program, funds may be used to provide housing directly or help people secure

¹²⁷For a general discussion of the Title V and base closure process and for resources on this topic, see National Law Center on Homelessness and Poverty, Housing, at www.nlchp.org/FA%5FHousing/ (last updated Nov. 1, 2005). For additional information, see Mona Tawatao, *The Affordable Housing Complex That Could: How Community Economic Development Advocacy Secured 100 Units of Permanent Housing for Formerly Homeless Persons on Former Military Base*, 37 CLEARINGHOUSE REVIEW 189 (July–Aug. 2003); Laurel Weir, *Update on Using Military Base Closures to Aid Homeless People*, 29 CLEARINGHOUSE REVIEW 771 (Nov.–Dec. 1995); Maria Foscarinis, *Converting Military Bases and Other Vacant Federal Property to Aid Homeless People*, 28 CLEARINGHOUSE REVIEW 1365 (April 1995).

¹²⁸President George W. Bush, State of the Union Address (Jan. 20, 2004), transcript available at www.whitehouse.gov/news/releases/2004/01/20040120-7.html.

¹²⁹RE-ENTRY POLICY COUNCIL, *supra* note 18, at 5; see Office of Justice Programs, *supra* note 117 (describing the grantees and the reentry services they offer).

¹³⁰Public Safety Ex-Offender Self Sufficiency Act of 2003, H.R. 2166, 108th Cong. (2003).

¹³¹Second Chance Act of 2004, H.R. 4676 108th Cong. (2004).

¹³²Cong. John Conyers (D-Mich.) also introduced the Re-Entry Enhancement Act, H.R. 5075, 108th Cong. (2004). It was an expanded version of the bill introduced by Cong. Rob Portman (R-Ohio) and included restoration of voting rights for ex-felons—a politically divisive issue. See generally Angela Behrens, *Voting—Not Quite a Fundamental Right*, 89 MINNESOTA LAW REVIEW 231 (2004) (discussing legal and legislative challenges to voter disenfranchisement laws).

¹³³S. 2789, 108th Cong. (2004) (introduced by Senators Sam Brownback (R-Kan.) and Rick Santorum (R-Pa.)); S. 2923, 108th Cong. (2004) (introduced by Senators Joseph Biden (D-Del.), Arlen Specter (R-Pa.), Jeff Bingaman (D-N.M.), and Mary Landrieu (D-La.)).

¹³⁴Second Chance Act of 2005: Community Safety Through Recidivism Prevention, H.R. 1704, 109th Cong. (2005).

¹³⁵See *id.* §§ 3, 13.

housing from the private market or other housing programs. Each state receiving funds must address housing in its strategic plan, and each state must monitor and report housing progress to the Justice Department.¹³⁶

- **Federal Task Force:** The bill creates a federal interagency task force to identify programs, resources, and barriers to reentry and to develop a national reentry research agenda. The task force would report to Congress on the federal barriers to successful reentry and make recommendations. In its report, the task force would address admission restrictions in federal housing and prerelease eligibility for federal assistance programs.¹³⁷
- **Offender Reentry Research:** The bill authorizes the Justice Department to research reentry. Housing is one of the variables that it must study in evaluating the factors that affect reentry.¹³⁸

On October 27, 2005, a new version of the reentry legislation was introduced in the Senate.¹³⁹ The Senate version authorizes \$200 million more than the House version over two years and offers more educational services, among other changes.¹⁴⁰

This legislation is a modest attempt to address the big issues surrounding reentry. Although it has attracted bipartisan support, advocates for reentry efforts

recognize that much more needs to be done, including concrete proposals to ensure that prisoners reentering the community can secure housing.

Any effective legislative effort must authorize funding to increase the supply of affordable housing, including housing with supportive services.¹⁴¹ Lack of affordable housing is the major obstacle to ending homelessness generally, not just among prisoners reentering the community. Legislation addressing the shortage of affordable housing, including a housing trust fund, has met stiff resistance from Republicans, especially in the House.¹⁴² However, grassroots focus on the issue may pay off in the long run. If local advocates continue to voice their concerns to their representatives, the chances of increasing funding for affordable housing will improve.

Congress also should change federal housing laws to lessen the draconian effects on individuals with criminal records. Individuals convicted of one count for possession of a small amount of marijuana should not face the same barriers as someone convicted of selling large amounts of drugs.¹⁴³ Congress should prohibit public housing authorities from applying blanket exclusions and should allow prisoners reentering the community to demonstrate their rehabilitation and that they do not represent a threat to the safety of other tenants.

¹³⁶See H.R. 1704, § 3, 109th Cong. (2005).

¹³⁷See *id.* § 4.

¹³⁸See *id.* § 5.

¹³⁹The Second Chance Act of 2005: Community Safety through Recidivism Prevention, S. 1945, 109th Cong. (2005), is a bipartisan bill sponsored by Senators Brownback, Biden, Specter, Jon Kyl (R-Ariz.), James Talent (R-Mo.), Mike DeWine (R-Ohio), John Corzine (D-N.J.), Bingaman, Santorum, and Barack Obama (D-Ill.).

¹⁴⁰See S. 1945, §§ 3(d), 13, 15(e), 17.

¹⁴¹E.g., the Corporation for Supportive Housing has been an active participant in the reentry effort. See generally RICHARD CHO ET AL., A GUIDE TO REENTRY SUPPORTIVE HOUSING: A THREE-PART PRIMER FOR NON-PROFIT SUPPORTIVE HOUSING DEVELOPERS, SOCIAL SERVICE PROVIDERS, AND THEIR GOVERNMENT PARTNERS (2002), available at <http://documents.csh.org/documents/doclib/GuideReEntrySH.pdf>.

¹⁴²National Affordable Housing Trust Fund Act of 2003, H.R. 1102, 108th Cong. (2003); Federal Housing Finance Reform Act of 2005, H.R. 1461, 109th Cong. (2005); see Bazelon Center for Mental Health Law, Hurricane Evacuees May Be Housed at Other Low-Income Families' Expense, www.bazelon.org/takeaction/2005/9-23-05katrinahousing.htm (last updated Sept. 29, 2005) (recounting fate of housing trust fund legislation in the House of Representatives).

¹⁴³See PETERSILIA, *supra* note 13, at 137.

V. Conclusion

The current approach to homelessness and reentry is exceedingly costly and shortsighted. High recidivism rates confirm that the current approach is not working. High recidivism rates “translate into thousands of new victimizations each year.”¹⁴⁴

High recidivism rates have direct economic consequences, especially incarceration costs. In 2002 the average cost per day to house a federal inmate was \$69 or more than \$25,000 a year.¹⁴⁵ The daily costs of incarcerating an individual in local jails ranged from \$39.27 per day (for very small jail systems) to \$73.98 per day (for the largest jail systems).¹⁴⁶ Even if we use the lowest figure, maintaining an individual in jail still costs more than \$14,000 per year. On a broader scale, state budgets for corrections more than quadrupled between 1982 and 1997—from \$9 billion to \$44 billion.¹⁴⁷

Many studies document the cost saving attributable to effective reentry programs, although more comprehensive studies are needed. A 2001 study by the Washington State Institute for Public Policy found that “the best [reentry] programs can be expected to deliver 20 percent to 30 percent reductions in recidivism or crime rates” and that “programs that can deliver—at a reasonable program cost—even modest reductions in future

criminality can have an attractive economic bottom line.”¹⁴⁸ An evaluation of several studies concluded that there is “ample evidence to suggest that treatment programs—if well designed and implemented—can reduce both recidivism and costs.”¹⁴⁹

Evidence indicates that efforts to provide supportive housing to prisoners reentering the community bear positive results. A Corporation for Supportive Housing study in New York showed that the use of state prisons and city jails dropped by 74 percent and 40 percent, respectively, when people with mental illness and past criminal records received supportive housing.¹⁵⁰ A study in England similarly found that two-thirds of former prisoners who did not have appropriate housing recommitted crimes within the first twelve months of release, whereas only one quarter of those who obtained housing reoffended in the same time frame.¹⁵¹ And in Ohio 400 offenders could be served at an annual cost savings of \$2 million by providing 100 halfway house beds for reentry prerelease and transitional control or for parole violators in lieu of returning them to prison.¹⁵²

The human costs of reentry failures are even more compelling. Allowing prisoners to reenter the community without proper supports and services increases

¹⁴⁴TRAVIS ET AL., *supra* note 27, at 1.

¹⁴⁵BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, FY2005 BUDGET AND PERFORMANCE SUMMARY 118 (2004) (Federal Prison System Operating Cost Per Inmate), available at www.usdoj.gov/jmd/budgetsummary/btd/1975_2002/2002/html/page117-119.htm.

¹⁴⁶The Criminal Justice Institute reported the following costs for 2000 (CRIMINAL JUSTICE INSTITUTE, THE 2000 CORRECTIONS YEARBOOK: JAILS 1, 39–41 (2000)): largest jails (more than 2,000 inmates): \$73.98 per day; larger jails (1,000–1,999 inmates): \$52.73 per day; large jails (500–999 inmates): \$53.88 per day; medium jails (250–499 inmates): \$57.41 per day; and small jails (fewer than 249 inmates): \$39.27 per day.

¹⁴⁷TRAVIS ET AL., *supra* note 27, at 1.

¹⁴⁸STEVE AOS ET AL., WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, THE COMPARATIVE COSTS AND BENEFITS OF PROGRAMS TO REDUCE CRIME 4 (2001), www.wsipp.wa.gov/rptfiles/costbenefit.pdf.

¹⁴⁹PETERSILIA, *supra* note 13, at 179.

¹⁵⁰DENNIS P. CULHANE ET AL., THE NEW YORK, NEW YORK AGREEMENT COST STUDY: THE IMPACT OF SUPPORTIVE HOUSING ON SERVICES USE FOR HOMELESS MENTALLY ILL INDIVIDUALS 4 (2001).

¹⁵¹LEGAL ACTION CENTER, SAFE AT HOME: REFERENCE GUIDE FOR PUBLIC HOUSING OFFICIALS ON THE FEDERAL HOUSING LAWS REGARDING ADMISSION AND EVICTION STANDARDS FOR PEOPLE WITH CRIMINAL RECORDS 3 (2004) (citing CENTRE FOR HOUSING POLICY, THE HOUSING NEEDS OF EX-PRISONERS (1996), available at www.jrf.org.uk/knowledge/findings/housing/H178.asp).

¹⁵²Anne Power, Halfway House Utilization: The Key to Reentry, A Cost Savings Report 10 (2003), www.occaonline.org/pdf/ohiocostsavings.pdf.

the risk that they will become lifetime criminals.¹⁵³ Whatever hope the prisoner reentering the community has of leading a productive life is diminished in the face of these barriers to reentry.

Reentry failures have a significant impact on others as well. Between 1991 and 1999, the number of children with a parent in a federal or state correctional facility increased by more than 500 percent, to approximately 1,500,000.¹⁵⁴ As an expert on prisoner reentry issues concludes, we should develop effective reentry programs “not only because it will be good for prisoners returning home, but because it will ultimately be good for their children, their neighbors, and the community at large.”¹⁵⁵

Unless the country is prepared for the next generation to become victims of this cycle of homelessness and incarceration, the need for an approach that protects the

human rights of people with criminal records is critical. Regardless of past mistakes, people coming out of jails and prisons have a right to a home. Vice President Richard Cheney recently claimed in a commencement address that America, unlike other places in the world, “is still the country of the second chance.”¹⁵⁶ That America does not exist, however, for people reentering their communities after incarceration.

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¹⁵³PETERSILIA, *supra* note 13, at 223.

¹⁵⁴CHRISTOPHER J. MUMOIA, BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, SPECIAL REPORT NO. 182335, INCARCERATED PARENTS AND THEIR CHILDREN 1 (2000), www.ojp.usdoj.gov/bjs/pub/pdf/iptc.pdf.

¹⁵⁵PETERSILIA, *supra* note 13, at 247.

¹⁵⁶Vice President Richard Cheney, Commencement Speech at Auburn University (May 13, 2005) (transcript available at www.whitehouse.gov/news/releases/2005/05/20050513-1.html).