

ISSUE BRIEF

Reducing Barriers to Reentry for Older Adults Leaving Incarceration

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INTRODUCTION & OVERVIEW

As a result of decades of state and federal “tough on crime” and mass incarceration policies, about 2.3 million people are locked up in more than 6,000 jails and prisons across the United States. More than 600,000 individuals are released from prison each year. Another nine million people cycle through local jails annually.¹

Because of structural racism in the criminal legal system, people of color—particularly Black Americans—have been and continue to be more likely to be incarcerated and receive harsher sentences. Moreover, Black and Latino people are incarcerated at much higher rates than non-Latino white people;² and people with disabilities are greatly overrepresented in the prison population.³ The prison population is also graying.⁴ The proportion of older adults in prison in the U.S. nearly tripled between 1999 and 2016, from 3 percent to 11 percent, and is projected to increase to more than 30 percent by 2030.⁵ Older adults in prison report a high incidence of chronic conditions and physical and mental disabilities including inability to independently complete activities of daily living.⁶ A study of incarcerated persons aged 55 and older found that 40 percent had cognitive impairments.⁷

In recent years, there has been an uptick in the number of persons released from prison overall—particularly older adults—fueled by both the desire to contain escalating health care costs⁸ and reform efforts. A growing consensus for criminal justice reform has brought increased interest in policies supporting early release of older adults for compassionate, health-related, or other reasons. This trend has only accelerated during the COVID pandemic.

Older adults being released from prison or jail face particular challenges to successful reentry into their communities. This policy paper addresses those challenges in the areas of housing, health care enrollment and access

to services, and basic income supports. It also identifies some innovative programs and policy solutions to improve the opportunities for older adults to successfully reintegrate into their communities.*

Throughout this paper, we use “older adults” to mean those individuals age 55 and older, because people tend to age more rapidly while in prison due to stress, poor diet, and lack of medical care.

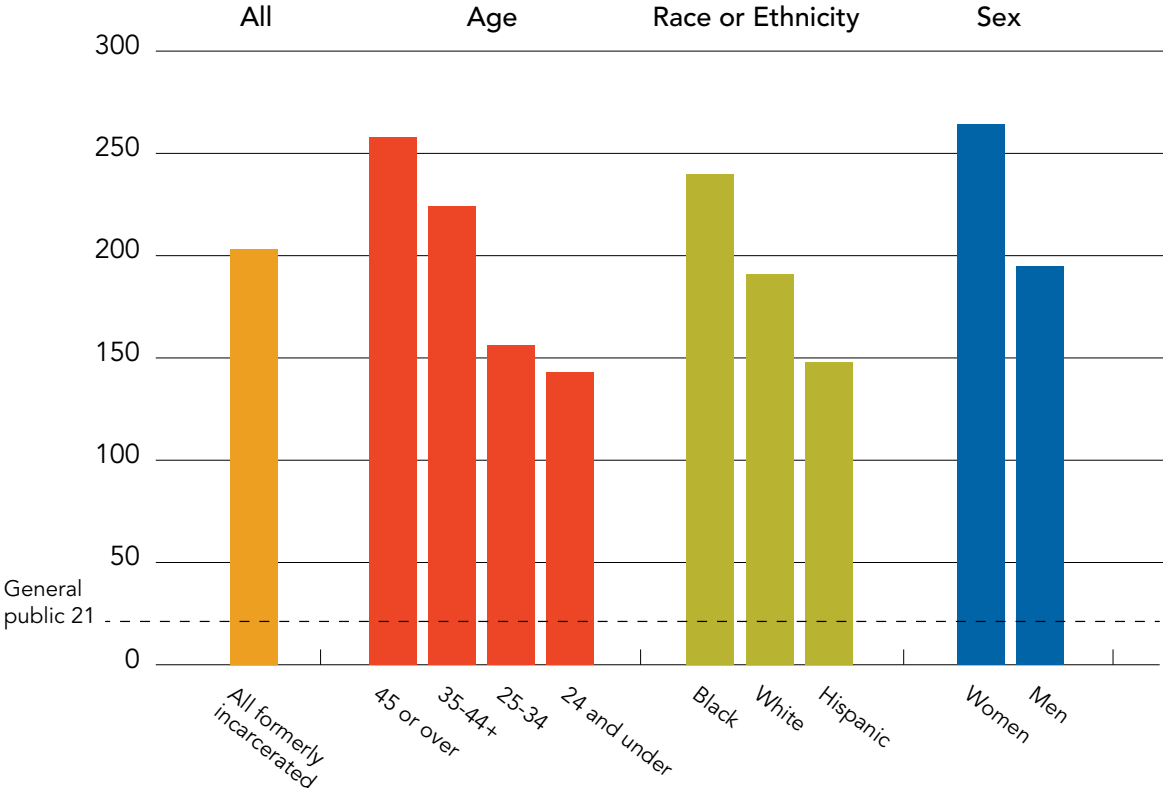
ACCESS TO HOUSING AND THE RISK OF HOMELESSNESS

The most immediate challenge an older adult leaving prison or jail faces is finding a place to live, yet the barriers to securing housing are formidable. As shown in Figure 1 below, formerly incarcerated individuals are ten times more likely to experience homelessness upon their release than the general population, and older adults are at an even higher risk of homelessness upon release than their younger counterparts.⁹ The lack of a home jeopardizes their safety, access to health care and other social services, as well as increasing the likelihood of becoming reincarcerated.

Black older adults in the U.S. are five times more likely than their white counterparts to experience homelessness,¹⁰ a pattern that is exacerbated for the reentry population by the over-representation of Black individuals in U.S. prisons and jails. While formerly incarcerated individuals of all races and ethnicities are almost ten times more likely to experience homelessness than the general public, Black and Hispanic individuals face even higher rates. See Figure 1. Women, particularly Black women, also experience homelessness at a higher rate than men; and older adults are more likely to experience homelessness upon release than younger individuals. See Figure 1.

FIGURE 1
Number of Formerly Incarcerated Individuals per 10,000 who Experience Homelessness compared to the General Population

Source: [Nowhere to Go: Homelessness among formerly incarcerated people](#), Prison Policy Initiative



*This paper focuses on reentry, and does not discuss the policy, fiscal, and humanitarian reasons why older adults who no longer pose a threat to society should be released into the community.

While older adults who are unhoused are at increased risk of reincarceration, having a stable home can prevent it.¹¹ For example, being unhoused or moving between shelter and transient housing can lead to a violation of conditions of parole regarding having a fixed address. Unhoused individuals have daily interactions with law enforcement and are often re-arrested for low-level offenses related to homelessness, such as loitering in a public place, illegal camping, and failure to remove belongings. These re-arrests result in a revolving door of release, homelessness, and reincarceration.¹² Released individuals of color are doubly impacted by the homelessness-to-jail cycle due to the racial disparities in rates of homelessness compounded by disparities in arrests for low-level offenses.¹³

Many older formerly incarcerated adults struggle to find stable housing in either the private or public housing market. The costs of private-market housing are beyond reach for most formerly incarcerated older adults, and both public housing agencies and private landlords tend to use screening criteria that automatically exclude persons with a prior criminal history. Additional reasons that deny housing to people leaving jail or prison include a lack of credit history, funds for a security deposit, or rental history as well as limited education and employment record.

Tenant screening that utilizes these seemingly neutral criteria¹⁴ can create insurmountable barriers for many reentrants, and more negatively affect reentrants of color who are more likely to have been sentenced for longer terms.¹⁵ Older adults who have recently left jail or prison have little or no income or savings and are likely unable to secure paid employment due to their health needs and advanced age.

Expungement of criminal records is one avenue to overcome housing prohibitions based on prior criminal record, but it is not available for all convictions. Record clearing can be a lengthy and sometimes complicated process that, even if eventually successful, does not address the immediate need for housing upon reentry.¹⁶

There are policy improvements and innovative practices at the local, state, and federal level that can mitigate these barriers to obtaining housing—and their outsized effect on communities of color—while providing a key to successful reintegration into the community:

Adopt ordinances and laws that limit the use of criminal background checks to automatically deny housing to formerly incarcerated individuals.

Some cities have adopted “fair chance” ordinances that include limits on how and when landlords can consider prior criminal history when selecting tenants, recognizing that background checks contribute to housing inequities for older adults with criminal histories—particularly older adults of color.¹⁷ One of the more comprehensive examples of these ordinances was recently enacted by Oakland, California. It prohibits landlords from asking about an applicant’s criminal history during the application process and bars denial of a housing applicant based on criminal history unless required by federal law.¹⁸ Landlords also are barred entirely from consulting any outside sources about an applicant’s criminal record, with the exception of the state sex offender registry.¹⁹

Strengthen federal regulations to advance housing opportunities for reentering older adults.

For federal subsidized housing, only two categories of conviction trigger mandatory prohibitions on admission: conviction for methamphetamine production and conviction for offenses that subject a person to sex offender registration.²⁰ For all other convictions, U.S. Department of Housing and Urban Development (HUD) regulations allow local housing authorities and subsidized housing providers to adopt “reasonable” admissions and eviction standards that take into account the applicant’s individual circumstances. These factors could include the seriousness of the offense, the effect on the community and other household members from a denial of admission, and

consideration of rehabilitation for those involved in illegal drug use or alcohol abuse.²¹ Yet, public housing authorities and subsidized housing providers often adopt outright bans on admission based on criminal history regardless of the seriousness of the offense, the length of time since it occurred, or evidence of rehabilitation.²² Punitive admissions policies not only prevent formerly incarcerated individuals from renting affordable housing, they also deter families from adding their formerly incarcerated relatives to their household, since a returning household member's criminal record could jeopardize the entire family's subsidized housing.

Overly broad prohibitions on admission for people with criminal records may also constitute a discriminatory housing practice in violation of the Fair Housing Act (FHA). The FHA prohibits discrimination on the basis of race, sex, disability, and other protected characteristics.²³ While the FHA does not specifically carve out protection for persons denied housing on the basis of criminal history, HUD has made clear that an overbroad denial of housing to applicants on the basis of criminal records will have a disparate impact on people of color, which is in violation of the FHA: “[C]riminal history-based restrictions on housing opportunities violate the [FHA] if, without justifications, their burden falls more often on renters . . . of one race or national origin over another.”²⁴

In a 2021 policy letter to HUD grantees, the agency expressed its commitment to ensure that people leaving prisons and jails are supported in their reentry to the community and acknowledged that addressing reentry housing needs advances equity and reverses some of the effects of racial discrimination in the criminal legal system.²⁵ In an April, 2022 memo to HUD agency staff, Secretary Fudge directed an agency-wide review, by October 2022, to identify all existing HUD regulations, policies and guidance (such as model leases) “that may pose barriers to housing for persons with criminal histories or their families and propose updates and amendments consistent with this directive to make our programs as inclusive as possible.”²⁶ It is important that HUD follows through on that commitment and, in doing so, pays particular attention to the needs of older adults reentering the community. Two tangible steps that HUD could take are to provide a clear, narrowly tailored set of admissions criteria that local landlords and Public Housing Authorities (PHAs) must follow and to vigorously enforce the Fair Housing Act where admissions policies create a racially disparate impact.

Integrate housing assistance and Medicaid-funded housing supports for older reentrants.

Older adult reentrants, especially in the immediate term, need extensive financial support for rent, security deposits, utility deposits, and other start-up necessities. These needs are particularly acute for older adults who, due to age and/or disability, are even less likely than younger reentrants to be able to obtain employment. They may also experience significant delays in the start-up of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) benefits that, in most cases, provide them with their only income.

The recently issued HUD guidance, discussed above, stressed to Public Housing Authorities and other HUD grantees that people exiting prisons and jails who are at risk of homelessness are eligible for the 70,000 Emergency Housing Vouchers awarded by HUD to PHAs under the American Rescue Plan.²⁷ PHAs can use the vouchers to fund a variety of housing costs including landlord incentives and one-time move-in expenses. The HUD vouchers are a short-lived COVID-related program, but further investments by HUD in vouchers or similar ongoing programs that reach a wider portion of the reentry population could go a long way in preventing homelessness among older individuals leaving incarceration. This up-front investment provides a crucial bridge while other sources of income and support are stabilized.

States can also include housing-related support services in their Medicaid state plans or waiver programs to help older reentrants obtain or maintain housing.²⁸ Supports can include housing location services, application assistance, home accessibility modifications, and one-time housing payments such as first month's rent and security deposits. They can also include services to support an individual's ongoing successful tenancy.²⁹ States could prioritize older adults leaving jail or prison for these crucial housing-related services, many of which are reimbursable under Medicaid.³⁰

Other local programs have demonstrated success when rental support and integrated services are offered immediately following reentry. One example is the [Arming Minorities Against Addiction & Disease \(AMAAD\) Institute's](#) New Beginnings Project in Los Angeles, which assists formerly incarcerated individuals—particularly Black and LGBTQ individuals—with their housing, mental health, and substance use support needs through combining housing with intensive case management and services. It receives funding from the state's correction authority to provide transitional housing and then rental assistance for up to sixteen months following reentry.³¹

Expand affordable housing with wrap-around services to meet the needs of the older reentry population.

Many older adults are released into the community with significant and complex medical and disability-related needs. Offering permanent supportive housing (PSH) with wrap-around services that connect people with community services—such as case management, home-based health care, and behavioral health services—has proven to be a cost-effective intervention for these individuals.

Successful programs have shown that interweaving affordable housing, mental health, and other comprehensive health care can support formerly incarcerated older adults who are at risk for homelessness or have complex health needs. For example, under the Massachusetts Community Support Program for People Experiencing Chronic Homelessness (CSPECH), these target populations can receive Medicaid-reimbursed supportive services in permanent supportive housing.³² Permanent supportive housing solutions provide health care cost savings, as homeless individuals who move into PSH significantly reduce use of health services that are often reimbursed by Medicaid.³³

Although PSH when paired with wrap-around services has been shown to achieve housing stability, current models are typically not focused on the unique needs of older adults—such as providing long-term care services and supports or home adaptations.³⁴ Expansion of those models with particular emphasis on inclusion of reentering older adults could significantly improve outcomes and stabilize health and housing costs for reentering older adults.

ACCESS TO HEALTH CARE BENEFITS

Older adults reentering the community have significant and complex health care needs. Individuals in jail or prison have higher incidences of disability and chronic conditions compared to the general population, even when adjusted for socioeconomic differences.³⁵ One survey found that 82 percent of those 65 or older have a chronic physical problem.³⁶ Older incarcerated adults often have spent decades in correctional facilities.³⁷ Fifty-five percent of those in prison age 65 or older had been in prison for more than 10 years.³⁸ Many experienced sub-optimal care, sometimes dropping to unconstitutional levels.³⁹

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States and advocates working with justice-involved older adults have prioritized enrolling these individuals in health care benefit programs before they leave incarceration and getting them connected with needed services in the community immediately upon reentry.⁴⁰ This section discusses four areas where federal and state laws, regulations, and contracting practices impede success in these efforts for older reentrants. It also proposes policy revisions to smooth access to the health care programs and connect older adults to the actual sources of care.

Implement the Medicaid suspension option in all states.

Most older adults reentering the community meet the income and asset criteria for Medicaid enrollment. With Medicaid enrollment, the state can enroll Medicare-eligible individuals in Medicare at any time. Medicaid enrollment erases Medicare late enrollment penalties, and also provides premium and co-insurance assistance for Medicare beneficiaries. In addition, Medicaid pays for long-term services and supports. Under current law, if an individual is enrolled in Medicaid when entering a penal institution, the state has the option of suspending Medicaid enrollment rather than disenrolling the individual. Most states have taken up this option, which obviates the need for a new Medicaid application upon reentry and smooths access to timely coverage. However, the period of suspension varies greatly among states, ranging from 30 days to the full duration of incarceration.⁴¹ If all states adopted a policy of Medicaid suspension for the full duration of incarceration, the path to both Medicaid and Medicare coverage immediately upon reentry would smooth significantly.

“An even more comprehensive solution would allow states to **provide Medicaid coverage—and receive federal matching funds for doing so—during the last 30 days of incarceration.**”

An even more comprehensive solution, first introduced legislatively in the Build Back Better federal package, would allow states to provide Medicaid coverage—and receive federal matching funds for doing so—during the last 30 days of incarceration. Starting full Medicaid coverage prior to reentry would have multiple advantages: Medicaid coverage would be fully operational before leaving a facility; current lags in Medicaid coverage of Medicare premiums would be reduced; individuals could be assessed in a more timely manner for long-term services and supports; and in states with Medicaid managed care, individuals could begin to have a relationship with their Medicaid Managed Care Organization (MCO) prior to reentry. The financial benefit to states of receiving federal matching funds for Medicaid services during the last month of incarceration would also be substantial.

Use contracts with Medicare and Medicaid providers and health plans to address the specific needs of justice-involved individuals and protect against discrimination.

States have broad authority to impose contractual performance obligations on Medicaid providers, MCOs, and Medicare Dual Eligible Special Needs Plans (D-SNPs). Most state Medicaid contracts with providers and health plans, however, do not explicitly prohibit discrimination against justice-involved individuals. On the Medicare side, CMS currently does not use its own regulatory authority and sub-regulatory guidance to impose specific obligations on Medicare Advantage plans with respect to justice-involved individuals.

Both states and CMS could use these levers to ensure that individuals reentering the community get access to services that meet their needs. For example, Ohio’s Medicaid program has imposed a contractual requirement that its MCOs must develop a transition plan prior to an enrollee’s release and conduct a video conference with individuals with serious chronic health conditions who need ongoing care. The contract also requires that the MCO follow up with the enrollee within five days of release.⁴² Explicit prohibitions on discrimination against

justice-involved individuals by plans and their network providers also could help with access to needed care by, for example, ensuring that long-term care facilities in plan networks do not refuse admission based on an individual's criminal record.⁴³

Provide Medicare coverage for individuals released under supervision.

In addition to not covering services for individuals in penal institutions, Medicare, by regulation, also bars provider payments for any Medicare-covered services for individuals who are “under supervised release, on medical furlough,⁴⁴ required to reside in mental health facilities, required to reside in halfway houses, required to live under home detention, or confined completely or partially in any way under a penal statute or rule.”⁴⁵ In contrast, the Medicaid program uses a different definition that allows Medicaid coverage for individuals on parole, probation, or released to the community pending trial; living in a halfway house where individuals can exercise personal freedom; voluntarily living in a public institution; or on home confinement.⁴⁶

The Medicare restrictions are both broad and imprecise, particularly in their failure to fully define “under supervised release.” These restrictions prevent many older individuals returning to the community from being able to access Medicare providers because of conditions connected with their release, and those who do not qualify for Medicaid could face significant health care costs, needing to either pay out-of-pocket or find other insurance.

A change in the Medicare definition to harmonize with the Medicaid definition would improve access and prevent confusion among providers, beneficiaries, and those who are working to connect them to needed health services. It would also relieve Medicaid programs from costs for services that Medicare would otherwise cover, providing health care savings for states.

Rationalize Medicare enrollment policies for incarcerated individuals and those re-entering the community.

Under current policy, the Medicare program “suspends” coverage for Medicare enrollees incarcerated for over 30 days.⁴⁷ The suspension stops all Medicare benefits, but incarcerated enrollees still have the obligation to pay monthly Medicare premiums, even though their SSI and Social Security retirement or disability benefits have also stopped. Because they cannot pay their premiums, most enrollees are disenrolled after a grace period. Upon reentry, they may only re-enroll in Medicare during the General Enrollment Period (January-March) each year and are subject to late enrollment penalties when they do so. They also are liable for paying the premiums for their coverage during the grace period and those payments are taken from their first Social Security benefit.

Individuals who turn 65 while incarcerated have the usual Initial Enrollment Period (IEP) around their 65th birthday, and, if they do not enroll and start paying premiums at that time, also have no Special Enrollment Period (SEP) upon reentry and face late enrollment penalties.⁴⁸

There has been recent progress in addressing these barriers to timely Medicare enrollment. In April 2022, the federal Centers for Medicare and Medicaid Services (CMS) published a proposal to institute a reentry SEP with no late enrollment penalties.⁴⁹ The SEP would apply both to individuals who had not enrolled in Medicare while incarcerated and to those who were disenrolled while in custody. If finalized as proposed, the SEP would become available as of January 1, 2023, and would be a significant improvement to current policy. It leaves unaddressed, however, the issue of premium liability upon reentry for suspended coverage during the automatic grace period before disenrollment.

Dismantling the regulatory and statutory barriers to coverage discussed here would help assure that the still difficult task of accessing comprehensive care upon reentry would not be further burdened by unnecessary and inappropriate Medicare and Medicaid policies.

INCOME

The Social Security Administration (SSA) is a critically important system for older adults and people with disabilities who rely on benefits from SSA to pay for basic needs. However, SSA rules are not always responsive to the needs of the reentry population, causing denials of applications and delays in accessing benefits that can be catastrophic. Policies that improve access to Social Security and SSI would make it easier for formerly incarcerated individuals to access disability and retirement benefits they need to pay for rent, food, and other essentials.

Policies that improve timely access to Social Security and SSI for the reentry population would help everyone reentering our communities and could particularly help to reduce income inequities for people of color, people with disabilities, and older adults.

This section discusses four areas where changes to Social Security policies would reduce inequities for formerly incarcerated older adults by ensuring low-barrier and equitable access to SSI and Social Security benefits.

Improve the SSI application process to ensure prompt access to benefits upon release.

Individuals with little to no income and resources can qualify for SSI if they are age 65 or older or if they meet the Social Security definition of disability. The SSI disability determination process is notoriously difficult and can take several years for individuals whose applications are denied and who must appeal the denial. Formerly incarcerated individuals with disabilities who are homeless or housing-insecure experience barriers with even basic elements of the application process, such as having a stable address or phone number, making it difficult to successfully complete an application. Potential improvements to help connect individuals with disabilities to SSI benefits include outreach and application assistance, both pre-release and post-release, as well as reviewing the SSI application rules through the lens of these individuals to identify and reduce barriers to access.

While individuals age 65 or older do not need to go through the disability determination process, they nonetheless can experience significant difficulty applying for SSI. The closure of the Social Security field offices during COVID increased these difficulties by making it more challenging to complete SSI applications, which typically require individuals to go in-person to the Social Security office at some point in the process. Applications for SSI from older adults dropped 55 percent only a month after field offices closed in March 2020.⁵⁰ Ensuring an SSI application process and outreach that works more effectively for older adults would allow formerly incarcerated older adults to access these benefits and to access them more quickly.

Stop requiring individuals who have already been found disabled by Social Security to undergo a new disability determination in order to receive a supplemental disability benefit.

Prior to 2018, when an individual who was receiving either SSI disability or SSDI applied for the other disability benefit, SSA would simply adopt the finding of disability from the first benefit program. An example would be

“Policies that improve timely access to Social Security and SSI **could particularly help to reduce income inequities for people of color, people with disabilities, and older adults.**”

someone receiving a small SSDI benefit who applied for SSI in order to increase their total monthly benefit up to the SSI maximum benefit rate. In this situation, SSA would adopt the existing SSDI disability determination as part of the SSI application and approve the individual for the additional SSI benefit if they met the non-disability requirements for SSI, such as having limited income and resources.

In 2018 and 2019, SSA changed this policy and began requiring individuals whose disability determination was based on a mental impairment or a Human Immunodeficiency Viruses (HIV) positive diagnosis to undergo a new disability determination if they applied for the second benefit on or after January 17, 2017. This has a particularly harmful effect on LGBTQ individuals and people of color who have higher rates of being HIV positive. After they reenter the community, these individuals can immediately restart their SSDI benefit. However, if they want to also receive SSI to supplement their SSDI, they now need to undergo a new disability determination process. This new requirement greatly increases the delay between the application for and approval of the second benefit.

Where SSA already has found the individual to meet SSA disability standards, it would be most effective for SSA to return to the pre-2018 rule and simply adopt the existing disability determination when the person applies for the other Social Security disability benefit. Any kind of disability review is best left to SSA's continuing disability review process, an existing process used to determine whether an individual who receives disability benefits remains disabled.

Allow SSI to resume upon release for formerly incarcerated individuals who previously qualified for SSI.

SSA has an SSI benefit suspension rule that makes it difficult for formerly incarcerated individuals to re-establish their eligibility for SSI disability benefits upon release. SSI beneficiaries who no longer qualify to receive SSI due to a non-disability reason, including being incarcerated for a calendar month or more, will have their SSI claim suspended for up to 12 months. If the incarceration extends beyond 12 months, the individual would need to file a new SSI application and undergo a new disability determination. For formerly incarcerated individuals who were receiving SSI disability benefits prior to their incarceration, this means losing their link to SSI. They must apply again for SSI when they reenter the community and undergo a new and potentially lengthy disability determination process before benefits can resume. This policy particularly impacts older adults leaving incarceration who have not yet turned 65, and thus can only qualify for SSI payments based on their disability.

Where SSA already has a disability determination for an individual, it would be most effective for SSA to simply adopt that determination when the person reenters the community. As with the issue discussed above, any kind of disability review is best left to the continuing disability review process.

Modify the calculation of Social Security benefits for people who have been exonerated to prevent further disadvantage due to their wrongful incarceration.

Formerly incarcerated individuals who were exonerated may have been incarcerated for years or decades during a period that would otherwise have been their core working years. While the number of exonerated individuals is relatively small, numbering in the thousands, they have been particularly unjustly impacted. Wrongfully deprived of those lost years of earnings, their Social Security earnings record may be substantially depressed, showing no earnings during their period of incarceration. This in turn affects both whether they qualify for Social Security retirement, disability, and survivors' benefits as well as their benefit amount. To prevent disadvantage due to lost

years of earnings, Social Security could explore ways to modify the benefit calculation to disregard the years of incarceration, to assign an average wage to those years, or some other restorative method.

Individuals reintegrating into the community also face economic challenges in other areas not addressed in this paper, including court debt and fines that lead to individuals having to choose between paying their debts and providing for basic needs like food and shelter. Older adults may face particular challenges as they have more limited options to obtain employment to pay off the debt. SSA policies that ensure low-barrier access to benefits for seniors and people with disabilities would help these individuals to successfully reintegrate into our communities by ensuring that they receive income to pay for basic needs without delay.

Reducing barriers to accessing SSA-administered benefits would also benefit local and state governments by ensuring that fewer people need basic income support from those sources. Adopting the policy changes described above would be a first step to ensuring that formerly incarcerated seniors have access to vital Social Security and SSI benefits and improve their chances to remain in the community.

CONCLUSION

This paper has discussed policy recommendations to improve access to three prerequisites for successful reentry of older adults into the community: stable housing, health care benefits, and adequate income. In some cases, they can be a prerequisite even for exiting the penal system at all, since the lack of a stable housing option can delay a person's approval for discretionary release from prison, resulting in longer periods of incarceration.⁵¹ Other obstacles not discussed here, including court debt and fines, charges related to post-release supervision, and barriers to obtaining current identification documents also present challenges to successful reentry of older adults into our communities.

A recurrent theme throughout all reentry issues is the importance of getting supports in place before the date of reentry or soon thereafter. Having supports from the start, especially housing, greatly increases the chances that a reentrant will not fall into homelessness or experience adverse health events. Across the U.S., local innovative reentry programs have developed models for how to quickly connect people leaving prison or jail to housing, healthcare, and benefits. For example, the Center for Urban Community Services' Housing Resource Center connects homeless and incarcerated individuals with information on mental health, supportive housing, forensic case management, and coordinated care services and makes referrals prior to release from New York's state prisons.⁵² Currently, only a small percentage of individuals in a few jurisdictions have access to similar formalized service coordination prior to leaving incarceration.⁵³

Policy improvements discussed in this paper combined with investments by states in expansion of pre-release programming could dramatically reduce the risk of homelessness and reincarceration and stabilize access to health care for formerly incarcerated older adults.⁵⁴

These improvements cannot erase the racism and injustices of the criminal legal system that many incarcerated older adults have endured for decades, but they can at least offer the opportunity for lives of dignity as they reenter society and the chance to begin to reconnect with their communities.

ACKNOWLEDGEMENTS

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ENDNOTES

- 1 U.S. Dep't of Health & Human Services, Incarceration & Reentry | ASPE ([hhs.gov](https://aspe.hhs.gov)), (Feb. 2019).
- 2 Ashley Nellis, "The Color of Justice: Racial and Ethnic Disparity in State Prisons," The Sentencing Project (2021), available at <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.
- 3 Bureau of Justice Statistics, "Disabilities Among Prison and Jail Inmates," 2011-12 (Dec. 14, 2015), available at <https://bjs.ojp.gov/press-release/disabilities-among-prison-and-jail-inmates-2011-12>.
- 4 Vera Institute of Justice, "Aging Out: Using Compassionate Release to Address the Growth of Aging and Infirm Prison Populations," (2017), available at <https://www.vera.org/downloads/publications/Using-Compassionate-Release-to-Address-the-Growth-of-Aging-and-Infirm-Prison-Populations%E2%80%9494Fact-Sheet.pdf>.
- 5 U.S. Dep't of Health & Human Services, Office of the Assistant Secretary for Planning and Evaluation (ASPE), "Aging, Reentry, and Health Coverage: Barriers to Medicare and Medicaid for Older Reentrants," (March 2018), available at https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/185306/Reentry.pdf. See also, Matt McKillop & Alex Boucher, "Aging Prison Populations Drive up Costs," Pew Charitable Trusts (Feb. 20, 2018), available at <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/20/aging-prison-populations-drive-up-costs>.
- 6 Lisa C. Berry et al., "Disability in Prison Activities of Daily Living and Likelihood of Depression and Suicidal Ideation in Older Prisoners." *Int. J Geriatric Psychiatry*. 2017 October; 32(10): 1141–1149, available at, <https://pubmed.ncbi.nlm.nih.gov/27650475/>.
- 7 Aging, Reentry, and Health Coverage: Barriers to Medicare and Medicaid for Older Reentrants, *supra* note 5.
- 8 KiDeuk Kim, Bryce Peterson, "Aging Behind Bars: Trends and Implications of Graying Prisoners in the Federal Prison System," Urban Institute (August, 2014), available at <https://www.urban.org/research/publication/aging-behind-bars-trends-and-implications-graying-prisoners-federal-prison-system>.
- 9 Prison Policy Initiative, "Nowhere to go: Homelessness among formerly incarcerated people," (August 2018), available at <https://www.prisonpolicy.org/reports/housing.html>.
- 10 National Alliance to End Homelessness, "Demographic Data Project: Race," (2019), available at <https://endhomelessness.org/demographic-data-project-race/>.
- 11 The Connecticut Collaborative on Re-Entry provides supportive housing and a range of services to single adults identified as frequent users of jail and homeless services in order to reduce the cycle between jail and homelessness. Information available at CT Collaborative on Re-Entry Program Info (csh.org).
- 12 Reentry and Housing Coalition, "Homelessness - What We Know," available at <http://www.reentryandhousing.org/public-housing>.
- 13 See, e.g., ACLU, "Study Documents Extreme Racial Disparity in Arrests For Low-Level Offenses," (Dec. 21, 2015), available at <https://www.aclu.org/press-releases/study-documents-extreme-racial-disparity-arrests-low-level-offenses>.
- 14 Federal Probation, "Landlord Attitudes Toward Renting to Released Offenders" 1-3 (June 2007), available at https://www.uscourts.gov/sites/default/files/71_1_4_0.pdf.
- 15 U.S. Sentencing Commission, "Demographic Differences in Sentencing: An Update to the 2012 Booker Report," 6, (2017), available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf (finding that sentences of Black male offenders were 19% longer than those of White male offenders).
- 16 National Consumer Law Center and the Collateral Consequences Resource Center, "The High Cost of a Fresh Start: A State-by-State Analysis of Court Debt as a Bar to Record Clearing," (Feb. 2022), available at <https://www.nclc.org/images/pdf/criminal-justice/Report-High-Cost-of-Fresh-Start.pdf>.
- 17 National Housing Law Project, "Local Anti-Discrimination Reentry Policies," available at <https://www.nhlp.org/initiatives/housing-opportunities-for-people-reentering/lifetime-registered-sex-offenders/>.
- 18 Federal law only mandates barring admission to federally assisted housing for those individuals convicted of methamphetamine production and offenses that subject a person to sex offender registration, 24 C.F.R. § 960.204(a)(4).
- 19 Fair Chance Access to Housing Ordinance, Oakland City Council, Ordinance No. 13581, 2020, available at Ordinance No. 13581 | Code of Ordinances | Oakland, CA | [Municode Library](https://municode.com). See also, [Seattle Fair Chance Housing legislation](https://www.seattle.gov/civilrights/civil-rights-enforcement/fair-housing/fair-chance-housing), enacted in August 2017, available at <https://www.seattle.gov/civilrights/civil-rights-enforcement/fair-housing/fair-chance-housing>.
- 20 24 C.F.R. § 960.204(a)(4). HUD signified its commitment to supporting the reentry population under the American Rescue Plan

by developing tools and guidance on screening and selection practices to prevent overbroad denials, reviewing HUD policies that limit housing for individuals with criminal records, and publishing best practices on reentry housing. HUD Letter (June 23, 2021), available at https://www.hud.gov/sites/dfiles/PA/documents/SOHUD_reentry_housing_letter.pdf.

- 21 24 C.F.R. § 5.852(a); HUD, 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,” 2 (Nov. 2, 2015), available at <https://www.hud.gov/sites/documents/PIH2015-19.PDF>; HUD, “Secretary Fudge Outlines HUD Actions to Address Reentry Housing Needs and Increase Public Safety, HUD No. 21-105,” (June 23, 2021), available at https://www.hud.gov/press/press_releases_media_advisories/HUD_No_21_105. Notably, definitive and reasonable lookback periods for prior offenses is missing from this list of factors.
- 22 Marie Claire Tran-Leung, “When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing,” Shriver Center (Feb. 2015), available at <https://www.povertylaw.org/wp-content/uploads/2019/09/WDMD-final.pdf>.
- 23 42 U.S.C. § 3601.
- 24 HUD, “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions,” 2, (Apr. 4, 2016) available at https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHAStandCR.PDF.
- 25 HUD Letter (June 23, 2021), available at https://www.hud.gov/sites/dfiles/PA/documents/SOHUD_reentry_housing_letter.pdf.
- 26 HUD Memo from Sec. Fudge, “Eliminating Barriers that May Unnecessarily Prevent Individuals with Criminal Histories from Participating in HUD Programs,” (April 12, 2022) available at: https://www.hud.gov/sites/dfiles/Main/documents/Memo_on_Criminal_Records.pdf.
- 27 Id.
- 28 For a more detailed description of housing-related activities and services that can be covered by Medicaid, see SHO#21-001, Opportunities in Medicaid and CHIP to Address Social Determinants of Health (SDOH), Dept. of Health & Human Services, Centers for Medicaid and Medicare Services at pp. 5-7, Jan. 7, 2021, available at <https://www.medicaid.gov/federal-policy-guidance/downloads/sho21001.pdf>.
- 29 Patti Prunhuber & Claire Ramsey, “Housing and Home and Community-Based Services: What it Takes to Age in Place.” National Center for Law & Elder Rights (June 2021), available at https://ncler.acl.gov/getattachment/Legal-Training/upcoming_event/HCBS-Ch-Summary-Final.pdf.aspx?lang=en-US.
- 30 SHO#21-001, Opportunities in Medicaid and CHIP to Address Social Determinants of Health (SDOH), supra note 28.
- 31 AMAAD Institute (Arming Minorities Against Addiction & Disease) Resilient Solutions Project, available at <https://amaad.org/programs/>.
- 32 Massachusetts Housing and Shelter Alliance, “CSPECH,” available at <https://mhsa.net/partnerships/cspech/>. As of 2020, 860 tenants had been enrolled in CSPECH’s Pay for Success initiative.
- 33 Dennis P. Culhane, “Ending Chronic Homelessness: Cost Effective Opportunities for Interagency Collaboration,” (March 1, 2010), available at https://repository.upenn.edu/cgi/viewcontent.cgi?article=1151&context=spp_papers.
- 34 Sonia Gupta Pandit & Rebecca T. Brown, “Mitigating Homelessness Among Older Adults: Adapting the Permanent Supportive Housing Model,” Generations, (Summer 2021), available at <https://generations.asaging.org/mitigating-homelessness-among-older-adults>.
- 35 “Disabilities Among Prison and Jail Inmates,” supra note 3.
- 36 Anthony Alexander Sterns et al., “The Growing Wave of Older Prisoners: A National Survey of Older Prisoner Health, Mental Health and Programming,” Corrections Today, (Oct. 2008) cited in Human Rights Watch, “Old Behind Bars, the Aging Prison Population in the United States,” (Jan. 27, 2012), available at <https://www.hrw.org/report/2012/01/27/old-behind-bars/aging-prison-population-united-states>.
- 37 Over 40% of incarcerated individuals over 50 years old were serving sentences of more than 20 years or life sentences. Old Behind Bars, supra, note 35.
- 38 Bureau of Justice Statistics, Aging of the State Prison Population, 1993-2013 (May 2016), p. 1, available at <https://bjs.ojp.gov/library/publications/aging-state-prison-population-1993-2013>.

- 39 See, e.g., California Health Care Facility Found Deficient and Unconstitutional | Prison Legal News, (March 29, 2017); The Beachwood Reporter - Illinois Prisoners' Health Care Still Unconstitutional (March 31, 2021); "Groundbreaking Trial Challenging Arizona Prisons' Inhumane and Unconstitutional Failures Set to Begin," ACLU of Arizona (Nov. 1, 2021), available at <https://www.acluaz.org/en/press-releases/groundbreaking-trial-challenging-arizona-prisons-inhumane-and-unconstitutional>.
- 40 For discussion of some of the programs that offer best practices, see, e.g., Ryan, Jennifer et al, "Connecting the Justice Involved Population to Medicaid Coverage and Care: Findings from Three States," KFF, (June 1, 2016), available at www.kff.org/medicaid/issue-brief/connecting-the-justice-involved-population-to-medicaid-coverage-and-care-findings-from-three-states/.
- 41 MACPAC, "Medicaid and the Criminal Justice System," (July 2018), p. 4, available at www.macpac.gov/wp-content/uploads/2018/07/Medicaid-and-the-Criminal-Justice-System.pdf.
- 42 Jesse Jannetta, et al., "Ohio's Medicaid Pre-Release Enrollment Program," Urban Institute (Jan. 2017), p. 7, available at www.urban.org/sites/default/files/publication/88051/ohio_medicaid_1.pdf.
- 43 See Nahla Fahmy, et al, "Access to Primary Care for Persons Recently Released from Prison," Annals of Family Medicine, (Nov./Dec. 2018) (study documenting discrimination by primary care providers in British Columbia), available at www.annfammed.org/content/16/6/549.long. The Medicare Managed Care Manual, Ch. 4 at 10.5.2 prohibits plans or their providers from discriminating on the basis of source of payment, which primarily protects Medicaid recipients from provider discrimination. See www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/mc86c04.pdf. A similar provision could be adopted to protect the reentry population.
- 44 "Medical furlough" describes authorized short or long-term absence from a correctional institution for medical treatment or because of a debilitating or terminal medical condition. Some furlough criteria require that the individual is expected to die within one year, or is no longer able to provide self-care in prison. See, e.g., Final Medical Furlough Release Criteria.pdf (illinois.gov).
- 45 42 C.F.R § 411.4(b). For more details on the process, see CMS, Medicare Learning Network "Beneficiaries in Custody Under a Penal Authority," (March 2018), available at www.cms.gov/outreach-and-education/medicare-learning-network-mln/mlnproducts/downloads/items-services-furnished-to-beneficiaries-in-custody-under-penal-authority-fact-sheet-icn908084.pdf.
- 46 Vikki Wachino, State Health Official Letter Re: To Facilitate successful re-entry for individuals transitioning from incarceration to their communities (CMS, SHO #16-007, April 28, 2016), available at www.medicaid.gov/sites/default/files/Federal-Policy-Guidance/Downloads/sho16007.pdf.
- 47 For more details on the process, see CMS, Medicare Learning Network "Beneficiaries in Custody Under a Penal Authority," supra note 45.
- 48 See Rose Feinberg, et al, "Aging, Reentry, and Health Coverage: Barriers to Medicare and Medicaid for Older Reentrants," ASPE 18 (March 2018), available at https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/185306/Reentry.pdf.
- 49 87 Fed. Reg. 25090 (April 27, 2022), proposing a new 42 C.F.R § 407.23(d), available at [2022-08903.pdf](https://www.govinfo.gov/2022-08903.pdf) (govinfo.gov).
- 50 Jonathan Stein & David A. Weaver, The Hill, "Half a million poor and disabled Americans left behind by Social Security," (Nov. 15, 2021), available at <https://thehill.com/opinion/finance/581522-half-a-million-poor-and-disabled-americans-left-behind-by-social-security>.
- 51 HUD Reentry Housing Letter, HUD No. 21-05, (June 23, 2021), available at https://www.hud.gov/sites/dfiles/PA/documents/SOHUD_reentry_housing_letter.pdf.
- 52 Center for Urban Community Services, "The Path Home, Easing the Transition" (June 14, 2018), available at www.cucs.org/the-path-home-easing-the-transition/.
- 53 Jeff Mellow et al., "The Role of Prerelease Handbooks for Prisoner Reentry," 70 Fed. Probation, (2006), available at www.uscourts.gov/sites/default/files/70_1_10_0.pdf (noting that only 10% of state prisoners discharged in 1997 participated in a pre-release program and that such programs are not available at all prisons).
- 54 Vera Institute of Justice, "Why Planning for Release Matters," available at https://www.vera.org/downloads/publications/IIB_planning_for_release.pdf.