

BRENNAN
CENTER
FOR JUSTICE

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February 3, 2014

The Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
Dirksen Senate Office Building, SD-224
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
United States Senate
Committee on the Judiciary
Dirksen Senate Office Building, SD-224
Washington, DC 20510

The Honorable Bob Goodlatte
Chairman
U.S. House of Representatives
Committee on the Judiciary
Rayburn House Office Building, 2142
Washington, DC 20515

The Honorable John Conyers
Ranking Member
U.S. House of Representatives
Committee on the Judiciary
Rayburn House Office Building, 2142
Washington, DC 20515

Dear Members of Congress:

The Brennan Center for Justice at New York University School of Law¹ writes to express our strong support for the Second Chance Reauthorization Act of 2013 (S.1690).

The Brennan Center is a non-partisan public policy and law institute that focuses on improving the systems of democracy and justice. The Brennan Center's Justice Program seeks to ensure a rational, efficient, effective, and fair criminal justice system. Our priority Justice initiative is to reduce mass incarceration with the belief that reducing the size of the correctional population will promote public safety.

We, along with a coalition of progressive and religious groups, support the Second Chance Reauthorization Act of 2013 ("SCA") because it provides critical grant funding for programs aimed at increasing the successful reintegration of individuals returning from federal and state prisons and jails back into their communities. It funds the criminal justice system in more effective ways by investing in programs that provide education, workforce training, and public safety programs in our communities. Successful reintegration reduces recidivism and crime, thereby reducing future incarceration and its associated costs. It also improves economic opportunity, mobility, and stability for those returning from prison. The inability to gain stable, respectable work, or to secure educational opportunities, leads directly to recidivism. The Second Chance Act works to keep individuals out of the criminal justice system and keep the public safe.

¹ This letter does not represent the opinions of NYU School of Law.

With less than five percent of the world's population, the United States has almost 25 percent of its prisoners. The United States incarcerated population has increased by 700 percent since 1970.² There are 2.3 million people in prison.³ At least 95 percent of state prisoners eventually return to communities, where they face unique challenges to reentry.⁴ More than 68 million Americans, a quarter of the nation's population, have criminal records – records of arrests, charges, convictions, and prison sentences.⁵ The overly broad rejection by employers of job applicants with criminal records amplifies the already huge fiscal, economic, and social impact of mass incarceration. As with incarceration in general, poor and low-income communities of color bear the brunt of these post-incarceration obstacles. Studies show time and again that people of color are far more likely to face employment discrimination based on criminal records than their white counterparts.⁶ Reentry programs like those funded by the Second Chance Act increases the ability of these prisoners to remain in their communities.

While state correctional spending has quadrupled in the past two decades, the vast majority of these resources are directed towards prisons.⁷ Fewer resources are used to prepare offenders to reintegrate successfully into society. Accordingly, the increase in correctional spending is correlated to maintaining prisons instead of improving public safety upon release. The Second Chance Act fills this void.

The SCA Lowers Crime and Helps Improve Economic Mobility

Since its initial passage in 2008, the Second Chance Act has distributed 600 grants in 49 states, totaling over \$300 million to fund programs that focus on those who are most at risk of reoffending. This funding has already proven to reduce prison costs and improve public safety by

² Pew Charitable Trusts, *Public Safety Performance Project, Public Safety, Public Spending: Forecasting America's Prison Population 2007–2011* i (2007), available at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/State-based_policy/PSPP_prison_projections_0207.pdf (stating that the prison population grew by 700 percent between 1970 and 2005).

³ U.S. Bureau of Justice Statistics, *Jail Inmates at Midyear 2012 – Statistical Tables 4* (May 2013), available at <http://www.bjs.gov/content/pub/pdf/jim12st.pdf>.

⁴ Timothy Hughes and Doris James Wilson, U.S. Bureau of Justice Statistics, *Reentry Trends in the United States* 1 (Oct. 2002), available at <http://www.bjs.gov/content/pub/pdf/reentry.pdf>.

⁵ Inimai Chettiar et al., Brennan Center for Justice, *Reforming Funding to Reduce Mass Incarceration* 3 & 49 n.2 (Nov. 2013), available at <http://www.brennancenter.org/publication/reforming-funding-reduce-mass-incarceration>.

⁶ See, e.g. Pew Charitable Trusts, *Collateral Costs: Incarceration's Effect on Economic Mobility* 22 (“Job seekers with a criminal record are offered half as many positions as those without criminal records, and African American applicants receive two-thirds fewer offers.”); (2010), available at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Economic_Mobility/Collateral%20Costs%20FINAL.pdf. see also New York State Bar Ass'n, *Re-Entry and Reintegration: The Road to Public Safety, Report and Recommendations of the Special Committee on Collateral Consequences of Criminal Proceedings* 48, 62 (2006), available at http://www.nysba.org/AM/Template.cfm?Section=Substantive_Reports&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=11415.

⁷ Pew Center on the States, *State of Recidivism: The Revolving Doors of America's Prisons* 1 (2011), available at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/State_Recidivism_Revolving_Door_America_Prisons%20.pdf (“Total state spending on corrections is now about \$52 billion, the bulk of which is spent on prisons. State spending on corrections quadrupled during the past two decades, making it the second fastest growing area of state budgets, trailing only Medicaid.”).

providing local, state and federal governments additional resources to help inmates reintegrate into their communities successfully. We provide several examples below.

Rehabilitation and crime control are not in conflict – in fact, the Second Chance Act shows that they work hand-in-hand. On their own, released individuals face a number of complex obstacles in education, housing, employment, and other areas of need. If not addressed, these obstacles increase the likelihood that they will join the more than four out of 10 adult American offenders who return to prison within three years of their release.⁸ The SCA decreases these odds. For example, the Harlem Parole Reentry Court, which has received two Second Chance grants, saw recidivism rates decrease from 19.3 percent to 14.7 percent. And in Oakland, California a program geared towards reducing recidivism among youth, ages 13 to 18, experienced a high level of success as well. In their first year, 74.4 percent of the participants were enrolled in school and of those who received job training 63.4 percent were able to secure employment.⁹ By enabling released prisoners to end a cycle of incarceration, the SCA furthers justice and fairness.

The Second Chance Act also effectively helps the formerly incarcerated obtain and maintain employment. For example, the Girl Scouts of Eastern Oklahoma found that 74 percent of the participants who received employment development services have since obtained employment. With jobs and incomes, formerly incarcerated individuals can transition back into society with more ease, fewer burdens, and better odds that they will not return to the system.

Reentry programs help improve our workforce, decrease unemployment rates, give more families the ability to purchase goods, and increase the output of American goods and services. The formerly incarcerated make up more than 6 million people in the U.S. at any given time, while nearly 700,000 individuals are released from prison each year.¹⁰ The SCA works to include millions of viable individuals in the workforce, and ultimately boost the economy. The consequences of unsuccessful reentry place enormous burdens on the economy as a whole. These include decreases in productivity, the quality and quantity of the labor force, the level of education, and the United States' global competitiveness.¹¹

The SCA Moves Toward a Success-Oriented Funding Model

Officials across the nation, and across the aisle, are searching for solutions to our nation's criminal justice crisis. One answer is to apply principles of behavioral economics to shift financial incentives to steer the criminal justice system toward clear goals.

⁸ Pew Center on the States, *State of Recidivism: The Revolving Door of America's Prisons 2* (Apr. 2011), available at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/State_Recidivism_Revolving_Door_America_Prisons%20.pdf.

⁹ Council of State Governments Justice Ctr., *Reentry Matters: Strategies and Successes of Second Chance Act Grantees Across the United States* (Nov. 2013), available at <http://csgjusticecenter.org/wp-content/uploads/2013/11/ReentryMatters.pdf>.

¹⁰ U.S. Bureau of Justice Statistics, *Prisoners in 2012 2* (Dec. 2013), available at <http://www.bjs.gov/content/pub/pdf/p12tar9112.pdf>.

¹¹ Brennan Center for Justice, *Comments to the U.S. Civil Rights Commission on Economic Impact of Criminal Records* (Jan. 2013), available at <http://www.brennancenter.org/analysis/comments-us-civil-rights-commission-economic-impact-criminal-records>.

A “Success-Oriented Funding” model for criminal justice spending is a simple, yet effective approach.¹² The concept is this: lay out clear goals for what taxpayer dollars should accomplish and then tie funding directly to achievement of those goals. In the criminal justice context, Success-Oriented Funding would fund what works at reducing crime and unnecessary incarceration. Mass incarceration is tremendously expensive and lacks evidence that it reduces crime at these levels. The Success-Oriented Funding model harnesses proven, data-driven private sector models and applies them to public dollars to incentivize policies that produce results. It ensures that federal dollars are spent wisely, effectively, and efficiently.

The Second Chance Reauthorization Act is a close example of Success-Oriented Funding. The Act lays out goals for funding under the SCA: breaking the cycle of recidivism, increasing public safety, and helping our governments address the growing population of individuals struggling upon release from prison. It then reserves funding for programs that address the underlying causes of crime and support individuals transitioning back to society. Additionally, Second Chance grants fund state departments of correction to reduce recidivism through planning, capacity-building, and implementation of effective and evidence-based interventions.

While the grant does not tie dollars to its recipients actually meeting these goals, as a true Success-Oriented model would, it has begun to prioritize agencies that use dollars conditioned on meeting specific goals.¹³ Second Chance grants reimburse investors when these agencies meet their reentry goals, such as lowering recidivism by 10 percent. By laying out clear goals and limiting grants to programs that work to meet those goals, the SCA helps to ensure that federal dollars are used to reduce the likelihood of recidivism.

The SCA promotes more effective spending by targeting the most vulnerable populations, by focusing on those with histories of homelessness, substance abuse or mental illness, and by shifting towards a more holistic approach to reducing recidivism through treatment. The program also focuses resources on employment services, to ensure that ex-offenders transition out of prison into their communities. It is indeed successful in reducing prison costs and improving public safety by giving federal, state, and local governments additional tools to help inmates more successfully reintegrate into their communities upon release and avoid reoffending.

The Brennan Center is pleased to offer our assistance by serving as a resource through our research and advocacy on criminal justice issues, particularly in reforming criminal justice funding structures. Our staffs in both New York and Washington work closely on efforts to preserve smart federal criminal justice funding, like the SCA, that moves the country away from mass incarceration and toward more modern and effective crime control practices. In addition to the Justice Program and Washington office directors, counsel, Danyelle Solomon in Washington at danyelle.solomon@nyu.edu and New York counsel, Nicole Fortier at nicole.fortier@nyu.edu, are also available to provide additional assistance.

¹² For more on Success-Oriented Funding *see generally* Inimai Chettiar et al., Brennan Center for Justice, *Reforming Funding to Reduce Mass Incarceration* 3 & 49 n.2 (Nov. 2013), available at <http://www.brennancenter.org/publication/reforming-funding-reduce-mass-incarceration>.

¹³ Non-Profit Finance Fund, Pay For Success Learning Hub, available at <http://payforsuccess.org>.

We encourage your support in passing the Second Chance Reauthorization Act of 2013.

Respectfully submitted,

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