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Removing Barriers to Opportunity for Parents With Criminal Records and Their Children

A Two-Generation Approach

By Rebecca Vallas, Melissa Boteach, Rachel West, and Jackie Odum December 2015



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Introduction and summary

Nearly four decades of mass incarceration and overcriminalization have made the United States the world leader in incarceration and arrests. The number of Americans in federal and state prisons and jails has quintupled over the past four decades—nearly 2.3 million Americans are behind bars today¹—leaving the U.S. incarceration rate at more than six times the average across developed nations. Communities of color—and particularly, men of color—are hit hardest, with black men six times more likely and Latino men two-and-a-half times more likely to be incarcerated than white men.²

An even greater share—between 70 million and 100 million Americans, or as many as one in three American adults—have some type of criminal record.³ Many have been convicted of only minor offenses, such as misdemeanors—and many only have arrests that never led to a conviction. But whether or not an individual has been incarcerated, having a criminal record often carries a lifetime of consequences, lasting long after someone has paid his or her debt to society. As discussed in a previous Center for American Progress report, “One Strike and You’re Out,” having even a minor criminal record can be a life sentence to poverty, presenting obstacles to employment, housing, education and training, public assistance, financial empowerment, and more.⁴

While the effects of parental incarceration on children and families are well-documented, less appreciated are the family consequences that stem from the barriers associated with having a criminal record, whether or not the parent has ever been convicted or spent time behind bars. A child’s life chances are strongly tied to his or her circumstances during childhood. Thus, these barriers may not only affect family stability and economic security in the short term but also may damage a child’s long-term well-being and outcomes.

Our new analysis estimates that between 33 million and 36.5 million children in the United States—nearly half of U.S. children—now have at least one parent with a criminal record.⁵ In this report, we argue that parental criminal records

significantly exacerbate existing challenges among low-income parents and their families. We explore the intergenerational effects of criminal records through five pillars of family well-being:

- **Income.** Parents with criminal records have lower earning potential, as they often face major obstacles to securing employment and receiving public assistance.
- **Savings and assets.** Mounting criminal justice debts and unaffordable child support arrears severely limit families' ability to save for the future and can trap them in a cycle of debt.
- **Education.** Parents with criminal records face barriers to education and training opportunities that would increase their chances of finding well-paying jobs and better equip them to support their families.
- **Housing.** Barriers to public as well as private housing for parents with criminal records can lead to housing instability and make family reunification difficult if not impossible.
- **Family strength and stability.** Financial and emotional stressors associated with parental criminal records often pose challenges in maintaining healthy relationships and family stability.

Because these challenges affect such a large share of our nation's children, we ignore these intergenerational consequences at our peril. In this report, we make the case for a “two-generation approach” to address barriers to opportunity associated with having a criminal record.⁶ We then offer policy recommendations to give both parents with criminal records and their children a fair shot.

As bipartisan momentum continues to mount in support of criminal justice reform, now is the time to find common ground and enact solutions to ensure that a criminal record does not consign an individual—and his or her children and family—to a life of poverty.

Criminal records: Creating barriers for two generations

The financial and emotional effects of parental incarceration on children and families are well-documented. Two-parent families typically experience a sudden, significant drop in income at the time of incarceration, due to the loss of the incarcerated parent's earnings.⁷ The disruption in the lives of children of lone parents can be even more severe. Many children—and parents—experience feelings of loss and abandonment, which can be exacerbated by the difficulty of maintaining family bonds while a parent is incarcerated. Moreover, a large and growing body of literature connects parental incarceration with childhood illness, behavioral problems, poor educational outcomes, and even a greater likelihood of poor physical and mental health in adulthood.⁸ Thus, it comes as little surprise that parental incarceration is increasingly considered to be an “adverse childhood experience,” or ACE—an experience that is associated with a greater risk of traumatic stress.⁹

Less appreciated, however, are the consequences of parental criminal records—separate from incarceration—on children and families. To that end, we examine five pillars of family well-being—income, savings and assets, education, housing, and family strength and stability—in turn, and how the barriers associated with a parent's criminal record can negatively affect a child's short- and long-term outcomes. As a result, we are able to make the case that a parent's criminal record can itself serve as an ACE, even absent parental incarceration.

A parent's criminal record can hold back the whole family

Ms. N is a 35-year-old mother with three children—ages 9, 11, and 15—whom she supports on her own. More than a decade ago, she was convicted of two minor retail thefts. In both incidents, she was spending time with a friend who shoplifted and was merely in the wrong place at the wrong time. Ms. N found it very difficult to find a job when she moved to Philadelphia in 2010, despite having work experience as a lunch aide at an elementary school and as a direct care worker at a residential facility for people with disabilities. She finally secured a position as a home health aide but was fired after three days when the employer obtained the results from her background check. Desperate to feed her children, Ms. N turned to the Supplemental Nutrition Assistance Program, or SNAP, formerly known as food stamps, but she remains without any other source of income to support her family. She wants nothing more than to put her criminal record behind her so that she can return to being a productive member of society and the breadwinner for her family.

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Income: Employment, earnings, and public assistance

Family income is one of the strongest predictors of economic mobility: Of those born into the bottom one-fifth of the income distribution, 42 percent of children—and 56 percent of African American children—remain in the bottom one-fifth as adults.¹⁰

On the flip side, a large and growing body of literature finds that addressing struggling families' income constraints not only mitigates hardship but also bolsters children's chances at upward economic mobility in the long term. Research by Greg Duncan and his colleagues finds that boosting a poor child's annual family income by just \$3,000 between the prenatal year and age 5 leads to a 17 percent average increase in the child's annual earnings down the line.¹¹

But having a criminal record can present barriers to employment, earnings, and even the meager benefits available from public assistance. The income-limiting effects of these obstacles, therefore, have broad implications—not just for the tens of millions of individuals who are prevented from moving on with their lives and becoming productive citizens but also for their children and families.

Today, nearly 9 in 10 employers conduct criminal background checks on their job applicants.¹² Even minor offenses such as misdemeanors and arrests without conviction can present major barriers to employment.¹³ Additionally, state laws on hiring and occupational licensing categorically bar individuals with certain types of convictions from more than 800 occupations nationwide.¹⁴ As a result, some 60 percent of formerly incarcerated individuals remain unemployed one year after their release.¹⁵ And for those lucky enough to find steady employment, having a criminal history often comes with a substantial reduction in earnings. Research indicates that formerly incarcerated men, for example, take home an average of 40 percent less pay annually than if they had never been incarcerated, resulting in an earnings loss of nearly \$179,000 by age 48.¹⁶

Notably, an individual need not have spent time behind bars—or even have been convicted of a crime—in order to face barriers to employment due to a criminal record. A study by the National Institute of Justice finds that having any arrest during one's life diminishes job prospects more than any other employment-related stigma, such as long-term unemployment, receipt of public assistance, or having a GED certificate instead of a high school diploma.¹⁷

Moreover, in many states, even public assistance can be out of reach for people with certain types of criminal records. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 includes a lifetime ban on receiving federal public assistance—through the Supplemental Nutrition Assistance Program, or SNAP or Temporary Assistance for Needy Families, or TANF—for individuals with felony drug convictions.¹⁸

Federal law gives states the option to modify or waive the bans, and most have done so to some extent, with Texas and Alabama the most recent to follow suit.¹⁹ Yet the majority of states have retained a ban in whole or in part for TANF, SNAP, or both.²⁰

This outdated and harsh policy has serious consequences for individuals and families. It deprives struggling families of vital nutrition assistance and pushes them even deeper into poverty at precisely the moment when they are seeking to regain their footing. Women are hit especially hard by this policy, as drug offenses accounted for half of the increase in the state female prison population between the mid-1980s and mid-1990s, compared with only one-third of the increase for men over the same period.²¹

When parents face challenges in securing employment or accessing basic income support to help meet basic needs, children suffer both short- and long-term negative consequences. In the early years, from infancy to age 3, children in lower-income households tend to develop vocabulary at a slower rate than their higher-income peers, and they ultimately have more limited language skills, affecting school performance.²² As children enter their school years, parental job instability is associated with lower educational attainment. And when mothers struggle with unstable work, their children are more likely to exhibit absenteeism, bullying, or withdrawal.²³

Research by Hilary Hoynes and her colleagues finds that safety net programs such as SNAP not only alleviate hunger, reduce poverty, and improve children's health in the short run but also improve children's long-term educational, economic, and health outcomes.²⁴ Studies find similar positive long-term benefits from the Earned Income Tax Credit and the Child Tax Credit: These programs not only improve the short-term well-being of children through reducing low birthweight and premature births²⁵ but also lead to improved educational and employment outcomes in adulthood.²⁶

Savings and assets

While families need income to make ends meet, they also need savings to be economically secure and to get ahead. Unfortunately, having a criminal record affects a parent's job prospects, thereby undermining their ability to save for the future. In addition, interaction with the justice system also can result in crushing fines and fees, trapping families in a downward spiral of debt.

In a growing nationwide trend, states and municipalities have increasingly moved toward “offender-funded justice.” This approach funds law enforcement and court systems—and in some cases, even substantial shares of a jurisdiction's budget—through fines and fees levied on justice-involved individuals.²⁷ For example, following the tragic death of Michael Brown—an unarmed, young black man who was shot by police in August 2014²⁸—it came to light that his hometown of Ferguson, Missouri, had relied on municipal court fines for a staggering 20 percent of its \$12.75 million total budget in 2013.²⁹

Examples include various sorts of “user fees” that are assessed upon conviction, public defender fees for defendants who exercise their right to counsel, pay-to-stay fees designed to offset states' costs of incarceration, and fees for GPS ankle bracelets while an individual is on community supervision. Many states and localities also assess late-payment fees, steep collection fees, and even fees for entering an installment payment plan.

According to the Ella Baker Center for Human Rights, which promotes the advancement of social and economic justice for low-income families and communities of color, 85 percent of returning citizens face criminal justice debts, up from just 25 percent in 1991.³⁰ Total criminal justice debts can rise into the tens of thousands of dollars.³¹ These debts often come on top of crushing child support arrears, which in many states can pile up while a parent is behind bars.³²

Notably, these criminal justice debts exacerbate the consequences of having a criminal record and transform punishment from a temporary experience into a long-term or even lifelong status. In many states, individuals are not eligible to clean up their criminal records through expungement or sealing until they have paid off all their criminal debts. Outstanding criminal debt can also stand in the way of public assistance, housing, employment, and access to credit. Moreover, while being incarcerated for being unable to pay off debts was long ago declared unconstitutional, missing a payment can be a path back to jail in many states, setting up a modern-day debtor's prison.³³

When families face debt, it not only undermines financial security but can also have negative psychological and mental health effects, affecting children’s emotional health.³⁴ In fact, even when adjusting for income and other variables, people with more debt were more likely to have some sort of mental health challenges. And when parents face mental health challenges, it can have adverse effects on their marriage and parenting skills, which in turn affects children.³⁵

Meanwhile, research shows that helping parents build savings has positive short- and long-term effects on children and families. For example, when working-age families can put aside even modest savings in the short term—even sums of less than \$2,000—they are less likely to face hardships such as running short on food, forgoing needed health care, or having the utilities turned off than households with no savings.³⁶ In the long run, assets can have a positive effect on children, not only by ensuring that funding is available for education and other mobility-enhancing opportunities but psychologically as well, affecting children’s aspirations to pursue higher education.³⁷ For example, having even modest educational savings set aside is associated with a substantially greater likelihood of children’s college attendance and completion.³⁸

When parents can build financial assets, rather than being caught in a cycle of debt due to a criminal record, the whole family benefits.

Education and training

One of the surest pathways to moving up the career ladder and achieving family economic security is securing additional education and training to better compete in the job market. Unfortunately, parents with criminal records face significant barriers to accessing the education and training they need, hindering their odds of finding stable work.

Additionally, parental education has profound effects on children. Children whose parents have less education are more likely to experience poverty, struggle with hunger, and lack health insurance, while the benefits of higher educational attainment among parents can help protect children from hardship even during tough economic times.³⁹

Approximately two out of five Americans behind bars have neither finished high school nor obtained a GED certificate.⁴⁰ Of those with a high school diploma or GED certificate, nearly half—46 percent—lack postsecondary education.⁴¹ Additionally, many struggle with low literacy: About 16 percent have below basic literacy levels, and 3 percent are completely illiterate in English.⁴²

Obviously, limited education and literacy can make it difficult to compete in the labor market, even without a criminal record. It also limits a person's earning potential: The difference in median earnings between an individual with a high school diploma and someone with a bachelor's degree is more than \$23,000 per year, a 70 percent gap.⁴³

Education and training not only boost employment and earnings prospects but also reduce the likelihood that an individual will return to jail or prison. A recent study by the RAND Corporation—the largest-ever analysis of correctional education—found that inmates who participated in correctional education were 43 percent less likely to return to prison than those who did not and were substantially more likely to obtain employment.⁴⁴ Postrelease employment rates were 13 percent higher for individuals who participated in academic or vocational education programs while behind bars and 28 percent higher for those who participated in vocational training.⁴⁵ Furthermore, the study found that every dollar spent on prison education saved \$4 to \$5 in incarceration costs during the three years after the individual's release, the time period when recidivism is most likely.⁴⁶

Unfortunately, despite the cost effectiveness of education and training behind bars, these types of programs are scarce.⁴⁷ In 1995, Congress removed access to Pell Grants for inmates—causing the number of postsecondary prison education programs to drop by more than 90 percent in the decade that followed.⁴⁸

Additionally, formerly incarcerated individuals—and even those with criminal records who have never been incarcerated—can face obstacles to education and training. While there has been some progress in removing barriers to federal financial assistance for people with criminal records,⁴⁹ federal law prohibits individuals with felony drug convictions from receiving the American Opportunity Tax Credit, or AOTC, for life. The AOTC serves as a complement to Pell Grants, providing qualifying students and families with a partially refundable tax credit of up to \$2,500 per academic year to offset some of their educational expenses.⁵⁰ To make matters worse, an estimated 66 percent of colleges and universities use background checks in the admissions process, further decreasing the chance that a person with a record will be able to access higher education.⁵¹

These obstacles for parents with a criminal record can have a profound effect on their children. Analysis by the Urban Institute reveals that even before the Great Recession, there were dramatic variations in child poverty rates by parental educational attainment. But those disparities were even greater after the recession. Between 2007 and 2010, children whose parents lacked a high school diploma saw their poverty rates rise by 8 percentage points, while those whose parents had a high school degree or some college saw theirs increase by 6 percentage points. Children whose parents had an associate's degree or four-year college degree saw their poverty rates rise by 3 percentage points and 2 percentage points, respectively.⁵² The Urban Institute's analysis shows a similar pattern for child food insecurity and lack of health insurance.⁵³

Parental education is not only associated with childhood risk of experiencing poverty and hardship in the near term but also with a child's long-term educational prospects. A mother's education level is strongly correlated with vocabulary and mental processing skills in the first few years of life, and with older children is predictive of school readiness, academic achievement, social engagement, and ability to regulate behavior.⁵⁴

Chronically poor children whose parents have a high school degree or higher are significantly more likely to finish high school themselves than their counterparts whose parents do not have a high school degree.⁵⁵ And indirectly, children whose parents have higher levels of education tend to have higher educational aspirations themselves, leading to higher educational attainment and ultimately greater career prospects.⁵⁶

Therefore, barriers to education and training associated with having a criminal record not only hold parents back from climbing the career ladder but can hamper children's educational and employment prospects as well.

Housing

Safe, decent, and affordable housing is foundational to the economic security of individuals and families. It also has powerful anti-recidivism effects for people with criminal histories. However, even a minor criminal record can affect the stability of a family's housing situation, both through loss of income leading to eviction or foreclosure and through overly harsh "one strike and you're out" public housing policies, which can make it impossible for an individual with a criminal record to physically rejoin his or her family.⁵⁷

The nation's two major housing assistance programs are the Section 8 Housing Choice Voucher Program and Public Housing. Both are federally funded, and their use is governed by federal law and policies. Both are administered by local public housing authorities, or PHAs, however, which have tremendous discretion regarding admission and eviction policies.⁵⁸

Federal public housing law includes a narrow, mandatory ban on access to public housing for people with certain types of criminal histories.⁵⁹ But it also gives local PHAs broad discretion to deny housing to prospective tenants and to evict current tenants on the basis of “criminal activity.”⁶⁰ Thus, federal law effectively provides a floor that many PHAs choose to exceed by exercising their discretion in extreme ways. For example, many PHAs will evict or deny housing to an individual or even to an entire household if one household member has had an arrest, even if that arrest did not lead to conviction.⁶¹ Guidance for PHAs published in November 2015 by the Department of Housing and Urban Development clarified the federal “one strike” policy, noting that arrests without conviction may not be considered evidence of “criminal activity” and thus may not serve as the basis for denial of housing or eviction.⁶²

Overly broad interpretations of this policy by local PHAs can put housing out of reach for returning citizens. It also can stand in the way of family reunification because a returning citizen would put his entire family at risk of eviction if he or she went to live with them. Indeed, a 2015 study by the Ella Baker Center found that 79 percent of returning citizens reported being denied housing due to their criminal history, and 18 percent of families reported being evicted or denied housing when their incarcerated family member returned home.⁶³

In addition to the obstacles that people with criminal records face to public housing, private housing can also be unattainable for individuals with criminal records and for their families. Four out of five landlords use criminal background checks to screen out potential tenants.⁶⁴ And as noted previously, the income-limiting effects of criminal records can also lead to eviction and housing instability—and, combined with the savings-limiting effects of a criminal record, can put homeownership far out of reach for many individuals with records and their families.

Housing instability can have harmful and long-lasting consequences for children. In the early years, frequent moves can affect children's mental health and language development. Multiple moves can lead to disruptions in education, residence in lower-quality housing and neighborhoods, and less parental engagement in the

child's education—all of which have negative consequences for children's academic outcomes.⁶⁵ Persistently poor children who experience residential instability before age 18 are significantly less likely to complete high school, enroll in postsecondary education, or complete a degree than their counterparts who had stable housing during childhood.⁶⁶

Housing instability and foreclosure also can affect children's health, with more visits to the emergency room and more delays in preventive care in areas with high foreclosure rates.⁶⁷ And of course, family homelessness during childhood has severe short- and long-term effects as well, affecting physical, cognitive, social, and emotional development. Children who experience homelessness and housing instability are more likely to be separated from their parents, to experience hunger and lack of access to medical and dental care, to repeat a grade or drop out of high school, and to display emotional and behavioral problems such as anxiety and depression.⁶⁸

As a result, the barriers to housing faced by parents with criminal records not only stand in the way of housing stability in the short term but also can carry substantial, negative, and long-term consequences for children.

Family stability and strength

A large and growing body of research documents the profound negative effects that parental incarceration can have on children and on family life.⁶⁹ Importantly, families can continue to face significant challenges long after a parent is released from a correctional facility—or even if the parent has a criminal record but never spent any time behind bars.

For starters, while child support represents an important contribution to the well-being of children who no longer reside with both parents, unaffordable child support orders can serve as a major driver of postincarceration debt. Many incarcerated parents enter correctional facilities with child support orders in place. While policies vary across states, in 14 states, incarceration is currently not a permissible reason for pausing child support orders, meaning that a noncustodial parent who is behind bars can accumulate sizable arrears and interest despite being unable to make payments while incarcerated.⁷⁰

When this happens, formerly incarcerated parents can return home to find that their child support debts are in the tens of thousands of dollars. Given that, as previously discussed, many individuals leaving prison face barriers to employment and earnings and often have little to no savings, it can be difficult if not impossible to dig out of this hole. Failure to find employment—or a job that pays well enough to afford to meet child support obligations—can trigger a downward spiral of mounting debt, late-payment penalties, and the possibility of reincarceration for failure to pay.⁷¹ Thus, it comes as little surprise that states report that 30 percent to 40 percent of their hard-to-collect child support cases involve noncustodial parents with criminal records or histories of incarceration.⁷²

Making matters worse, noncustodial parents often end up behind bars for nonpayment of child support, again setting up the equivalent of a modern-day debtors' prison and making it even harder for the parent to find employment upon release. It is this vicious cycle that led to the tragic death of Walter Scott, a South Carolina father who was pulled over for a broken tail light: He was shot in the back while trying to flee law enforcement. His brother, Rodney Scott, suspected he fled because he feared being arrested for outstanding child support debt.⁷³

Moreover, in a perverse and unintended consequence, unaffordable child support orders and arrears can take a toll on family bonds and impede family reunification after release. In a survey commissioned by the Ella Baker Center, more than half of survey respondents reported having to make the difficult financial choice between making a child support payment and meeting basic needs. The survey also showed that more than one-third of respondents reported that their inability to pay child support damaged familial relationships, including those with their own children.⁷⁴

As illustrated in the previous sections, whether or not a parent has spent time in prison or jail, having a criminal record carries profound implications for family economic security, which in turn can affect family life, with detrimental consequences for both parents and children. In a recent report, “Valuing All Our Families,” CAP set forth a family policy framework, underscoring that, as shown in Figure 1, family structure, stability, and strength are all interconnected and all matter for child as well as adult outcomes in a two-generation approach. Unfortunately, the economic insecurity associated with a criminal record negatively affects all three of these pillars.

FIGURE 1

The three S's: A new framework for family policy



When it comes to family stability—regardless of whether the parents are married, cohabiting, single, or in another type of family arrangement—children whose families experience unemployment are more likely to face a destabilizing change, whether it be divorce, doubling up with another family, or other disruptions in family life.⁷⁵ This is important because research suggests that “instability seems to matter more than family structure for [children’s] cognitive and health outcomes, whereas growing up with a single mother (whether that family structure is stable or unstable over time) seems to matter more than instability for children’s behavioral problems.”⁷⁶

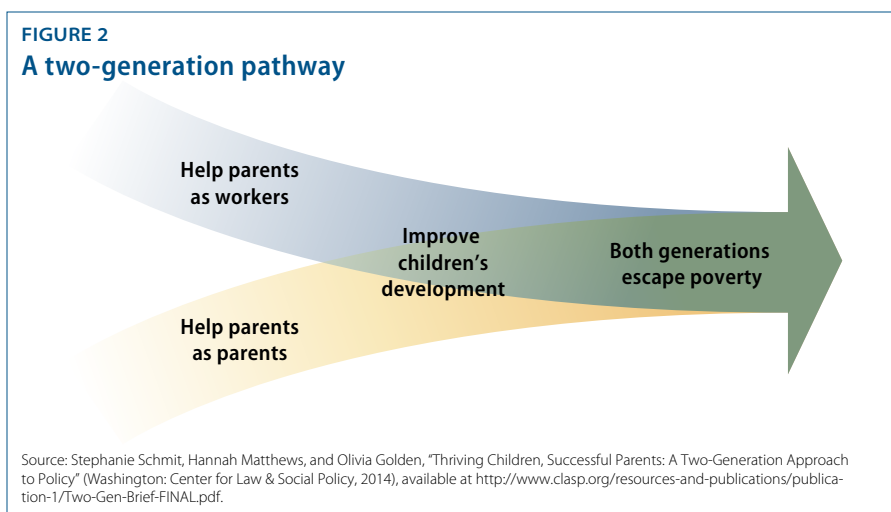
In terms of family strength—or the quality of parents’ relationships with one another and their children—economic security also plays an important role. Financial stress is a key predictor of marital violence, conflict, and divorce, whereas parents with higher incomes and educational attainment are more likely to report happier marriages than counterparts with lower incomes and less education.⁷⁷ Moreover, job loss and economic insecurity can carry over into family interactions. A report by the Brookings Institution and First Focus on the effects of foreclosures on children cites a body of research that points to how parents under financial stress can at times engage in “harsher and less supportive parenting, which in turn can lead to negative behaviors on the part of children, making it harder for them to interact well with peers and in school.”⁷⁸

And in terms of family structure, in cities where lower-income men are more disconnected from the economic mainstream—as measured by the degree to which their income falls below the median—they are less likely to marry. This mirrors a broader long-term trend, with higher levels of inequality being associated with a decline in marriage among men and women over time.⁷⁹ While the most sophisticated reviews of social science conducted to date suggest that the causal effects of a father’s absence alone on child well-being are likely modest,⁸⁰ there is little debate that both children and adults would benefit from stronger, more stable marriages and committed relationships.

Thus, these types of economic stressors not only affect families who are already dealing with the emotional fallout of a parent returning from incarceration but also have implications for family structure, stability, and strength for any family in which a parent’s criminal record is a barrier to the basic building blocks of economic security.

The case for a two-generation approach

In recognition that parent and child well-being are inextricably linked, two-generation approaches set out to address the needs of both disadvantaged parents and children together. While two-generation policy frameworks can vary, one thing remains consistent: Policies that help adults as both parents and workers can have a profound effect on a child's long-term outlook and well-being.⁸¹ Two-generation approaches combat intergenerational poverty by boosting education, health and well-being; economic supports; and social capital for parents and their children.⁸²



As discussed in the previous section, the barriers associated with having a criminal record do not just result in lifelong punishment for the parent with the record; they also can significantly limit a child's life chances. Given that nearly half of all children have a parent with a criminal record, this is an underappreciated driver of economic insecurity among families with children.

Thus, as policymakers work together to reform the nation's criminal justice system, they must enact policies that reflect a two-generation approach. They must begin by removing barriers to opportunity for parents with criminal records, thereby giving both parents and children a fair shot at a better life and an even better future.

Recommendations to remove barriers to opportunity for parents with criminal records and their children

Several recent reports have offered an array of policy recommendations to alleviate the emotional and economic consequences of parental incarceration on children and families. These recommendations include ensuring that parents are not incarcerated at great distance from their families, making visitation more child and family friendly, addressing usurious phone rates,⁸³ and more.⁸⁴ These are steps that policymakers should take.

However, whether or not a parent has been incarcerated, having a criminal record carries tremendous negative consequences for his or her family and children. While by no means an exhaustive list, the following recommendations would go a long way toward mitigating the intergenerational effects of the barriers associated with parents' criminal records.⁸⁵

Enable individuals with records to earn a clean slate

Enabling Americans with criminal records to earn a clean slate upon rehabilitation would permit them to redeem themselves and move on with their lives after they pay their debt to society. To that end, a comprehensive solution that would address many barriers is the automatic sealing of minor records after rehabilitation. Congress and the states should enact clean slate policies to automatically seal low-level, nonviolent records after an individual has proven his or her rehabilitation by remaining crime-free for a set period of time. While most states have expungement and other record-clearing laws in place, they typically require individuals to petition the court one by one on a case-by-case basis. As a result, many people are deprived of the opportunity to clear their record simply because they are unable to secure legal representation.⁸⁶ By contrast, automatic sealing has the benefit of expanding access to record clearing for individuals who have been rehabilitated, while reducing a burdensome and costly workload for the courts.

Congress should also enact the bipartisan Sentencing Reform and Corrections Act of 2015, which includes several important provisions to expand access to record clearing, such as sealing or expungement of juvenile criminal records under certain circumstances. Importantly, it also requires the attorney general to develop a process for individuals who are undergoing employment criminal background checks to challenge the accuracy of their federal criminal records, which would help address the well-documented problem of inaccuracies in criminal records databases.⁸⁷

Remove barriers to employment and income assistance

Fair hiring policies should be enacted at the federal, state, and local levels. To ensure that the federal government is a model employer, the Obama administration should finalize its Office of Personnel Management, or OPM, rule “banning the box” for federal agency hiring, which would delay the point in the hiring process when a criminal record is considered.⁸⁸ Additionally, Congress should pass the bipartisan Fair Chance to Compete for Jobs Act of 2015, which would extend the “ban the box” policy to federal contractors, who are not covered by the OPM rule.

States and localities that have not already done so should follow the lead of the 19 states and more than 100 municipalities that have adopted fair chance hiring policies that incorporate features such as banning the box.⁸⁹ The strongest policies incorporate the Equal Employment Opportunity Commission’s standards for consideration of criminal records in hiring, including that employers should not consider arrests without conviction; that employer demands for applications only from individuals without a criminal record are illegal; and that certain factors must be taken into account, such as the seriousness of the crime, the time that has elapsed since the conviction, and the nature of the job.⁹⁰

In addition, to enable families to access needed income and nutrition assistance while seeking to get back on their feet, Congress should repeal the overly harsh lifetime felony drug ban on Temporary Assistance for Needy Families and the Supplemental Nutrition Assistance Program. In the meantime, states that have not already done so should exercise their authority to opt out of or modify the ban.

Remove barriers to financial empowerment

Despite the emergence of several best practices, many states and localities persist in criminal justice debt policies that present serious barriers to re-entry and trap families in a never-ending cycle of debt. In collaboration with the Consumer Financial Protection Bureau, the U.S. Department of Justice should release guidance that encourages states and localities to adopt best practices in levying and collecting criminal justice debt.⁹¹ In the meantime, states and localities should reform their criminal justice debt policies, including by: conducting impact analysis before adopting new fees; considering ability to pay and permitting individuals to enter into affordable installment plans; implementing statutes of limitation and writing off uncollectible debt; permitting waiver of fees upon completion of re-entry programs;⁹² and avoiding incarceration as a penalty for nonpayment.

Additionally, the Obama administration should finalize its proposed rule to modernize the child support enforcement system. It would go a long way toward breaking the link between unaffordable child support arrears and mass incarceration, while supporting noncustodial parents in obtaining employment so that they can pay more in child support.

Remove barriers to housing

The overly broad and harsh “one strike and you’re out” policy in public housing should be repealed and replaced with a policy that requires individualized assessments. This would address safety concerns while removing the barriers that parents with records face to accessing public housing, and it also would promote family reunification and prevent the family homelessness that can result from a family member with a record joining the household after returning home from incarceration. The Department of Housing and Urban Development, or HUD, guidance released in 2015 clarifying the one-strike policy and laying out best practices for public housing authorities⁹³ marks a good first step, as it makes clear that arrests without conviction are not sufficient grounds for eviction or denial of housing. Even absent reform to the one-strike policy, local PHAs need not and should not exceed the narrow mandatory bans that they are required to implement, and they should adopt the best practices laid out in the recent HUD guidance. They also should follow the lead of New York City and other cities that have launched pilot programs to explore strategies for removing barriers to public housing for individuals with criminal records and their families.

To remove barriers to private housing, states and cities should adopt fair housing policies that prohibit landlords from discriminating on the basis of criminal history. While policies that lay out specific rights—such as Oregon’s recently enacted fair housing law⁹⁴—are optimal, states may be able to issue regulations that construe their own fair housing laws to limit discriminatory denials of housing without the need for new legislation.

Remove barriers to education and training

While progress has been made in terms of reducing barriers to federal financial aid for students with criminal histories, the harsh lifetime ban on the American Opportunity Tax Credit for individuals with felony drug convictions puts a vital source of financial aid out of reach for current and prospective students who might not otherwise be able to afford to pursue higher education or training. Congress should remove this ban to enable parents with criminal records to obtain the additional qualifications they need to compete in the labor market and provide for their families.

In 2015, the Obama administration announced the launch of a pilot program to test the restoration of Pell Grants to currently incarcerated students.⁹⁵ Upon the release of positive results, Congress should act to restore full access. Additionally, Congress and the states should increase investment in prison education and training to boost parents’ employment and earnings prospects and better equip them to support their families upon release. And colleges and universities should follow New York’s lead by limiting consideration of criminal history in the higher-education admissions process until after a conditional admission has been made; they also should only consider convictions if they indicate that the student poses a threat to public safety or if they have bearing on some aspect of the academic program or student responsibilities.

Enact policies to support family strength and stability

A previous CAP report offered a framework for family policy and laid out a two-part policy agenda to support strong and stable families. This framework includes an economic plank to bolster family economic security, as well as a social plank to ensure that struggling families are armed with the same tools as higher-income families to

navigate family-related decisions and disruptions.⁹⁶ The recommendations above underscore ways in which we can make many of these economic and social policies—from access to good jobs to removing barriers to income security and education—more fully available to parents with criminal records in ways that are likely to strengthen family structure, stability, and strength.

Given the unique challenges facing parents with criminal records, however, there are also specific policy interventions that would help strengthen family bonds both for formerly incarcerated parents and for the broader swath of Americans with some type of criminal record. Policies that support families in paying child support and strengthening parenting skills are an important set of supports that can help disadvantaged parents, including those facing barriers related to their criminal record.

For example, the Obama administration's proposed rule to modernize the child support system not only prevents child support debt from accumulating while parents are incarcerated but also gives state agencies new options to use federal child support funding for employment services to noncustodial parents who are unemployed and underemployed and thus struggling to make their payments. Efforts at the state level to help noncustodial parents find jobs, rather than setting them on a pathway to incarceration for nonpayment, have resulted in greater and more consistent payments for children.⁹⁷ The rule also allows states to incorporate discussions of visitation into support orders, which provides an opportunity to formalize a noncustodial parent's engagement with his or her child and enables states to offer education and resources to parents on effective co-parenting and family budgeting.⁹⁸ The rule should be finalized to ensure that states have these tools at their disposal to benefit children and families.

Another important policy tool is the administration's Pathways to Responsible Fatherhood Demonstration Grants, administered by the U.S. Department of Health and Human Services' Office of Family Assistance, which help fathers improve their relationship with their partners and/or the mothers of their children, strengthen their parenting skills, and contribute to their children's financial well-being.⁹⁹ This is a relatively small program, but results show that the important models it funds are strengthening families. (see text box on the Center for Urban Families for more information) As additional evidence emerges on best practices for serving parents with criminal records, Congress should consider appropriating additional funds to scale up programs that are showing positive results.

Finally, home visiting is an evidence-based, two-generation approach to improving parenting capabilities and child outcomes for disadvantaged families. Home visitation typically involves regular visits from a professional such as a nurse or social worker, which begin before the child's birth and extend through his or her early childhood. These visits, made only at the parent's request, can help provide information about child development, community resources, and effective parenting practices—and have been associated with better birth outcomes; increased parental action to promote literacy and a stimulating early learning environment; decreased involvement in the criminal justice system by the time participating children are teenagers; and higher grade point averages and graduation rates for children in the longer term.¹⁰² These types of programs can be especially important for parents with a criminal record, but unfortunately, they only serve a fraction of the families who could benefit. To that end, CAP has recommended that policymakers amend the Medicaid statute to add a new home visiting option for states to expand evidence-based home visiting services to all eligible and interested families.¹⁰³

A promising model

The Center for Urban Families

The Center for Urban Families, or CFUF, based in Baltimore, Maryland, is a grantee of the administration's Responsible Fatherhood Demonstration Grants program. Sixty percent of CFUF's clients have been convicted of either a felony or a misdemeanor, and 25 percent are on parole or probation.¹⁰⁰ CFUF's Family Stability and Economic Success, or FSES, model pairs employment services with family-strengthening supports to help parents achieve economic security as well as family stability. CFUF's holistic program serves more than 1,500 parents annually and has helped parents secure more than 6,400 full-time jobs upon completion of the program's employment services component.¹⁰¹

Boost resources for re-entry services

Direct service providers—such as civil legal aid organizations and nonprofit organizations that specialize in re-entry services¹⁰⁴—play a critical role in supporting re-entry by helping individuals with criminal records clean up their records through expungement or sealing so that they can obtain employment; access needed public assistance while they seek to get back on their feet; secure stable housing for themselves and their families; reunify with their families; and more. However, many eligible individuals are turned away for lack of adequate funding; for example, for every client served by legal aid, another is turned away for lack of resources.¹⁰⁵ Resources for legal aid and other re-entry providers should be increased to enable more individuals with criminal records to get the help they need to achieve successful re-entry. To that end, Congress should reauthorize and boost funding for the bipartisan Second Chance Act, which authorizes the Department of Justice to award federal grants to government agencies and nonprofits to provide services designed to support re-entry and reduce recidivism.¹⁰⁶

Enhance data collection efforts on the effects of criminal records

Efforts to engage in evidence-based policymaking to combat the legacy of mass incarceration and overcriminalization would be greatly improved by a better understanding of criminal records on individuals, children, and families—as well as our national economy. In fact, the paucity of data on individuals with criminal records may be a significant reason why individuals with criminal records have received little previous attention in the research literature. The Department of Justice’s Bureau of Justice Statistics should seek ways to make more detailed information available to the research community and work with agencies, such as the Census Bureau, that administer household surveys to produce new data linking criminal records to individual and family characteristics and outcomes, including employment and other financial outcomes. These data should be made available to the research community to help researchers and policymakers better understand the patterns, implications, and effects of criminal records.

Conclusion

Following four decades of mass incarceration and overcriminalization, nearly half of U.S. children now have at least one parent with a criminal record. Given the barriers to economic security and mobility associated with having even a minor record, we ignore the intergenerational consequences at our peril. As bipartisan momentum continues to build in support of criminal justice reform, as well as in support of policies to put second chances within reach, now is the time for federal, state, and local policymakers to find common ground. We must enact solutions to ensure that a criminal record does not consign an individual—and his or her children—to a life of poverty.

Appendix: Methodology

Recent research estimates that between 70.3 million and 100.5 million American adults have a criminal record.¹⁰⁷ But how many minor children today have a parent—or parents—reflected in this statistic, whose criminal record may present a barrier to economic security, family stability, and future opportunity? Due to the scarcity of data on individuals with criminal records, the response provided in this report represents only a rough estimate—but the first of its kind.¹⁰⁸

As a first step, our analysis distinguishes between two groups of individuals with criminal records, whose childbearing behavior is expected to differ for a number of reasons. Population 1 comprises adults who are currently or formerly incarcerated in prison, and Population 2 is made up of individuals who have a criminal record but have never spent time in prison.¹⁰⁹

Population 1 has received a fair amount of attention in the research literature—as have their children, for whom parental incarceration has been shown to have severe and lasting detrimental consequences. Recent research by Sarah Shannon and others estimated that in 2012,¹¹⁰ about 7.7 million Americans were currently or formerly incarcerated in prison.¹¹¹ And a recent Child Trends study estimated that in 2012, 5.2 million children—nearly 1 in 14—had a parent who was currently or formerly incarcerated in either jail or prison.¹¹² Leveraging data on recidivism, average duration of incarceration, and relative size of jail and prison populations, respectively, in 2012, we isolate the subset of these children—nearly 2.1 million—who have a parent in Population 1.¹¹³

However, the population of individuals with criminal records is much broader than those who have spent time behind bars in prison, as a large and growing share of individuals convicted of criminal offenses receive probation-only sentences and many people with records have arrests that did not lead to conviction. Subtracting the estimates given above—the size of Population 1 from the total number of Americans with a criminal record—suggests that between 62.6 million and 92.6 million Americans are part of Population 2. Much less is known about these individuals and their families.

To approximate the number of minor children in the United States who have at least one parent in Population 2, this analysis makes the simplifying assumption that all minor children have parents of “child-raising age”—defined here as the age range of the average age at first childbirth on the low end to 18 years above this age on the high end.¹¹⁴ Because no data are directly available on Population 2—much less on their children or their fertility—this analysis selects a plausibly similar group whose childbearing behavior is knowable to serve as a proxy for Population 2.

In what follows, we develop a demographic profile of this proxy group, focusing on characteristics that are related to both childbearing behavior and the likelihood of having a criminal record. Then, by superimposing this demographic profile on nationally representative survey data, we can predict the expected fertility of a population with these characteristics.

A plausible proxy for Population 2 is the group of adult arrestees in 2012. The FBI’s Universal Crime Reporting, or UCR, system collects detailed arrest records from state law enforcement agencies. For a set of 28 criminal offenses—ranging from minor to severe—the UCR system provides information on arrestees by select categories of age, sex, race, location, and other characteristics. Of course, some arrests result in imprisonment. To exclude these arrest records—which are relevant to Population 1 rather than Population 2—prison admissions data are used to adjust the number of arrests within each offense type according to the likelihood that arrest will result in imprisonment.¹¹⁵ Following this adjustment, the FBI arrest data can be used to construct a demographic profile of arrestees in 2012.

Data and research point to several demographic characteristics that are strongly correlated with the likelihood that an adult has a criminal record and with expected childbearing behavior.¹¹⁶ For example, a person’s sex is strongly correlated with criminal activity, arrest, and incarceration, as well as with the timing of childbirth.¹¹⁷ As discussed earlier in this report, communities of color are disproportionately likely to face arrest and incarceration, making race a strong correlate of both types of outcomes. And whether an individual resides in a metropolitan area or a more rural area is related to both expected number of births and the likelihood of encounters with law enforcement that can lead to a criminal record.¹¹⁸

Filtering the adjusted arrest records to include only adults of child-raising age or younger—that is, age 18 to about age 44 for this population¹¹⁹—we tabulate the shares of arrests in demographic groups defined by sex, race, and metropolitan location status.¹²⁰ A “cell” in this demographic profile might contain, for example, the share of 2012 arrests attributed to white females in nonmetropolitan areas.

Next, we turn to survey data in order to estimate the average number of minor children belonging to Population 2 individuals who were of child-raising age in 2012—taking advantage of the variation in childbearing habits by sex, race,¹²¹ and metropolitan location status¹²² to approximate this more closely. We use the National Survey of Family Growth, or NSFG, a nationally representative survey of men and women ages 15 to 44. The 2011–2013 NSFG had about 10,400 participants. In addition to detailed information on family life, marriage, health, and sexual behavior, the survey contains information on the number of children ever born to male or female respondents.¹²³

The first step, using NSFG microdata, is to identify the subset of adults of child-raising age. We calculate the average age of first childbirth for respondents who have one or more children, within each gender, race, and metropolitan location status cell.¹²⁴ This produces an estimate of the average age of first childbirth of slightly less than 26 across the overall population; across individual demographic groups, the estimates range from age 21.9 to age 27.7.

We next obtain the weighted average number of minor children belonging to respondents in the child-raising age range, within each sex, race, and metropolitan location status cell.¹²⁵ Since each child has both a mother and a father, multiplying each cell-specific average by the corresponding cell-specific population of child-raising age—and then summing the results—produces a prediction of the total number of minor children that is roughly twice the size of this population in 2012.

Of course, not all children are actually born to parents in this stylized child-raising age range. For this reason, this approach will somewhat underestimate the population of minor children when the total number of children attributed to men and women is computed. Furthermore, men may in some cases be unaware of children they have fathered; therefore, the estimate of children born to men is expected to be smaller than that of children born to women. To adjust for these effects, as well as for parents' potential underreporting of children, estimates are calibrated to the total population of children under age 18 in 2012, as reported by the Census Bureau—about 73.7 million—by calculating separate adjustment factors for men and women.¹²⁶ These two adjustment factors are then applied to the quantities that represent the average number of minor children within the sex, race, and metropolitan location status groups.

In the case of some children, both the biological mother and biological father may have a criminal record;¹²⁷ an additional adjustment is made to the set of quantities that represent the average number of children per record-holder of child-raising age to avoid double-counting these children.¹²⁸

To obtain the number of children in each demographic cell, the next step is to multiply these averages by the number of Population 2 individuals of child-raising age in the corresponding demographic cell. To do this, we return to the demographic profile constructed from UCR arrest records, which provides the share of Population 2 individuals of child-raising age in each sex, race, and metropolitan location status cell.

Translating these shares into numbers requires an estimate of Population 2 individuals of child-raising age. In 2012, roughly 32.7 percent of American adults were of child-raising age.¹²⁹ Assuming that a similar proportion of Population 2 falls into this age range,¹³⁰ between 20.4 and 30.2 million people with records—who have never been in prison—were of child-raising age in 2012. To ensure that the estimate is conservative, we rely on the lesser of these estimates.¹³¹ Multiplying this topline number by the shares in each demographic cell—and summing over all of the demographic cells—yields the total number of children with at least one Population 2 parent.

The final step is to add these children to the children of Population 1 parents—that is, parents who are currently or have been formerly incarcerated. This again requires an adjustment for double-counting—this time to account for children who have one parent in Population 1 and the other in Population 2.¹³² After subtracting these children, the remaining Population 1 children are added to the Population 2 children.

The approach yields a rough but conservative range of estimates for the number of children under age 18 who had at least one parent with a criminal record in 2012. We find that the number of U.S. children who have at least one parent with a criminal record ranges from 33 million—44.8 percent of minor children in the United States—to 36.5 million—49.5 percent of minor children.

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- 77 Paul R. Amato and others, *Alone Together* (Cambridge, MA: Harvard University Press, 2009).

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- 79 Shawn Fremstad and Melissa Boteach, "Valuing All Our Families" (Washington: Center for American Progress, 2015), available at <https://www.americanprogress.org/issues/poverty/report/2015/01/12/104149/valuing-all-our-families/>.
- 80 Ibid.
- 81 For an extensive review of existing literature on the two-generation approach, please see Janice M. Gruendel, "Two (or More) Generation Framework: A Look Across and Within" (Washington: Aspen Institute, 2014), available at https://www.cga.ct.gov/coc/PDFs/two-gen/report_gruendel.pdf.
- 82 Ibid.; The Aspen Institute, "The Two-Generation Approach," available at <http://ascend.aspeninstitute.org/pages/the-two-generation-approach> (last accessed November 2015).
- 83 This fall, the Federal Communications Commission capped prison phone charges—which had previously run as high as \$14 per minute—at 11 cents per minute. See Federal Communications Commission, "FCC Takes Next Big Steps In Reducing Inmate Calling Rates," October 22, 2015, available at <https://www.fcc.gov/document/fcc-takes-next-big-steps-reducing-inmate-calling-rates>.
- 84 Two notable reports published earlier this year were Murphey and Cooper, "Parents Behind Bars" and deVuono-Powell and others, "Who Pays? The True Cost of Incarceration on Families." A previous report by the Urban Institute—Travis, McBride, and Solomon, "Families Left Behind"—also offered important recommendations in this space.
- 85 For a comprehensive road map of policy recommendations for federal, state, and local policymakers to remove barriers to opportunity for Americans with criminal records, see Vallas and Dietrich, "One Strike and You're Out."
- 86 The need for civil legal aid generally far outstrips available resources. See Legal Services Corporation, "Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans" (2009), available at http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf. Demand for expungements is no exception. See, for example, Meyli Chapin and others, "A Cost-Benefit Analysis of Expungements in Santa Clara County" (Stanford, CA: Stanford Public Policy Program, 2013), p. 12, available at <https://publicpolicy.stanford.edu/publications/cost-benefit-analysis-criminal-record-expungement-santa-clara-county>. This source discusses a shortage of resources for expungements.
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- 88 Where in the hiring process a criminal record would be considered is one of the issues that will be developed during the rulemaking process.
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- 90 Equal Employment Opportunity Commission, "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq." (2012), available at http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.
- 91 It is important to note that victim restitution can and should be treated separately from other fines and fees.
- 92 For example, the Clapham Set, a pilot project operated in Suffolk County, Massachusetts, from 2008 to 2011, offers a model of a voluntary workforce development initiative that provides re-entry support while permitting participants to have their criminal debts reduced or eliminated upon successful completion of the program. For more information on the Clapham Set, see Vallas and Dietrich, "One Strike and You're Out," p. 31.
- 93 Office of Public and Indian Housing, *Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions* (U.S. Department of Housing and Urban Development, 2015), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf>.
- 94 Oregon S.B. 91 was passed by the Oregon Legislature and signed into law by Gov. John Kitzhaber (D) in June 2013 and took effect on January 1, 2014. Under the law, a landlord may not refuse to rent to a tenant on the basis of an arrest record or certain types of criminal convictions. Additionally, the law provides that prospective tenants must be given a notice of adverse action stating the reason or reasons why they were denied housing. See Oregon State Legislature, "Oregon Legislative Information: 2013 Regular Session: S.B. 91," available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Overview/SB91> (last accessed December 2015).
- 95 U.S. Department of Education, "U.S. Department of Education Announces Second Chance Pell Pilot Program for Incarcerated Individuals," Press release, July 31, 2015, available at <http://www.ed.gov/news/press-releases/us-department-education-launches-second-chance-pell-pilot-program-incarcerated-individuals>.
- 96 Fremstad and Boteach, "Valuing All Our Families."
- 97 For example, a pilot program in Virginia connects non-custodial parents facing jail with employment services and case management and ensures that monthly child support orders are adjusted to affordable amounts. According to state data, of the 2,736 noncustodial parents who participated in the program as of July 2014, 1,000 graduated and the average monthly payments per graduate more than doubled. See Tina Griego, "Locking up parents for not paying child support can be a modern-day debtor's prison," Storylines, September 26, 2014, available at <https://www.washingtonpost.com/news/storyline/wp/2014/09/26/locking-up-parents-for-not-paying-child-support-can-be-a-modern-day-debtors-prison/>.
- 98 Melissa Boteach and Rebecca Vallas, "3 Fact You Need to Know About the Obama Administration's Proposed Child Support Rules," Center for American Progress, June 18, 2015, available at <https://www.americanprogress.org/issues/poverty/news/2015/06/18/115417/3-facts-you-need-to-know-about-the-obama-administrations-proposed-child-support-rules/>.
- 99 Office of Family Assistance, "Responsible Fatherhood," available at <http://www.acf.hhs.gov/programs/ofa/programs/healthy-marriage/responsible-fatherhood> (last accessed November 2015).
- 100 Joe Jones, "Promoting Responsible Fatherhood" (Baltimore: Center for Urban Families, available at https://www.ets.org/s/sponsored_events/achievement_gap/pdf/center_for_urban_families.pdf (last accessed December 2015).
- 101 Center for Urban Families, "About Us," available at <http://www.cfuf.org/About-Us/> (last accessed November 2015).
- 102 Mother and Infant Home Visiting Program Evaluation, "Project Description," available at http://www.mdrc.org/sites/default/files/img/MIHOPE_Project%20Description.pdf (last accessed November 2015).

- 103 Rachel Herzfeldt-Kamprath and others, "Paying It Forward" (Washington: Center for American Progress, 2015), available at <https://www.americanprogress.org/issues/early-childhood/report/2015/11/12/122038/paying-it-forward/>.
- 104 The Council of State Governments maintains a national database of re-entry service providers. See Council of State Governments Justice Center, "Reentry Services Directory," available at <https://csgjusticecenter.org/reentry/reentry-services-directory/> (last accessed December 2015).
- 105 This is a phenomenon known as the "justice gap." See Legal Services Corporation, "Documenting the Justice Gap in America" (2007), available at <http://archive.lsc.gov/sites/default/files/LSC/pdfs/justicegap.pdf>.
- 106 The Second Chance Reauthorization Act was introduced earlier this year as S. 1513 by Sens. Rob Portman (R-OH) and Patrick Leahy (D-VT) in the Senate and as H.R. 3506 by Reps. Jim Sensenbrenner (R-WI) and Danny Davis (D-IL) in the House.
- 107 The Department of Justice, reports that 100.5 million Americans have state criminal history records on file. Some organizations, such as NELP, have contended that this figure may overestimate the number of Americans with criminal records, as some people may have records in more than one state. NELP thus suggests reducing the Department of Justice figure by 30 percent, which with 2012 data yields the more conservative estimate of 70.3 million American adults with criminal records. For the Department of Justice data, see Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2012*. For a discussion of NELP's methodology using 2008 Department of Justice data, see Natividad Rodriguez and Ensellem, "65 Million 'Need Not Apply': The Case for Reforming Criminal Background Checks For Employment." For a general discussion, see Vallas and Dietrich, "One Strike and You're Out." Juvenile records—generally, records acquired when an individual is younger than age 18—are not counted in these estimates, nor are they considered in the analysis in this report.
- 108 To the authors' knowledge, this is the first estimate of children affected by parental criminal records. The authors hope that more extensive data collection on individuals with criminal records and their families—and greater attention to the intergenerational effects of criminal records—will spur additional research.
- 109 People who have been incarcerated in jail, as opposed to prison, are included in Population 2. Typically, jail is where individuals are sent while awaiting trial or upon conviction of a misdemeanor or low-level offense resulting in a sentence of less than one year. As noted, we anticipate the childbearing behavior of the two populations we define to differ for a number of reasons. For example, incarceration disrupts family formation and stability by removing an individual from his or her family members and, thus, may more severely impede one's ability to support a family after release than does a criminal record alone. Furthermore, on average, individuals who are or have been incarcerated tend to have committed more serious offenses. This may be correlated with riskier behavior, which may also be exhibited in sexual behavior or behavior toward family members, affecting childbearing habits. See, for example, Bryan Sykes and Becky Pettit, "Mass Incarceration, Family Complexity, and the Reproduction of Childhood Disadvantage," *Annals of the American Academy of Political and Social Science* 654 (1) (2014): 127–149, available at http://condor.depaul.edu/bsykes1/Publications_files/Sykes_Pettit_2014.pdf; Andrea Knittel and others, "Incarceration and Sexual Risk: Examining the Relationship Between Men's Involvement in the Criminal Justice System and Risky Sexual Behavior," *AIDS and Behavior* 17 (8) (2013): 2703–2714, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3788090/>.
- 110 Since the most recent available data from several key sources used herein is from 2012, the estimation approach in this report is focused on that year.
- 111 Sarah Shannon and others, "Growth in the U.S. Ex-Felon and Ex-Prisoner Population, 1948-2010," available at <http://paa2011.princeton.edu/papers/111687>. Working paper under review at *Demography*.
- 112 Murphey and Cooper, "Parents Behind Bars."
- 113 This procedure is somewhat nuanced because we must account for children of formerly as well as currently incarcerated individuals. While work has been done to examine individuals formerly incarcerated in prison, research is scarce on those formerly incarcerated in jail. In 2012, about 68 percent of those incarcerated, or 1.57 million, were imprisoned, while the remaining 32 percent, or 0.74 million, were in jail. See Todd D. Minton, "Jail Inmates at Midyear 2012 - Statistical Tables" (Washington: Bureau of Justice Statistics, 2013), available at <http://www.bjs.gov/content/pub/pdf/jim12st.pdf>; Lauren E. Glaze and Erinn J. Herberman, "Trends in Admissions and Releases, 1991–2012" (Washington: Bureau of Justice Statistics, 2014), available at <http://www.bjs.gov/content/pub/pdf/cpus12.pdf>. However, these groups' children are unlikely to be divided into similar shares. Notably, the jail population turns over much more quickly, on average, than does the prison population because inmates in jail tend to be held for less time. Thus, we obtain the average duration of jail and prison spells, respectively, using 2002 data from the Bureau of Justice Statistics. See Doris James, "Profile of Jail Inmates, 2002" (Washington: Bureau of Justice Statistics, 2004), table 8 available at <http://www.bjs.gov/content/pub/pdf/pji02.pdf>; Erica Goode, "Average Prison Stay Grew 36 Percent in Two Decades," *The New York Times*, June 6, 2012, available at http://www.nytimes.com/2012/06/06/us/average-prison-stay-grew-36-percent-in-two-decades.html?_r=0. For an individual, though, average duration may not tell the complete story over time: Many—indeed, most—formerly incarcerated individuals will return to incarceration at some point. For this reason, we scale up our estimates of the total time the average individual of each population can expect to be incarcerated, developing a factor based on the average number of incarceration spells within each population. The next step is to estimate how many cohorts will cycle through—or, more specifically, the ratio of cohorts that will cycle through—incarceration of each sort during a given time period. Comparing these numbers, we calculate prison inmates as a share of all incarcerated individuals. We then presume that the ratio of prison inmates to all inmates is the same as the ratio of children of prison inmates to children of all inmates. Finally, using these shares, we are able to identify children in the Child Trends estimate who have an incarcerated parent. This produces a total estimate of Population 1 children—that is, children of current and former prisoners—of just fewer than 2.1 million. See Murphey and Cooper, "Parents Behind Bars."
- 114 Since average age at first childbirth differs somewhat across the demographic groups that we isolate for purposes of our analysis, child-raising age will also differ by demographic group. Ideally, data could be found to determine the lower bound of child-raising age according to the average age across all births—rather than the average age of first birth—for individuals with one or more children. However, the source of fertility data—the National Survey of Family Growth, described below—only contains information on the timing of first birth for male respondents. For this reason, the authors define the lower bound of child-raising age in this exercise according to the age of first childbirth among individuals who report having one or more children. Without further adjustment, this would cause the approach to slightly overestimate the average number of children born to adults of child-raising age. However, as described below, estimates are calibrated to the total number of children in the population in 2012 in order to adjust for this and for other effects.

- 115 For several reasons, new arrests do not translate directly into new criminal records. First, and most importantly, Universal Crime Reporting records include both arrests that eventually result in incarceration as well as those that do not. The authors adjust arrests within offense category according to the likelihood of incarceration in order to exclude arrestees who fall into Population 1. To do this, each of the 28 offenses categories in the UCR records is matched to its closest counterpart(s) in data on admissions to state and federal prisons in recent years. The authors calculate the share of arrests that resulted in incarceration, interpreting this as the likelihood that arrest will result in incarceration. See Bureau of Justice Statistics, "Arrest Data Analysis Tool, national estimates for 2009 by crime type," available at <http://www.bjs.gov/index.cfm?ty=datool&url=/arrests/index.cfm#> (last accessed November 2015); Bureau of Justice Statistics, "Prisoners entering Federal prison, 2009, by offense," available at http://www.bjs.gov/fjsrc/var.cfm?tttype=one_variable&agency=BOP&db_type=Prisoners&saf=IN (last accessed November 2015); Bureau of Justice Statistics, "National Corrections Reporting Program: Most serious offense of state prisoners, by offense, admission type, age, gender, race, and Hispanic origin: 2009," available at <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=268> (last accessed November 2015). There are other discrepancies between arrests and people with records as well. For example, individuals may be arrested multiple times within one year, causing demographic information to be overrepresented in the demographic profile of arrestees. However, these additional discrepancies are expected to have a relatively minor effect on results.
- 116 Correlations may be due to actual patterns of criminal or risky behavior or to law enforcement practices and tactics—or to both.
- 117 For example, males accounted for nearly three-quarters of arrests in 2012 and made up nearly 94 percent of inmates serving sentences of more than one year in state and federal prisons in 2012. Compared with women, men tend to encounter the criminal justice system at earlier ages but have children later in life, on average. Authors' calculations from Federal Bureau of Investigation, "Universal Crime Reporting System, 2012, Tables 39 and 40," available at <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/table-guide> (last accessed November 2015); Bureau of Justice Statistics, *Prisoners in 2012: Trends in Admissions and Releases, 1991–2012* (U.S. Department of Justice, 2013), Table 18, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4842>; Gladys Martinez, Kimberly Daniels, and Anjani Chandra, "Fertility of Men and Women Aged 15–44 Years in the United States: National Survey of Family Growth, 2006–2010," *National Health Statistics Report* (51) (2012), table 5, available at <http://www.cdc.gov/nchs/data/nhsr/nhsr051.pdf>.
- 118 Multiple other individual characteristics and statuses—such as income level, educational attainment, and marital status—are also strongly related to both expected fertility and the likelihood of a criminal record. However, information on these characteristics is less commonly collected in the context of encounters with law enforcement. On correlates of fertility and childbearing behavior, see, for example, *ibid.* For just two of many well-documented examples of how various personal attributes are related to risky behavior and criminal activity, see, on education, Lance Lochner and Enrico Moretti, "The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports," *American Economic Review* 94 (1) (2004): 155–189, available at <https://www.aeaweb.org/articles.php?doi=10.1257/000282804322970751>; on marriage, Robert Sampson, John Laub, and Christopher Wimer, "Does Marriage Reduce Crime? A Counterfactual Approach to Within-Individual Causal Effects," *Criminology* 44 (3) (2006): 465–508, available at http://scholar.harvard.edu/files/sampson/files/2006_criminology_laub-wimer_1.pdf?m=1360070470.
- 119 As noted above, NELP and Department of Justice statistics pertain to the number of American adults with nonjuvenile criminal records. With a few exceptions—such as for expungement and sealing—adult arrest records only ever accumulate over time. Thus, an individual who was arrested prior to having a minor child—before he or she entered child-raising years, for purposes of this exercise—nonetheless becomes a parent with a criminal record eventually if he or she has a child. For this reason, the demographic profile of arrestees uses data on individuals as young as age 18, the earliest age when an adult record could be acquired. Ideally, this age filter would extend up to the end of individuals' expected child-raising years—about age 44, though this differs somewhat by demographic group. However, data on age are somewhat limited in UCR data. For example, arrests by gender can be obtained for individuals ages 18 to 45, but information by race and metropolitan location status is for all adults ages 18 and older. In these cases, the approach assumes that the distribution of arrestees—and, by extension, of Population 2—by offense across race and metropolitan location status is identical for those of child-raising age and younger for older adults. Moreover, throughout this exercise, an implicit assumption is that the age distribution of arrestees by gender, race, and metropolitan location status has not changed substantially in the past couple decades—that is, that the distribution of parents who were on the younger end of their child-raising years was roughly equivalent to that of parents who were in their older child-raising years.
- 120 Ideally, information could be obtained for the full set of interactions between offense type, age, race, gender, and metropolitan location status. However, the UCR system makes only limited tabulations of arrest data available, allowing researchers to observe the interaction of gender and detailed age categories and the interaction of race and metropolitan location status. To combine gender with race and metropolitan location status, the authors assume that the race and metropolitan location status distribution is equivalent for both genders.
- 121 The UCR arrest records have four categories of race—white, black, American Indian or Alaska Native, and Asian American or other Pacific Islander. The final two available categories are combined to create three categories—white, black, and other. Notably, the arrest records do not have information by ethnicity, or origin. The NSFG data, on the other hand, contain two separate relevant variables—one for race—white, black, and other—and one for Hispanic origin. Unfortunately, there is no way to perfectly align the race and ethnicity categories between the two sources; in particular, the "other race" categories, though small, are not likely to match closely between the two sources.
- 122 In the UCR data, the authors define "metropolitan area" arrests as the total of city arrests and metropolitan county arrests. Nonmetropolitan area arrests include only UCR arrests in nonmetropolitan counties. The UCR system tracks a fourth category of arrests by race—suburban areas—but this geographic unit is not mutually exclusive with the three previously mentioned; for this reason, suburban areas are excluded. In NSFG data, the authors define a metropolitan area resident as a respondent who lives within a metropolitan statistical area, or MSA, and a nonmetropolitan area resident as one who does not live in an MSA. For a description of the UCR system's geographic areas, see Federal Bureau of Investigations, "Area Definitions," available at <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/area-definitions> (last accessed November 2015). Throughout the analysis, the authors make the simplifying assumption that individuals who reside in metropolitan areas, as observed in NSFG data, tend to be arrested in metropolitan areas and that those who live in nonmetropolitan areas tend to be arrested in nonmetropolitan areas.

- 123 By contrast, most nationally representative surveys, such as the Census Bureau's commonly used household surveys, such as the Current Population Survey, ask only about children who reside with or are dependent on adult respondents. The few surveys that do collect information on total fertility, such as the National Survey of Family Growth, tend to focus solely on women.
- 124 This calculation examines only NSFG participants ages 35 and older, in an attempt to exclude most respondents who were likely to have additional children; including these individuals would bias the estimate of age of first childbirth downward. Ideally, the calculation would be restricted to adults who were well past their childbearing years in 2012, but the limited sample size and age range of the survey—which samples individuals up to age 44—prevents this. Thus, this calculation tends to slightly underestimate the average number of children born to members of each gender, race, and metropolitan location status group, all else being equal. For two demographic groups, the average age of childbirth entails that the child-raising age range extends beyond the upper limit of the NSFG's age range by one year. For this group, the age of first childbirth is rounded down instead of up so as not to truncate the sample of individuals of child-raising age.
- 125 Note that for the overall population, this should produce an estimate equal to about twice the total number of minor children in 2012, since each child has a mother and a father. In theory, the number of children reported by women and by men should be about the same. However, since men may be unaware of children they have fathered—and perhaps for additional reporting-related reasons—the men's estimate is expected to be, and is, lower than the women's estimate.
- 126 This approach implicitly assumes that for each gender, the factor by which the approach underestimates the average number of children is equivalent for each race and metropolitan location status group.
- 127 Given the paucity of data and literature on people with records, it is hardly surprising that very little information exists to suggest how many pairs of co-parents of minor children both have criminal records. However, several factors suggest that the share is likely substantial. For example, research on so-called positive assortative mating documents individuals' tendency to seek partners who are similar to themselves in respects such as education attainment and earning potential. See, for example, Jeremy Greenwood, Nezih Guner and others, "Marry Your Like: Assortative Mating and Income Inequality," Working Paper 19829 (National Bureau of Economic Research, 2014), available at <http://www.nber.org/papers/w19829>. Insofar as individuals with criminal records come disproportionately from certain education, socioeconomic, and income groups, this literature suggests a greater correlation of criminal record status among co-parents than among two randomly chosen members of the population of each gender.
- 128 Because males represent the majority of people with records, the sensitivity of results to the assumption about double-counting can be minimized by adjusting the subset of children attributed to the smaller group, females. To ensure that the estimate is conservative—and in light of the discussion above—the authors presume that the incidence of double-counting is fairly high—that between 50 percent and 80 percent of the children attributed to females with records have a father who also has a record. This double-counting adjustment factor is applied to the average number of children born to women in each race and metropolitan location status cell. This implicitly assumes that double-counting is equally prevalent among all race and metropolitan location status groups.
- 129 According to authors' analysis of 2011–2013 NSFG data, the average age of first childbirth across the population in 2012 was just under 26—about 24.7 for women and 27.1 for men. The authors use Census Bureau population estimates by single year of age to tabulate the share of adults ages 18 and older who fell into the child-raising age range in 2012. See Bureau of the Census, "Annual estimates of the resident population by single year of age and sex for the United States: April 1, 2010 to July 1, 2014 (NC-EST2014-AGESEX-RES)," available at <https://www.census.gov/popest/data/datasets.html> (last accessed November 2015).
- 130 For several reasons, this is likely to be an underestimate—perhaps most notably because upticks in police activity; stringency of convictions and sentencing; and crime, particularly drug crime, coincided with a time when this cohort was at the age where they were most likely to have encounters with law enforcement. For the typical individual, criminal activity and delinquency tend to peak in the late teenage years of 15 to 19 and begin to decline during the early 20s. The cohort of child-raising age in 2012 would thus have lived through the peak years for risky behavior between the late 1980s and early 2000s. This coincides with the period between the late 1970s and 2008 when prison admissions and incarceration rates grew rapidly. See National Institute of Justice, "From Juvenile Delinquency to Young Adult Offending," March 11, 2014, available at <http://www.nij.gov/topics/crime/Pages/delinquency-to-adult-offending.aspx>; The Sentencing Project, "Trends in U.S. Corrections."
- 131 This estimate is based on a recent conservative estimate made by NELP, as discussed in endnote 104 above.
- 132 Before adjusting, the authors first set aside the share of Population 2 children who were already determined to have both parents in Population 2; they cannot also have a parent in Population 1. Once again, there is very little guidance in existing research on the extent of possible double-counting. To produce a conservative estimate—and to take into account the evidence on assortative mating discussed earlier—the authors replicate the earlier assumption that double-counted children make up at least 50 percent, and at most 80 percent, of Population 1 children. These children are then subtracted from Population 1 children.

Our Mission

The Center for American Progress is an independent, nonpartisan policy institute that is dedicated to improving the lives of all Americans, through bold, progressive ideas, as well as strong leadership and concerted action. Our aim is not just to change the conversation, but to change the country.

Our Values

As progressives, we believe America should be a land of boundless opportunity, where people can climb the ladder of economic mobility. We believe we owe it to future generations to protect the planet and promote peace and shared global prosperity.

And we believe an effective government can earn the trust of the American people, champion the common good over narrow self-interest, and harness the strength of our diversity.

Our Approach

We develop new policy ideas, challenge the media to cover the issues that truly matter, and shape the national debate. With policy teams in major issue areas, American Progress can think creatively at the cross-section of traditional boundaries to develop ideas for policymakers that lead to real change. By employing an extensive communications and outreach effort that we adapt to a rapidly changing media landscape, we move our ideas aggressively in the national policy debate.

