

Reverse Civic and Legal Exclusions for Persons with Criminal Charges and Convictions

A policy action to Promote Smart Decarceration

Issue

Civil disability policies entangle persons with criminal convictions in a web of civic and legal exclusions that revoke or restrict their rights and limit access to services needed for an individual's successful community reintegration. These policies—also known as collateral consequences—extend the reach of criminal justice punishment long after contact with the formal system has ended. There are now an estimated 40,000 civil disability policies nationwide—policies which affect the daily lives of individuals, touching every aspect from housing and family composition to education and employment opportunities. Just as racial, economic, and behavioral-health disparities exist within the formal criminal justice system, so also the disproportionately negative effects of justice-system involvement play out in the lives and communities devastated by mass incarceration. Civil disability policies exacerbate those effects. As decarceration efforts proceed, we must align civil disability policies and rehabilitative practices to ensure that people with criminal convictions have the greatest possible chance of success.

Action

Immediate remediation of civil disability policies is critical to offer persons with criminal convictions the opportunities necessary to lead socially and economically productive lives as parents, family members, and workers in their respective communities. Without revising or, in many cases, eliminating these restrictive policies, our country cannot achieve the rehabilitative goals of the justice system. While some civil disabilities play a healthy role in keeping our communities safe, many such policies serve no useful function other than to further punish defendants beyond court-imposed sentences. We call for a review of current civil disability policies and advocate for immediate policy intervention to align these policies with rehabilitative aims. We recommend the following action steps to address the negative effects of the current patchwork of civil disability policies and to promote sustainable efforts in decarcerating America:

- Adopt Orders of Limited Relief and Certificates of Rehabilitation.¹
- Create a predetermined shelf life for civil disabilities.
- Immediately restore civic rights when convictions are overturned, pardoned, or expunged.
- Require that defendants receive pre-plea notification of civil disabilities and their potential impacts.
- Require consideration of disabilities in sentencing; include considerations in sentencing statements.
- Fund research to study impacts of civil disability on crime, public safety, and social disparities.

Evidence

Evidence overwhelmingly favors review, amendment, and reform of civil disability policies. Over two decades of research have identified certain life domains that promote rehabilitative success after criminal justice system involvement. These domains include employment, education, housing, family composition, positive social networks, and civic engagement.² However, civil disabilities prohibit access to those life opportunities. In a 2014 report, the Vera Institute of Justice examined shifts in state-level civil disability policies over 5 years.³ Although 41 states had passed laws that increased relief from civil disabilities, reduced civil disabilities, provided people with more information on civil disabilities, or formed task forces to study civil disabilities, the Vera Institute found that those laws did not go far enough. Most of the reforms applied to a limited set of offenses, and the mechanisms that activated the relief were

inaccessible to most people. Additionally, these reforms gave little attention to the crime-related risks that may be inflicted by civil disability—risks driven by exclusions from civic participation.

Orders of Limited Relief provide a formal way for persons with criminal convictions to gain a reprieve from mandatory sanctions and other collateral consequences related to education, employment, housing, public benefits, and occupational licensing. Like Certificates of Rehabilitation, Orders of Limited Relief are obtained by petitioning the court.⁴ Although a number of states offer Orders of Limited Relief, the implementation varies from state to state. A study of two of states that use the orders found that, among persons with a criminal conviction, having a certificate of relief is associated with a more than threefold increase in the likelihood of receiving an interview or job offer.⁵ Research shows that sustained, gainful employment is a strong predictor of reduced recidivism.⁶ Orders of Relief could be a valuable tool for limiting the effects of current civil disability policy and opening the door to employment—a successful rehabilitative intervention.

Automatic restoration of civic rights, such as the right to vote, imposes a shelf life on civil disabilities, allowing persons with criminal convictions to engage in their communities and productively participate in ways that benefit those around them. Research shows that voting is correlated with desistance from crime.⁷ Fourteen states and the District of Columbia automatically restore voting rights upon release from a correctional institution.⁸ Connecticut reinstates the right to serve on a jury 7 years after a felony conviction.⁹ The state's policy provides an example of a shelf life imposed on a civil disability; it also represents an effort to further opportunities for civic participation among persons with criminal convictions.

Although civil disability policies are not a formal feature of the criminal justice system, they are only imposed as a result of criminal charge or conviction. Therefore, before defendants make plea decisions, they should be notified of civil disabilities that may accompany a conviction; they should be aware of how case decisions will affect daily life long after their contact with the justice system. In addition to weighing potential legal options, defendants deserve the right to weigh potential civil disability outcomes before entering a plea, as the outcomes may affect housing, family composition, and other critical social structures beyond the individual. For example, certain housing options are inaccessible to persons with criminal convictions. Housing stability promotes the mental, physical, and economic well-being of individuals, despite incarceration history and particularly during times of adversity.¹⁰

Research on the effects of civil disabilities is scarce. There is an urgent need to understand the role and impact of civil disabilities in the emerging era of decarceration. The current layers of local, state, and national civil disability policies work against the aims to lower incarceration rates, redress disparities within the system, and develop reforms that reduce recidivism while maximizing public safety. Resources are needed to fund research on civil disability policies and on revisions that align with rehabilitative practices. Without such research, we will jeopardize efforts to reform other parts of the criminal justice system.

Summary

More than 70 million adults in the United States have criminal records and are subject to civil disability policies.¹¹ Current civil disability policies directly undermine evidence-based corrections and the rehabilitative aims of our justice system. Furthermore, these policies disproportionately affect individuals, families, and communities that live on the margins of our society. Immediate action is needed to ameliorate unnecessarily restrictive policies and to eliminate policies that do not advance public safety. Such actions are important steps toward reversing the deleterious effects of mass incarceration and can lead the way into an era of decarceration.

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End Notes

1. Uniform Law Commission (2010).
2. Andrews and Bonta (2010); Geller and Curtis (2011); Nally, Lockwood, Ho, and Knutson (2014); Visher, Bakken, and Gunter (2013).
3. Subramanian, Moreno, and Gebreselassie (2014).
4. For additional information on Orders of Limited Relief and Certificates of Rehabilitation, see Uniform Law Commission (2010).
5. Florida Parole Commission (2012); Leasure and Andersen (2016).
6. Berg and Huebner (2011); Nally et al. (2014); Visher, Debus, and Yahner (2008).
7. Uggen and Manza (2004).
8. National Conference of State Legislatures (2016).
9. Conn. Gen. Stat. § 51-217 (2015).
10. Geller and Curtis (2011).
11. Laird (2013); Vallas and Dietrich (2014).

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About this policy action

This policy action statement was developed by members of the network engaged in the Grand Challenge to Promote Smart Decarceration. The Grand Challenges initiative's policy action statements present proposals emerging from Social Innovation for America's Renewal, a policy conference organized by the Center for Social Development at Washington University in collaboration with the [American Academy of Social Work & Social Welfare](http://www.aasw.org/), which is leading the Grand Challenges for Social Work initiative to champion social progress through a national agenda powered by science.

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