

# Allowing Felons to Earn a Commendable Release



**Sarah Trumble**

Former Deputy Director,  
Social Policy & Politics



**Lanae Erickson  
Hatafsky**

Vice President for the  
Social Policy & Politics  
Program

[!\[\]\(cf531ed27e91483460120fcc057b3901\_img.jpg\) @LanaeErickson](https://twitter.com/LanaeErickson)

## Takeaways

In this paper, we propose a commendable release policy for felons--making it possible for those who fully pay their debt to society to:

- regain eligibility for government benefits;
- qualify for employment opportunities; and,
- earn the legal ability to keep their prison record private in most job searches.

## The Problem

When someone has been incarcerated for a felony in this country, the punishment continues after release. After felons serve out their sentences and pay their debts to society, a series of laws mostly enacted in the 1990s make reentry into their communities and gaining lawful employment difficult.

These laws came about as a result of rising crime rates beginning in the 1960s and peaking in the early 1990s. Some of these laws had a strong basis in public policy. For example, the 1993 Brady Law required background checks before the purchase of a firearm in order to prevent former felons from acquiring guns. Others were borne of frustration—a lifetime prohibition on drug felons receiving Pell Grants has no public policy rationale beyond retribution.

These policies violate a basic tenet in our criminal justice system: when you pay your debt to society you should be able to get some semblance of a fresh start. And a policy that continues to punish beyond the walls of prison is also costly over the long term—limiting upward mobility, harming children of former felons, and contributing to high re-incarceration rates.

Instead, we should focus on ensuring that every American who is willing to put in the effort has the opportunity for upward mobility and a better life — regardless of their past missteps. That means we can't discard someone just because they made one mistake — even if that mistake was serious enough to lead to a criminal record. If we are going to try to instill in our nation's children the belief that with hard work and dedication they can better their position in life, we need to keep that promise and allow adults to do so, even after they've been incarcerated.

The scale of the problem is staggering. Currently, 2.7 million children in America have a parent behind bars, and 10 million have had a parent incarcerated at some point.<sup>1</sup> The Bureau of Labor Statistics reports a 79% increase in the number of parents held in state or federal prisons between 1991 and 2007.<sup>2</sup> Earnings fall an average of 40% after a felon is released, in part because many former felons struggle to obtain employment at all. That's because job applicants must often check a box disclosing whether they have ever been convicted of a felony — an admission that can scare off prospective employers.<sup>3</sup> Many state boards won't grant or can suspend or revoke previously-earned professional

licenses to those who have been convicted of felonies for careers as varied and unrelated to public safety as architects, hearing aid salespeople, or embalmers.<sup>4</sup> According to *The Washington Post*, people who have been convicted of a felony are automatically and permanently disqualified from as many as 800 occupations and nationwide face up to 40,000 collateral consequences of conviction.<sup>5</sup>

Beyond the workforce, people who have been convicted of a felony are denied basic government safety net protections available to everyone else. The *Personal Responsibility and Work Opportunity Act of 1996* banned anyone convicted of a drug felony from receiving food stamps from the Supplementary Nutrition Assistance Program (SNAP) or benefits under the Temporary Assistance for Needy Families (TANF) program **for the remainder of their lives**.<sup>6</sup> Public Housing authorities can use criminal convictions to screen applicants for housing or to evict residents and their families under what has been referred to as their "one strike policy."<sup>7</sup> The *Higher Education Act of 1998* limited felons' access to student loans.<sup>8</sup> Drug felons again are singled out here, with a lifetime ban on eligibility for Pell Grants.<sup>9</sup> This is particularly disturbing given both the astronomic number of Americans in jail on drug charges and the fact that the very best way to be upwardly mobile and move out of the bottom income quintile is by earning a two- or four-year college degree.

This all adds up to a perfect storm, making it near impossible for those who have ever been convicted of a felony at any point in their lives to care for their families and break the mobility barrier—for themselves or their children. And that not only undermines the rehabilitative goals of our justice system, but it also traps many people who were once convicted of a felony in poverty, leaving them with few options. In fact, research shows that being denied eligibility for food stamps makes felons more likely to engage in dangerous and risky behavior to obtain food.<sup>10</sup> That's not only bad for felons and their families — it's bad for society. America can't keep the promise of mobility if one mistake

leads to a lifetime of punishment: cutting people off from job options indefinitely, denying them any measure of assistance as they try to feed their family and get back on their feet, and kicking them out of their housing for the foreseeable future. In order to break the mobility barrier and make it so that our country is not a place where being born at the bottom of the economic ladder means staying there, we need to rethink how we treat those who have been incarcerated at some point in their lives, especially those for whom felony convictions have closed so many doors.

## **The Solution**

### **Create a federal commendable release program.**

If a person has paid their debt to society and taken steps to better their life, we recommend a two-step federal commendable release policy that would give people released from prison the opportunity to earn back some of the benefits they are denied and remove some of the roadblocks to employment they currently face.

#### **Step 1: Immediately upon release**

Denying felons access to the safety net just as they endeavor to re-enter society sets them up to fail—and in many cases, reoffend, in their effort to feed and house their families. Instead, someone who has served their time and taken concrete steps to better their lives should be eligible to apply for a commendable release which would restore access for them and their families to federal benefits including SNAP, TANF, public housing, and Pell Grants. This sort of restoration could be modeled on the various forms of certificates of rehabilitation offered in states ranging from Arizona and Nevada to New Jersey and Illinois. The specifics of eligibility for such a certificate vary by state — Illinois, for example, prohibits anyone convicted of a felony resulting in great bodily harm or permanent disability, an aggravated DUI or aggravated domestic battery, a Class X felony, or any offense that requires post-offense registration (such as sex

offenses, offenses against children, and arson) from receiving such a certificate.<sup>11</sup> The New Jersey Parole Board, on the other hand, awards certificates using a standard of “not incompatible with the welfare of society.”<sup>12</sup> A federal policy could pick and choose among the states’ varying standards to establish requirements for who can apply for a commendable release at the federal level.

Once a standard has been determined for who can apply, benefits should be restored to those that behaved commendably while behind bars by 1) completing their sentences with good behavior; and 2) performing a set number of hours of programming designed to better oneself — such as taking parenting classes, earning a degree or GED, enrolling in mental health or substance abuse counseling, or learning a trade. The only way to accomplish this restoration of eligibility for federal benefits like SNAP, TANF, and Pell Grants on the national level would be through federal legislation like a commendable release bill in Congress amending the *Personal Responsibility and Work Opportunity Act* and the *Higher Education Act of 1998*. However, some states — including Alabama, Alaska, Georgia, Mississippi, and Texas — have already chosen to opt out of the prohibition on either or both SNAP and TANF benefits, recognizing the importance of these benefits as a stepping stone to a better life for people who were previously incarcerated and their families.<sup>13</sup> With a federal commendable release policy, every person convicted of a felony at either the state or federal level would have the opportunity to earn access to the safety net protections the federal government provides, regardless of the policies of their state.

## **Step 2: One year after release**

One year from the date of release, a person who has repaid their debt to society should also be eligible to have the remaining collateral consequences of a felony conviction removed through a second-step of expanded commendable release. The requirements for this expansive relief could be based on the post-release behavioral requirements outlined

by several states in their certificate laws. For example, California requires someone with a criminal record to live an “honest and upright life,” “conduct himself with sobriety and industry,” “exhibit a good moral character,” and “obey the laws of the land” after being released from jail in order to receive a certificate of rehabilitation.<sup>14</sup>

Because former felons who cannot find jobs often feel like they have no choice but to return to a life of crime in order to provide for their families, the long-term effect of a commendable release policy should be to remove one of the major roadblocks felons face in the hiring market — stigma. To do that, beginning one year after release, anyone who has earned an expanded commendable release by satisfying the post-release behavioral requirements should be excused from having to “check the box” on most job applications disclosing their previous conviction. This is a slightly different take, with similar motives, on the already existing nationwide campaign to “ban the box” on job applications — which has led to 13 states and more than 60 cities passing legislation that prohibits employers from asking about criminal convictions on application forms in the first place.<sup>15</sup> And it would be the ultimate way to prove we mean it when we say that our society is a place where you can work hard and turn your life around.

In addition to lifting the remaining barriers and excusing job applicants from disclosing old criminal histories on every job application, an expanded commendable release policy could also offer affirmative protection to those who have served their time and taken the steps needed to change their lives by creating a presumption of rehabilitation or lifting some of the permanent occupational bars. For example, New York’s certificate of relief from disabilities and certificate of good conduct both provide a judicially enforceable presumption of rehabilitation that must be respected by employers and licensing boards — meaning licensing boards must presume a former-felon has been rehabilitated if he has obtained a certificate, and therefore are prohibited from denying him a license or employment based on that conviction.<sup>16</sup> And New

Jersey's certificate precludes licensing boards from "disqualifying or discriminating" against someone because of a past conviction if the person has earned a certificate of rehabilitation.<sup>17</sup> A federal commendable release policy could also remove the barriers to obtaining federal licenses or permits that lock people with certain criminal records out of specific occupations, including the military, the insurance industry, and labor organizations.<sup>18</sup>

The path has already been paved for federal legislation in this vein, thanks to Senators Cory Booker (D-NJ) and Rand Paul (R-KY), who introduced their *REDEEM Act* earlier this year. The *REDEEM Act* shares the same motivations as a commendable release program—ensuring that we aren't relegating people to a second class life for a single mistake. It would raise the age of criminal responsibility to 18, seal juvenile records for non-violent crimes committed before the age of 15, limit solitary confinement for juveniles, and allow non-violent criminals to petition the courts to seal their criminal records — making it easier for them to apply for jobs.<sup>19</sup> The bill would be a major step forward if passed. Our commendable release proposal in some ways would go even further. For example, the *REDEEM Act* only restores SNAP and TANF benefits to people who committed crimes rationally related to substance abuse and who have either completed (or are completing) a treatment program specific to that abuse or who have been adjudicated by the court to not need one. A commendable release program would restore not only TANF and SNAP benefits, but also eligibility for Pell Grants and public housing, and it would do so for a wider range of people: anyone who both demonstrated good behavior while behind bars and completed a certain number of hours of any type of beneficial programming, with limits based only on public safety. And while this bill calls for a much-needed report listing the federal statutes, regulations, and policies that restrict someone with a criminal record from obtaining employment, a federal license, or a federal permit, it would not take any concrete steps to actually reduce or eliminate those barriers at this juncture. But both the *REDEEM Act* and

a commendable release policy could help change the way our society treats those who have been convicted of a past felony and their families — and keep our word that any American willing to put in the effort to improve their station in life can in fact do so.

## **Use federal resources to encourage states to implement their own commendable release programs.**

In addition to passing federal legislation, another way to move forward on a commendable release program would be to use federal resources to encourage states to implement their own versions of this proposal — for example, via a competitive grant or the conditioning of some portion of the criminal justice funding states receive from the federal government. Many felons are housed in state jails, rather than federal prisons, and while a federal bill could reinstate their eligibility for federal benefits, it would not be sufficient to grant relief from state licensing bans and collateral consequences. A state-sponsored commendable release policy could go even further than restoring federal benefits and removing federal occupational bans — it could also grant civil immunity for negligent hiring to employers who hire people that have earned commendable releases as well as addressing state licensure requirements that exclude felons from many occupations at the state level.

To encourage businesses to give a second chance to those with criminal records, state commendable release policies should guarantee that employers who hire workers that have earned commendable releases get immunity from negligent hiring claims regarding those employees. Because negligent hiring (wherein someone can sue an employer for something bad their employee has done if that employee has a criminal record) is tort claim governed by state law, a federal policy alone could not provide employers with this incentive to hire applicants who have served time in prison previously but have since demonstrated personal growth and responsibility. Of course, there should also be certain occupational exceptions



to ensure public safety, such as childcare or providing security for high value targets. But this type of immunity has already been successfully granted to employers in states like Ohio and Illinois, and extending it to more states would remove another roadblock felons face when trying to get back on their feet after serving their time.<sup>20</sup>

A state commendable release policy could further be directly based on those certificates already offered in a handful of states. New York, for example, offers both a certificate of relief from disabilities (for first time felons) and a certificate of good conduct (for repeat offenders) designed to lift barriers to employment and occupational bars.<sup>21</sup> Nevada allows felons to apply for a certificate of good conduct five years after their release, which would remove many of the legal disabilities stemming from the conviction. However, Nevada rarely grants these certificates.<sup>22</sup> In some states, the pardon board can restore some or all rights lost to felons (like sitting on a jury in Georgia or voting in Alabama). And while some states have a presumption of rehabilitation for felons who have had a clean record for a certain number of years, they are rife with exceptions and often unenforceable.<sup>23</sup> This mismatch of state policies — varying in what they offer, who is eligible, and how likely they are to be granted — means the federal government could mark a major step forward by encouraging states to enact robust commendable release policies based on the best practices on the ground.

## **Critiques & Responses**

### ***Easing restrictions on felons puts public safety at risk.***

A commendable release policy should include careful safeguards to ensure that public safety is the top priority. That means commendable release should only be an option for offenders who have demonstrated good behavior while behind bars and after their release, and employment and licensing restrictions should only be eased for those jobs that won't put the public at risk. And depending on how it is structured, entire categories of crimes could be deemed

disqualifying (like rape under the Illinois certificate law).<sup>24</sup> But no one will be endangered by allowing someone who was convicted of a drug offense in their teens to get a job as a licensed embalmer or by ensuring that people with past criminal convictions have access to the safety net they may at times need to help feed and house their families.

***We have limited federal resources for the safety net — we should spend them on people who haven't broken the law.***

America incarcerates more of its citizens than any other advanced nation. To write them all off as we do under current law virtually ensures that they and their families will perpetuate our nation's mobility crisis. How can we ask people to pull themselves up by their bootstraps if our public policy has already seized their boots? Former President George W. Bush called America "the land of second chance."<sup>25</sup> For that to be true, we need to ensure that anyone who puts in the difficult work to turn their life around after being incarcerated has the opportunity for upward mobility — regardless of the mistakes they may have once made.

#### TOPICS

POVERTY/MOBILITY 18

#### END NOTES

- 1.** Katie Reilly, "Sesame Street Reaches Out to 2.7 Million American Children with an Incarcerated Parent," The Pew Research Center, Fact Tank, June 21, 2013. Accessed November 24, 2014. Available at: <http://www.pewresearch.org/fact-tank/2013/06/21/sesame-street-reaches-out-to-2-7-million-american-children-with-an-incarcerated-parent/>; See also "Children of Incarcerated Parents Fact Sheet," The Osborne Association. Accessed November 24, 2014. Available at: <http://www.osborneny.org/programs.cfm?programID=23>.
- 2.** Katie Reilly, "Sesame Street Reaches Out to 2.7 Million American Children with an Incarcerated Parent," The Pew Research Center, Fact Tank, June 21, 2013. Accessed November 24, 2014. Available at: <http://www.pewresearch.org/fact-tank/2013/06/21/sesame-street-reaches-out-to-2-7-million-american-children-with-an-incarcerated-parent/>.
- 3.** "Collateral Costs: Incarceration's Effect on Economic Mobility," Report, The Pew Charitable Trusts, Public Safety Performance Project, Economic Mobility Project, September 28, 2010. Accessed October 16, 2014. Available at: <http://www.pewstates.org/research/reports/collateral-costs-85899373309>.
- 4.** Connecticut, General Assembly, Office of Legislative Research, "Consequences of a Felony Conviction Regarding Employment," Report, April 5, 2005. Accessed October 16, 2014. Available at: <http://www.cga.ct.gov/2005/rpt/2005-r-0311.htm>.
- 5.** Jonathan Blanks, "Our Criminal Justice System is Making it Really Hard for People to Find Jobs," *The Washington Post*, September 30, 2014. Accessed October 16, 2014. Available at: <http://www.washingtonpost.com/posteverything/wp/2014/09/30/our-criminal-justice-system-is-making-it-really-hard-for-the-poor-to-find-jobs>.

- 6.** United States, Congress, “Personal Responsibility and Work Opportunity Reconciliation Act of 1996,” 104<sup>th</sup> Congress, 2<sup>nd</sup> Session, signed into law August 22, 1996. Accessed October 16, 2014. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d104:H.R.3734:@@@R>.
- 7.** Susan D. Phillips, “Parents in Prison,” Fact Sheet, The Sentencing Project, September 2012. Accessed October 16, 2014. Available at: [http://www.sentencingproject.org/detail/publication.cfm?publication\\_id=414](http://www.sentencingproject.org/detail/publication.cfm?publication_id=414); See also “Collateral Damage: America’s Failure to Forgive or Forget in the War on Crime – A Roadmap to Restore Rights and Status After Arrest or Conviction,” Report, The National Association of Criminal Defense Lawyers, May 2014. Accessed October 16, 2014. Available at: <http://www.nacdl.org/restoration/roadmapreport/>.
- 8.** United States, Congress, “Higher Education Amendments of 1998,” 105<sup>th</sup> Congress, 1<sup>st</sup> Session, signed into law October 7, 1998. Accessed October 16, 2014. Available at: <https://www.govtrack.us/congress/bills/105/hr6>.
- 9.** Susan D. Phillips, “Parents in Prison,” Fact Sheet, The Sentencing Project, September 2012. Accessed October 16, 2014. Available at: [http://www.sentencingproject.org/detail/publication.cfm?publication\\_id=414](http://www.sentencingproject.org/detail/publication.cfm?publication_id=414).
- 10.** Helen Dodson, “Ban on Food Stamps Leads to Hunger, HIV Risk Among Former Drug Felons,” Yale News, March 25, 2013. Accessed October 16, 2014. Available at: <http://news.yale.edu/2013/03/25/ban-food-stamps-leads-hunger-hiv-risk-among-former-drug-felons>.
- 11.** “Certificates of Rehabilitation,” Citizens Institute for Law and Public Policy. Accessed October 16, 2014. Available at: <http://peoplewithcriminalrecords.com/legal-clinics/certificates-of-rehabilitation/>.

- 12.** “Summary of State Laws,” Toolkit, The Legal Action Center. Accessed October 16, 2014. Available at: [http://www.lac.org/toolkits/certificates/summary\\_state\\_laws.htm](http://www.lac.org/toolkits/certificates/summary_state_laws.htm).
- 13.** “Opting Out of Federal Ban on Food Stamps and TANF,” Toolkit, The Legal Action Center, December 2011. Accessed October 16, 2014. Available at: <http://www.lac.org/toolkits/TANF/TANF.htm>.
- 14.** Margaret Love and April Frazier, “Certificates of Rehabilitation and Other Forms of Relief from the Collateral Consequences of Conviction: A Survey of State Laws,” American Bar Association Commission on Effective Criminal Sanctions, October 1, 2006. Accessed October 16, 2014. Available at: [http://meetings.abanet.org/webupload/commupload/CR203000/otherlinks\\_files/convictionsurvey.pdf](http://meetings.abanet.org/webupload/commupload/CR203000/otherlinks_files/convictionsurvey.pdf).
- 15.** “Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Practices to Reduce Unfair Barriers to Employment of People with Criminal Records,” Report, The National Employment Law Project, September 2014. Accessed November 24, 2014. Available at: <http://www.nelp.org/page/content/banthebox/>.
- 16.** Margaret Love and April Frazier, “Certificates of Rehabilitation and Other Forms of Relief from the Collateral Consequences of Conviction: A Survey of State Laws,” American Bar Association Commission on Effective Criminal Sanctions, October 1, 2006. Accessed October 16, 2014. Available at: [http://meetings.abanet.org/webupload/commupload/CR203000/otherlinks\\_files/convictionsurvey.pdf](http://meetings.abanet.org/webupload/commupload/CR203000/otherlinks_files/convictionsurvey.pdf).
- 17.** Margaret Love and April Frazier, “Certificates of Rehabilitation and Other Forms of Relief from the Collateral Consequences of Conviction: A Survey of State Laws,” American Bar Association Commission on Effective Criminal Sanctions, October 1, 2006. Accessed October 16, 2014. Available at: [http://meetings.abanet.org/webupload/commupload/CR203000/otherlinks\\_files/convictionsurvey.pdf](http://meetings.abanet.org/webupload/commupload/CR203000/otherlinks_files/convictionsurvey.pdf).

- 18.** United State, Department of Justice, Office of the Pardon Attorney, "Federal Statutes Imposing Collateral Consequences Upon Conviction." Accessed November 24, 2014. Available at:  
[http://www.justice.gov/pardon/collateral\\_consequences.pdf](http://www.justice.gov/pardon/collateral_consequences.pdf).
- 19.** Ed O'Keefe, "Cory Booker, Rand Paul Team Up on Sentencing Reform Bill," *The Washington Post*, July 8, 2014. Accessed October 16, 2014. Available at:  
<http://www.washingtonpost.com/blogs/post-politics/wp/2014/07/08/cory-booker-rand-paul-team-up-on-sentencing-reform-bill/>; See also United States, Congress, "The REDEEM Act," 113<sup>th</sup> Congress, 2<sup>nd</sup> Session, introduced July 8, 2014. Accessed October 16, 2014. Available at: <https://www.congress.gov/bill/113th-congress/senate-bill/2567/text>.
- 20.** Ohio, Department of Rehabilitation and Correction, "Certificate of Qualification for Employment." Accessed October 16, 2014. Available at  
<http://www.drc.ohio.gov/web/cqe.htm>; "Certificates of Rehabilitation," Citizens Institute for Law and Public Policy. Accessed October 16, 2014. Available at: <http://peoplewithcriminalrecords.com/legal-clinics/certificates-of-rehabilitation/>.
- 21.** Margaret Love and April Frazier, "Certificates of Rehabilitation and Other Forms of Relief from the Collateral Consequences of Conviction: A Survey of State Laws," American Bar Association Commission on Effective Criminal Sanctions, October 1, 2006. Accessed October 16, 2014. Available at: [http://meetings.abanet.org/webupload/commupload/CR203000/otherlinks\\_files/convictionsurvey.pdf](http://meetings.abanet.org/webupload/commupload/CR203000/otherlinks_files/convictionsurvey.pdf).
- 22.** Margaret Love and April Frazier, "Certificates of Rehabilitation and Other Forms of Relief from the Collateral Consequences of Conviction: A Survey of State Laws," American Bar Association Commission on Effective Criminal Sanctions, October 1, 2006. Accessed October 16, 2014. Available at: [http://meetings.abanet.org/webupload/commupload/CR203000/otherlinks\\_files/convictionsurvey.pdf](http://meetings.abanet.org/webupload/commupload/CR203000/otherlinks_files/convictionsurvey.pdf).

- 23.** Margaret Love and April Frazier, "Certificates of Rehabilitation and Other Forms of Relief from the Collateral Consequences of Conviction: A Survey of State Laws," American Bar Association Commission on Effective Criminal Sanctions, October 1, 2006. Accessed October 16, 2014. Available at: [http://meetings.abanet.org/webupload/commupload/CR203000/otherlinks\\_files/convictionsurvey.pdf](http://meetings.abanet.org/webupload/commupload/CR203000/otherlinks_files/convictionsurvey.pdf).
- 24.** "Certificates of Rehabilitation," Citizens Institute for Law and Public Policy. Accessed October 16, 2014. Available at: <http://peoplewithcriminalrecords.com/legal-clinics/certificates-of-rehabilitation/>.
- 25.** President of the United States George W. Bush, "Address Before a Joint Session of the Congress on the State of the Union," Speech, January 20, 2004. Accessed October 16, 2014. Available at: <http://www.presidency.ucsb.edu/ws/index.php?pid=29646>.