

# Reentry & Housing:

AFTER YOU GET OUT, YOUR PUNISHMENT ISN'T  
OVER.

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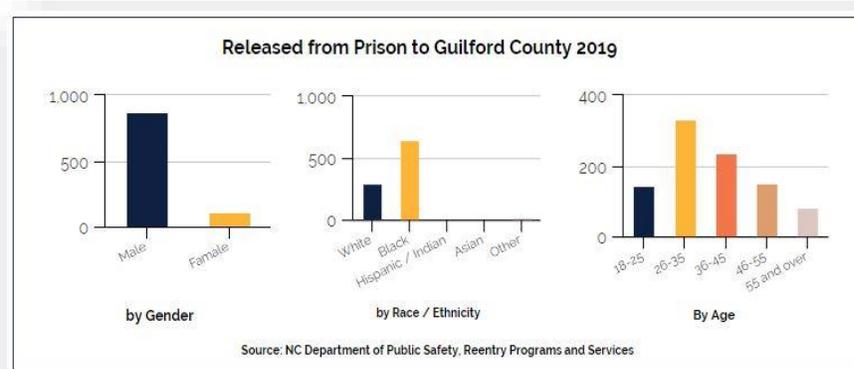
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## Background

“Having a criminal record is one of the biggest obstacles to housing, and one of the biggest causes of homelessness.”

Getting out of prison is a big relief, but once you're out, you can find yourself in some highly vulnerable and unstable situations. Just when you're trying to find your footing, you have to repair your relationships with loved ones. You have to keep away from the drugs. You have to get a job, and open a bank account, and start working on the credit score. None of that's easy, but before any of it, there's the matter of finding a place to live, and that is definitely hard to do. As a matter of fact, having a criminal record is one of the biggest obstacles to housing, and one of the biggest contributing causes of homelessness. But a place to live -- it's a basic human need.

One in four adults in the United States has a criminal record (Paul-Emile, 2016, 396, Friedman, 2015). This paper will examine the predicament faced by those 70 to 80 million Americans. We will look at the reasons why justice-served people can't afford housing, why landlords won't rent to them, at how the criminal background check industry has compounded the problem, at the complex of public attitudes and questions of landlord liability. Next, we will try to enumerate the costs resulting from the chronic inability of justice-served people to gain access to safe and affordable housing. Then we will take a look at some of the remedies that have been proposed to remove the obstacles, including new legislative initiatives and the diligent enforcement of existing laws, and interventions to reduce stigma and

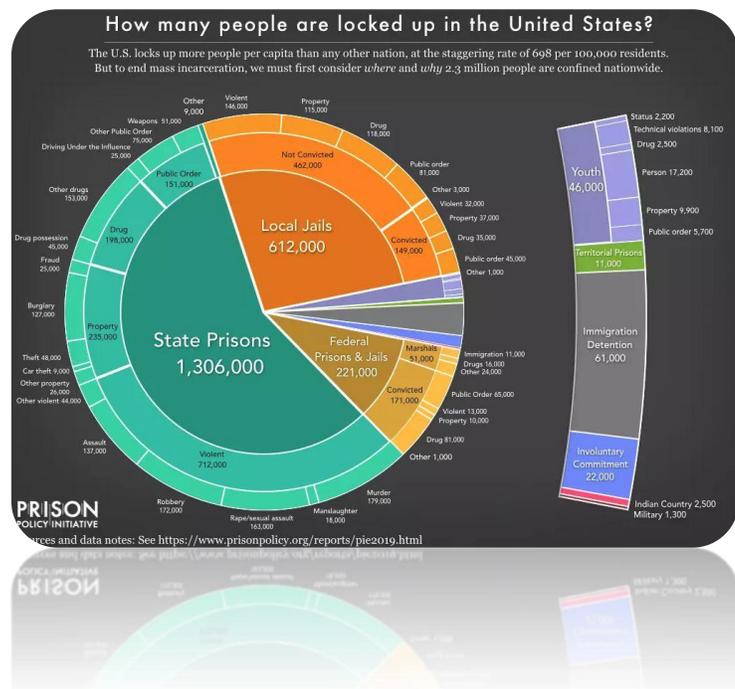


change attitudes. Finally, this paper will offer a challenge to some of the assumptions underlying the reentry process.

## Reentry: A Perfect Storm

A perfect storm of policy trends over the last forty years has made this a challenging time for reentry. (Federal Interagency Reentry Council, 2016; Seiter and Kadela, 2003). Incarceration rates almost quintupled from 1970, and sentences got longer. Attitudes toward those charged with crimes got tougher and more unforgiving. Prisons and jails drew more and more from minority populations.

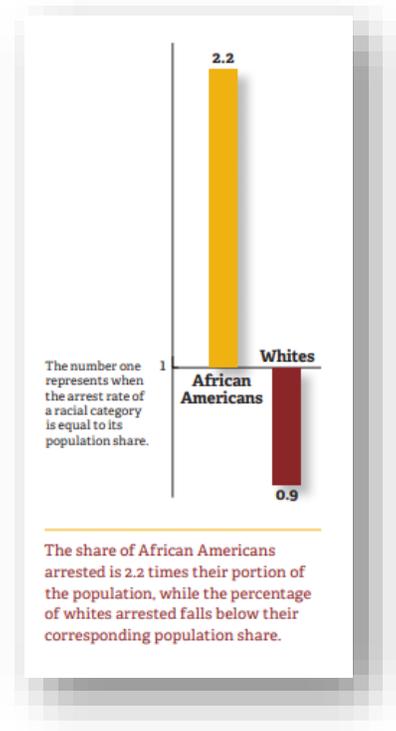
The old prison system was built on the principle of rehabilitation, with emphasis on prerelease educational and vocational programming. Indeterminate sentencing and parole played important roles in encouraging and rewarding successful transitions. But under the new retributive model beginning in the mid-70s, the programs were cut, prisons became harsher and more crowded, parole was abolished, tolerance for probation violations went way down, and the reentry process became much more difficult. Funding for prison educational and vocational programming was slashed, at the same time as funding for social services for health and housing on the outside was also cut. The reentering population now has a changed profile: disproportionately suffering from drug addiction, mental illness and chronic physical conditions including asthma, diabetes and heart disease, with high rates of disability and experience of violent victimization, abuse and neglect. These are the burdens



carried by the 700,000 people released from prisons each year (Byrd, 2016) – including 25,000 from North Carolina prisons, a thousand to Guilford County – as they seek housing, “the first hurdle in the steeplechase of reentry” (LeBel, 2017, 891).

## Obstacles to Housing

A criminal conviction brings imprisonment and fines, but also collateral consequences, some lasting a lifetime and some quite severe -- the suspension of political and economic rights that reentry, as hopeful as that word sounds, isn’t designed to restore (Gunnison and Helfgott, 2013, 63). But of all the disabilities facing the justice-served person, the inability to secure housing is one of the most consequential. Housing is out of reach, for the reasons we will examine here, often to such an extent and as a result of systems so efficient, that it may be viewed as a kind of supplemental justice system. Thacher (2008, 25) calls it “institutional exclusion,” a continuation of the system of incarceration whose objective is to “remove a risky individual from a community to prevent him from committing crime there, whether through physical restraint, execution, or exile.” But because the housing system operates to exclude only “from one place at a time,” it doesn’t attract the attention and concern that incarceration itself does.



## Poverty

The first obstacle is cost. Many reentering persons lack the savings and income needed to pay the rent, and many have a bad credit history or none at all. They may also have accumulated debt while incarcerated, from court fees, restitution and child support (Gunnison and Helfgott, 2013). Stable employment is the solution,

but that takes time to achieve, and the employers don't want people with criminal backgrounds any more than landlords do (Leasure, 2019; LeBel, 2017). And the financial burdens of reentry are worsened by rules making people with criminal backgrounds ineligible for welfare benefits and other forms of assistance (Schneider, 2018, 428).

## Applications Rejected

Even when a prospective tenant has put together the funds needed to apply for housing, they're often locked out anyway. As many as half of all private landlords categorically exclude applicants with criminal backgrounds (Leasure, 2019, 33). These exclusions are arbitrary and based on "such broad-

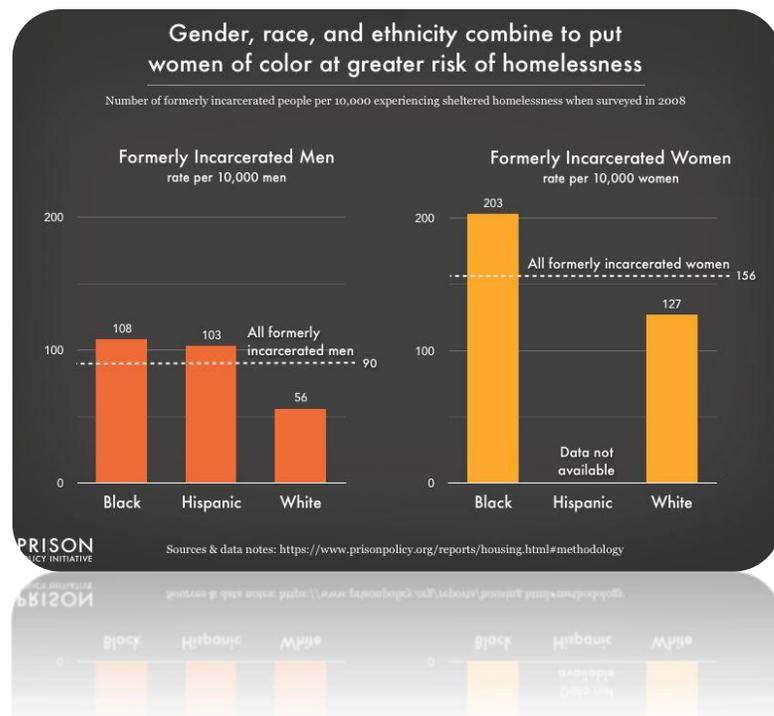
"As many as half of all private landlords categorically exclude applicants with criminal backgrounds."

brush criteria that they are only tenuously, if at all, connected to the goal of public safety" (Human Rights Watch, 2004, 80). With avenues to the private housing market blocked, the alternatives aren't necessarily more palatable. Federal and local rules require public housing authorities to reject applicants on the basis of certain categories of criminal background, including drug offenses and offenses deemed violent (Leasure, 2019; Schneider, 2018; Human Rights Watch, 2004). Transitional housing is sometimes available. Community-based correctional housing is designed to promote a phased transition, providing temporary carceral shelter in the community, with the emphasis on obtaining employment prior to final reentry (Leasure, 2019, 32). Recovery houses emphasize access to drug treatment as a platform for reentry. Many reentering people stay with family members, but this option is not trouble-free: sleeping on couches or in crowded quarters can be an inherently unstable situation; family members may be engaging in criminal activity; and returning to old boyfriends or girlfriends has been shown to lead to recidivism at higher rates than, say, to a spouse or parent (Gunnison and Helfgott, 2013, Leasure, 2019, 32). Homeless shelters, squalid motels; when all these alternatives are exhausted, there's the street, the next-to-final destination in "the

prison to homelessness pipeline,” as Schneider (2018) calls it. The final stop: back to prison. Justice-served people “are almost 10 times more likely to be homeless than the general public” (Couloute, 2018), and homelessness is a key predictor of recidivism (LeBel, 2017).

## Public Attitudes

The unwillingness of landlords to rent to reentering persons is supported by a widespread public sentiment unsympathetic to their predicament. The machinery of mass incarceration depends for its maintenance on some degree of demonization in the first place, and it follows the prisoners when they go home. Stigmas attach to people with criminal records, and that stigma is more pronounced as to certain categories of crime including, notably, drug crime (Grommon, 2017). People with criminal histories are perceived as dangerous, and this stigma is multiplied by additional ones that are associated with race or ethnicity, poverty, HIV+ status, and mental illness (LeBel, 2017). In consequence, according to surveys, citizens express unwillingness to expend tax dollars to provide services to those with criminal records, especially when housing assistance is concerned. NIMBY-ism is rampant: resistance is at its strongest, for example, when facilities to house reentering people are located close to respondents’ homes. So the landlords’ unwillingness to rent is simply a particular example of the broadly negative views held by people in general (Leasure, 2017, 34). LeBel (2017, 891-892) cites the “principle of least eligibility,” which decrees that “formerly incarcerated persons



are perceived by many as the least eligible of all citizens to receive social benefits or services of any kind.”

## Liability Concerns

Landlord’s negative attitudes are only fortified by their belief that they could incur liability for failure to keep their tenants safe. They fear, not entirely unreasonably, that such a failure could result in “physical, financial and reputational damage” to their businesses (Blumstein and

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Nakamura, 2009, 328). Thacher (2008) recounts the evolution of the law which now in some instances holds landlords responsible for crimes committed on their premises, particularly if the landlord failed to take steps to minimize “predictable risk.” But whatever role may appropriately be assigned to the landlord -- protector of tenants, facilitator of reentry, risk manager -- the decision-making process has been altered radically by the emergence of the criminal background check industry.

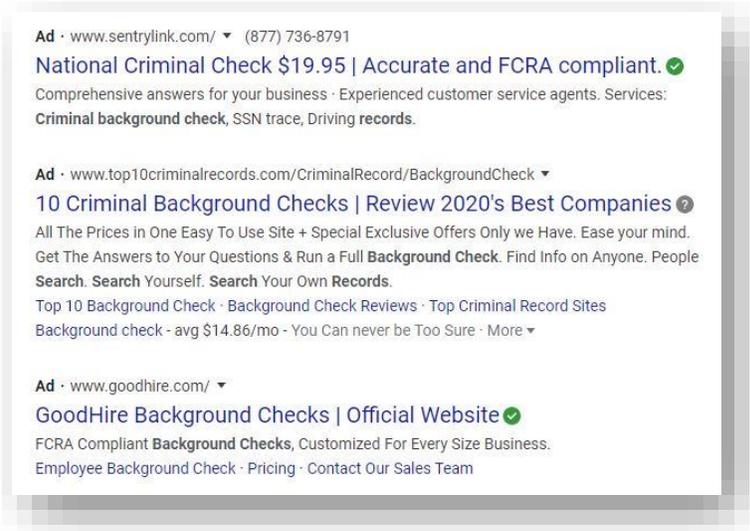
## Criminal Background Check Industry

The background check system is a key tool in maintaining the system of institutional exclusion. It confers on private institutions -- landlords and background check marketers -- the responsibility for implementing the “crime control” strategies that continue after the completion of official strategies of incarceration carried out by the state (Thacher, 2008, 9). But this was not possible thirty years ago. In the past, more landlords were amateurs with small holdings, who recruited tenants face to face through informal social networks. Criminal records were largely inaccessible and rarely checked. Now the rental market has been more professionalized and, side by side with the rise of mass incarceration, the internet-based criminal background check industry has risen too. Technology has made possible easy and cheap access to comprehensive databases, geared for big corporate owners and even for those small landlords still remaining, and with it has

come growing criticism of one-size-fits-all application policies (Kusisto, 2016). The over one hundred million criminal records now online are the aggressively marketed stock-in-trade of a multi-billion-dollar industry (Paul-Emile, 2016). But the product is defective. It leaves the landlord with little guidance or assessment as to the severity or recency of the offense or whether it can serve as an accurate predictor of risk. And the commercial records system, and the law enforcement records on which it's based, are riddled with errors (Human Rights Watch, 2004, 75-76). Even as the system grows in scope, the data are proving inaccurate and poorly understood by its users (Schneider, 2018, 429, Jacobs, 2015).

## Improving Access to Housing.

Housing advocates, scholars and commentators have proposed many new approaches that have the potential to remove some of the obstacles we have seen. One that almost everyone can endorse is to persuade landlords to replace the blanket exclusion with a “rule of reason.” To state the obvious, there’s a difference between a first offense misdemeanor drug possession twenty years ago and a recent string of violent assaults. The rule of reason would encourage landlords to review the record and ask, does this really pose a risk either of nonpayment or of danger to the community? Leasure (2019) showed that landlords were willing to consider such factors as offense type, whether it was a first offense and the age of the offender. These days, landlords are under increasing pressure to demonstrate that a rejection is necessary to fulfill a legitimate business purpose (Schneider, 2018, 446).



Equally important, new approaches to criminal background checks would allow applicants to present evidence of subsequent rehabilitation. This might mean simply that enough time has passed without any new charges so that, as studies show, the likelihood of a new crime

being committed is less and less (Blumstein and Nakamura, 2009). For some landlords, including public housing authorities, a limitation on “looking-back” will require a real culture change (Schneider, 2018, 449). An alternative approach would look to extrinsic evidence such as a letter from an employer (Denver, 2020), or a good credit record (Leasure, 2019, 39). A more ambitious set of techniques will entail action by a government agency, either through expanded sealing or expungement mechanisms or through the issuance of a certificate affirming that time has passed with no new charge, or the dismissal of charges, or evidence of some commendable act such as completion of drug treatment or a new academic achievement (Jacobs, 2015). At least eleven states have some version of this, including the “Certificate of Relief” issued in North Carolina under General Statutes§ 15A-173.2.

Yet more ambitious would be a program of broad-scaled stigma reduction interventions of a kind that has proved effective in relation to race, mental illness and HIV status. These represent a holistic approach targeting the justice-served community, the landlords, and the general public through social media marketing, in-person interviews, focus groups and legal and policy initiatives, all based on the

well-understood proposition that people’s greater familiarity with a stigmatized person tends to lessen their negative attitudes toward them (LeBel, 2017, 897).

Significant legal and statutory initiatives are already under way in this area. The “Ban the Box” campaigns that have made inroads in the employment markets have been proposed for housing as well, prohibiting landlords from asking about criminal history until the end of the application process instead of the beginning (Custer, 2018). These interventions can help, though landlords will retain their discretion and, in many cases, their negative attitudes (Smith, 2014). Having perhaps more significant potential to change the housing market is the guidance issued by the Obama Administration in 2016 (U.S. Department of Housing & Urban Development, 2016). It asserts that the Fair Housing Act requires housing providers to fashion their application policies to avoid disparate impact on racial and ethnic minority populations and other protected classes. Whether or not the subsequent administration will aggressively pursue enforcement, landlords already have begun to change their behavior in anticipation of possible legal liability under the Fair Housing Act (Schneider, 2018, Kusisto, 2016).



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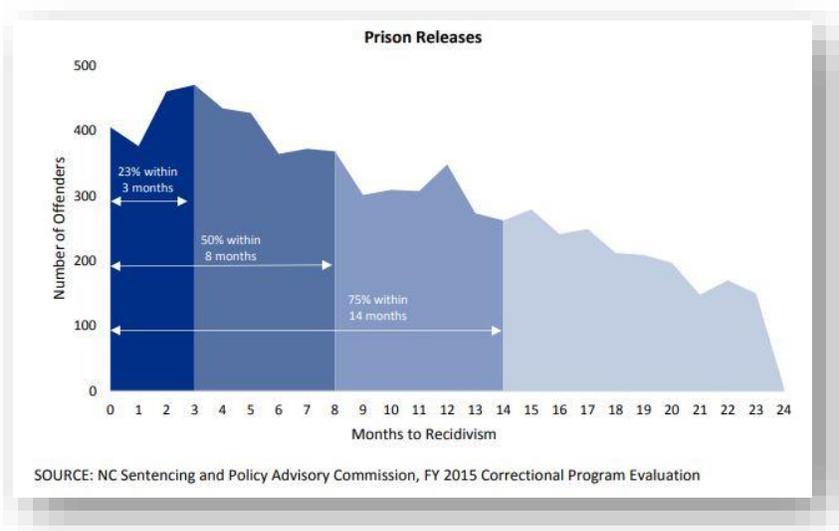
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## Questioning Reentry

The obstacles to housing encountered by justice-served people are intended to limit risk -- but perversely they help to cause the very things they are meant to prevent, forcing the reentering person into “a position wherein one wants to behave legally, but cannot” (Augustine, 2019, 726). Communities are destabilized, people become homeless and recidivism increases (Leasure, 2019; Seiter and Kadela, 2003).

Against this background, a dizzying number of reentry programs have been launched. The word itself has been redefined, from an act of leaving jail or prison and returning to the world outside the walls (Nathan, 2015) -- 95% of the 2.3 million people now in American jails and prisons will eventually do that -- to a particular kind of transitional and treatment programming labeled “reentry.” Governments have adopted this framework, proceeding from the assumption that “reentry” is a problem with the reentering person that has to be fixed. The U.S. Congress has been improbably active in this realm for the last ten years or so. Republican administrations especially are fond of doing criminal justice reform through reentry programming: hence the Second Chance Act of 2007 (P.L. 110-199) and the Second Chance Reauthorization Act of 2018 (included in the First Step Act of 2018, P.L. 115- 391), providing major funding for federal, state and local programs aimed at facilitating the

reintegration of those leaving jails and prisons and improving their chances of success. But despite the proliferation of programs -- there are hundreds at the federal and state level now -- the numbers returning



to prison in North Carolina keep rising (North Carolina Sentencing and Policy Advisory Commission, 2018), and nationwide the rates of recidivism remain high (Valera, et al, 2017). With all those resources, the reentry program system has turned into something like a “prisoner reentry industry” (Ducksworth, 2010), but while working overtime to fix the flawed individual, none of the programs seems to want to fix the landlords or the systems for allocating housing.

We might have to take another look at “reentry mania” (Byrd, 2016, 1). Programs aren’t effective, there are just too many people reentering, they’re returning to less stable communities, there aren’t enough services to meet the needs they have, release supervision has moved from a case management to a policing model, and failure rates are going off the charts (Seiter and Kadela, 2003). We might have to become more critical of the reentry project and of the larger correctional and the even larger social and political systems in which this project is situated. The endless cycle of failure of the reentry system seems to mirror the endless cycle of failure of the prison system itself. Our insistence on making the reentering person the “exclusive terrain of intervention” (Byrd, 2016, 6), on making their drug addiction and their bad credit history the sole problem to be solved, allows us to avoid hard questions about how access to housing is regulated in the United States and about why we have 2.3 million people locked up in the first place. Rather than extending the punishment into the everyday lives of millions of people in the free world, the reentry project could become, instead, an opportunity to rethink justice from beginning to end.

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