

ACCESS

DENIED

IN OREGON

A Report on the
Barriers Faced by
People with a Past
Felony Conviction



Partnership for Safety and Justice

PARTNERSHIP FOR SAFETY AND JUSTICE:

Originally founded in 1999 as the Western Prison Project, **Partnership for Safety and Justice** advocates for a criminal justice system that is just and that more effectively creates the types of safe communities we want to live in. We unite those most affected by crime, violence, and the criminal justice system to redirect policies and resources away from an over-reliance on incarceration toward effective strategies that reduce crime and increase community safety.

Access Denied in Oregon was produced as part of our **Beyond Barriers** program. **Beyond Barriers** focuses on eliminating the civil and social barriers formerly incarcerated people experience. The program helps create a society that better supports the successful transition of people returning to the community from prison and jail so that we can all live in safer communities.

Access Denied in Oregon is available on our website.

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INTRODUCTION ►

The United States now incarcerates over 2.2 million people, more than any other country in the world. This means that one out of every 136 people in the U.S. is currently in jail or prison.ⁱ The astronomical growth of incarceration in the U.S. over the past 25 years has created a wide range of social challenges, not least of which is how to respond to formerly incarcerated people upon their re-entry into the community. More than 650,000 people are released from state and federal prisons every year, and millions more leave local jails.ⁱⁱ The transition back into the community is far from welcoming for most returning prisoners. Formerly incarcerated people are stigmatized and stereotyped, and face a range of laws and policies that undermine their ability to become active and productive citizens.

Is it society's responsibility to mitigate the challenges experienced by former prisoners when they transition back into society? Although some people may quickly answer no, the cost of not developing better systems of support is far too great, both in terms of the human toll and the cost to the public when people fail and then return to prison. Supporting the successful re-entry of formerly incarcerated people reduces recidivism, increases public safety, and helps lower the skyrocketing cost of incarceration.

Successful re-entry is difficult, in part, because of a wide range of civil barriers that reduce opportunities for people with a past felony conviction. Unless you are a formerly incarcerated person, or a family member or friend of a former prisoner, the real struggles associated with transitioning back into the community from prison are probably quite unfamiliar. This report is designed to provide a glimpse into some of the existing challenges.

In 2005, Partnership for Safety and Justice (then known as Western Prison Project) began an intentional exploration of the range of civil barriers formerly incarcerated people face. We realized that not nearly enough attention is being paid to this critical set of issues. We began this project by surveying 384 formerly incarcerated people about their experiences transitioning back into the community. We also conducted two focus groups, one with formerly incarcerated people and one with people who have had a family member incarcerated. Focus group participants identified the issues they felt are most critical to successful re-entry. We then conducted research to identify the legal and administrative barriers facing people with felony convictions in Oregon in areas such as housing and employment. This is by no means a comprehensive overview of the roadblocks to re-entry after prison. Rather, this report is designed to share some of the information we have collected with an emphasis on the key barriers identified by our survey and focus group participants.

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◀ SUMMARY FINDINGS

Formerly incarcerated people and people with felony convictions experience a range of civil barriers that make it harder to find stable employment and housing. There are a number of policies that could help dismantle these roadblocks to re-entry in Oregon:

- 1) The standard practice of releasing state prisoners back to the county in which they were convicted should be re-examined. When possible, release location should be based on an assessment of where someone has the strongest community of support and the best chance of finding stable housing and employment.
- 2) The state should consider legislation that prevents employers from refusing job applicants solely on the basis of arrest or conviction history, and offer a set of standards and practices that encourage employers to make individualized decisions about people with criminal records. By initially eliminating people with conviction or arrest records from job applicant pools, people who may be highly qualified for certain jobs get screened out to the disadvantage of the employer, the individual job applicants, and the community.
- 3) Arrest records that never lead to a conviction should not be publicly available or used to make employment and housing decisions. The presumption of innocence is a core principle of our justice system and upholds the American value of fairness. This fairness should be extended to housing and employment considerations.
- 4) Having a valid driver's license or official state identification is often a requirement for acquiring a job, a checking account, housing, and services. The Department of Corrections should better assist prisoners in acquiring the official documentation and identification necessary for their success when released.
- 5) It is a common practice for people with drug related convictions to have their licenses revoked or suspended as part of their sentence, even when the crime was not driving-related. Legislation that restricts that practice would help people maintain access to essential identification and mobility when released—factors that support an individual's ability to find housing, employment, and stay connected to their families.
- 6) Housing is a critical factor for successful re-entry. Unfortunately, there is simply not enough housing available for formerly incarcerated people returning to the community. Increasing funding to expand transition and re-entry housing is a common sense approach to public safety.

EMPLOYMENT ►

“I was recruited to apply for a temporary county job by a county staff person who knows me. She felt like my background made me incredibly qualified for the position. The county contracts with a temp agency to manage the payroll for all the county’s temporary workers. I filled out the temp agency’s paperwork which included a question about conviction history, which I answered honestly. Soon after, the temp agency told the county department that they would not manage my contract because I have a felony record. Well, county staff knew about my record and didn’t feel like it was relevant. Nevertheless, I lost that job opportunity which paid \$20 an hour and might have led to a permanent position. I believe there is now a push within that county to hire a different temp agency because of my situation, which is a step in the right direction, but that doesn’t help me put food on the table.”

The Equal Employment Opportunity Commission (EEOC) has interpreted Title VII of the Civil Rights Act to prohibit employment policies that exclude individuals solely on the basis of their criminal conviction records. While Title VII doesn’t directly spell out protections for persons with felony convictions, the EEOC has determined that discriminating on the basis of criminal conviction records has a disparate impact on people of color, and is therefore a discriminatory practice. However, a person’s criminal record can be considered if the employer can demonstrate a business necessity for doing so. But if employers ask, they must ask everyone. Selectively inquiring about criminal convictions can be grounds for a discrimination complaint against the employer.ⁱⁱⁱ

In spite of the EEOC interpretation of the Civil Rights Act regarding hiring practices, there are a number of federal, state, and local laws that prohibit the hiring of individuals with certain felony convictions.

NOT JUST CONVICTIONS POSE A BARRIER TO EMPLOYMENT:

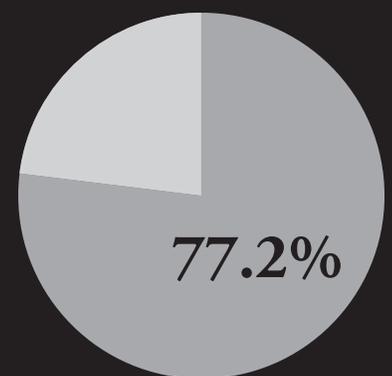
Oregon is one of a number of states that allow employers to consider arrest records in a hiring process. This unnecessary and unfair employment practice has the negative effect of greatly expanding the pool of people facing barriers to employment. Conversations with workforce development staff confirmed that more and more employers are starting to take advantage of this practice, requiring applicants to list any and all convictions and arrests.

It is easy to see how the admission of a prior arrest, even one that didn’t lead to a criminal conviction, could still taint a job application. This inequity in the law is ripe for change. Massachusetts and other states have passed laws that prohibit employers from asking prospective applicants about arrest information that did not lead to a criminal conviction.



Have you ever been denied employment because of your criminal record?

Of the 364 people who responded to this question, 77.2% answered “yes.”



*For many people
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OCCUPATION-BASED BARRIERS TO EMPLOYMENT:

With greater public awareness of the possibility of identity theft, and a heightened domestic security environment, we are likely to see a greater proliferation of vocation-based exclusionary hiring practices. These laws and policies have the effect of further limiting employment options for many individuals with felony convictions.

Oregon law allows certain professional groups with licensure requirements latitude in considering past convictions as a criteria for acceptance.

ORS (Oregon Revised Statute) 670.280 says a licensing board, commission or agency may not deny, suspend or revoke an occupational or professional license solely for the reason that the applicant or licensee has been convicted of a crime, but it may consider the relationship of the facts which support the conviction and all intervening circumstances to the specific occupational or professional standards in determining the fitness of the person to receive or hold the license.

The list of professional and occupational associations and boards that can legally bar an individual with specific felony convictions from working in Oregon is long. Here is a partial list: engineers and land surveyors, dentists, veterinarians, cosmetologists, real estate agents, construction contractors, clinical social workers, and occupational therapists.

According to Oregon statute, other specific professions, like teaching, can totally bar people from employment based on the presence of certain felony convictions.^{iv} The list of felony convictions that bar an individual from employment as a licensed teacher in Oregon totals over 40 different felonies, running the gamut from person-to-person crimes to drug possession to prostitution.

Although certain convictions may be pertinent to some hiring decisions, particularly in jobs that work with vulnerable populations, the overly broad extent of existing employment barriers is unnecessary and counterproductive. Take the case of a woman who ten years ago turned to prostitution because of poverty and domestic violence and was arrested and convicted. Imagine that now this same woman has worked hard to get her life back on track, including successfully getting out of her abusive relationship. She has a long history of community volunteerism, works with youth, and completed school with academic success. Should we really deny this person the ability to become a teacher because of a past prostitution conviction? The civil barriers faced by this woman suggest that even after paying any criminal penalties (such as jail or prison time, fines, restitution, etc.), the “punishment” for her crime never ends.

Employment barriers are a slippery slope. Too often, businesses develop hiring practices that screen out qualified applicants based on conviction

history alone. This creates a dilemma for many people with felony convictions. If you tell the truth and check the box that acknowledges a conviction (or even an arrest) record, then chances are you will never get an interview--no matter what you have done to get your life back on track, or how qualified you might be. Yet, if you lie and don't check the box, you could begin an important relationship based on an act of dishonesty.

People in our focus groups spoke about their disappointment and frustration with how hard it is to break through that initial job screening. For many people who have worked hard to turn their lives around, all they need is the opportunity to tell their story in an interview and their sincerity and potential will shine through. Too many people never get that chance.

HOUSING

“Our son went to Oregon State Penitentiary. While in prison he went to school and got his GED while there were still programs like that available. Now he is out; he can't find a job. He stays with us. The family is trying to help him, and it is hard on us. ... Renting... they're always turning him down for an apartment. It torments your mind. When is it going to let up? I wish somebody would give people a chance.”

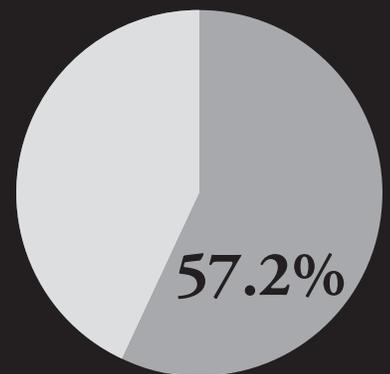
PRIVATE HOUSING:

Oregon law outlines clear protections for certain groups of individuals accessing housing in the private market, but the law provides no protection for persons with felony convictions. It is at the discretion of private landlords and property managers to rent or not rent to people with felony records, with one exception.

The Federal Fair Housing Act and its reasonable accommodation prescriptions provide certain protections for some individuals with criminal records. The litmus test is whether or not a criminal conviction is tied to a federally recognized disability. According to the U.S. Department of Justice, Civil Rights Division, the Fair Housing Act “defines persons with a disability to mean those individuals with mental or physical impairments that substantially limit one or more major life activity. The term mental or physical impairment may include conditions such as....alcoholism, and drug addiction.”^v Therefore, the most common conviction tied to a disability accommodation would be drug possession (but not manufacturing or selling) if it was the result of addiction.

Have you ever been denied housing because of your criminal record?

Of the 367 people who responded to this question, 57.2% answered “yes.”





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PUBLIC AND FEDERALLY SUBSIDIZED HOUSING:

Section 8 and Public Housing are two separate housing programs funded by the federal government and administered by local government housing agencies (for example, the Housing Authority of Portland). Section 8 serves those with very low incomes, while Public Housing serves more moderately low income people.

Federal policies suggest that local housing authorities “may deny” access to Section 8 assistance to anyone convicted of the following charges within the last three years:^{vi}

- Illegal drug use
- Violent criminal activity
- Methamphetamine production
- Sex offenses
- A variety of Public Housing related crimes

Public Housing is governed by an even more restrictive set of policies and does not provide local housing authorities with discretion. There is a long list of convictions that automatically deny access if the convictions fall within a corresponding tiered timeline of the last 3 years, 7 years, and lifetime history.^{vii} The list is so extensive that most people with felony convictions are simply not eligible for Public Housing.

Housing and employment were the two issues that people identified as the most important factors leading to successful re-entry into the community. Yet, stable housing is incredibly hard to come by. The two most likely sources of support in this area are family and non-profit-run housing specifically designed to support the transition of formerly incarcerated people.

Public attitudes are a growing barrier to addressing the lack of transitional housing. Even as community based organizations successfully develop the resources and plans to create re-entry housing, local residents give in to fear and stereotypes and embrace a “not in my backyard” perspective, which leads to organized resistance. The implications of this intolerance are severe. As it becomes harder and harder to house formerly incarcerated people, society forces people to become homeless. The instability and severity of being homeless encourages a return to addiction and crime, negatively affecting public safety.

LICENSES, IDENTIFICATION, COURT FEES AND FINES ► --

This section deals with a complex set of problems that, when experienced individually, are challenging enough, but these issues also interlink in debilitating ways. Having a valid driver's license and identification is often a requirement for acquiring a job, a checking account, housing, and services. Yet many people have their driver's licenses taken away for non-driving related crimes or for not paying court fees and fines. When money and employment are necessary for regaining a license, people become trapped in a situation that's sometimes near impossible to fix.

It has become standard practice for judges to suspend licenses for non-motor vehicle related crimes like drug possession. Additionally, even if a person's license was valid when they entered prison, it has often expired when they are released. Gaining access to valid identification upon release is a significant barrier with wide-ranging negative effects.

In 2005, the Department of Motor Vehicles (DMV) began to accept Oregon Department of Corrections (DOC) -issued "release ID cards" as an accepted form of identification, but only if DOC has verified the person's identification before their release. Surprisingly, DOC can not officially verify a person's identity unless DOC is presented with some of the same documents that the DMV requires as primary documents. To make matters more difficult, DOC provides little assistance to people under their custody in acquiring verified identification. This loophole renders the exchange policy between DOC and DMV practically useless, and does little to help people easily receive valid identification shortly upon their release.

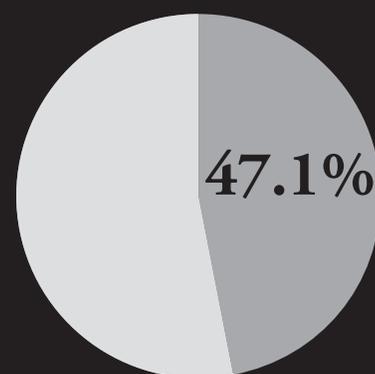
The irony that DOC can not "verify" the identification of people they have been incarcerating is not lost on prisoners and former prisoners. Because valid identification is so critical to the success of former prisoners when they return to the community, DOC should develop stronger procedures to assist prisoners in acquiring the necessary documentation and identification before their release.

Additionally, many formerly incarcerated people have had their license suspended because of failure to pay court fees and fines. Court fees and fines were identified as a real challenge during re-entry into the community. There is an expectation that people begin paying court fees and fines immediately upon release despite having no immediate employment. Parole and probation officers have the ability to help facilitate payment plans, although the practice of doing so is at their discretion and is inconsistently applied.

In 2003, the Oregon legislature passed HB 2263, which prohibited the Department of Motor Vehicles from issuing hardship permits to people with suspended licenses because of failure to appear or failure to pay back fees and fines with no exceptions. It was thought that more stringent

Did you lose your license as a result of your felony conviction?

Of the 363 people who responded to this question, 47.1% answered "yes."



233 people surveyed ranked paying court fees and fines (including supervision fees) as "a major difficulty" when transitioning back into the community.

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punishment would ensure people paid their fees and fines and show up at court. Our research suggests that since that bill passed, the number of related license suspensions has remained the same. One state employee replied upon our inquiry, “how on earth are these people supposed to get to and from work to pay their fines and fees if they don’t have access to a hardship permit for a driver’s license? It’s like cutting a person’s legs off to compel them to run a marathon. It doesn’t make any sense.”

PRISON AND JAIL RELEASE PRACTICES

“When I spoke to the team of people in charge of my daughter’s transition from prison, they told me that she had to be released to the county where she was arrested, even though there was no family support or county re-entry services available. They planned to release her at 7:00 a.m. with no money, no bus ticket, and she was expected to report to the parole and probation office in another county by 1:00 p.m. that day. Perhaps the worst of it was that the only place they had identified she might stay involved sleeping in a parking lot. How is that acceptable?”

“The release was a problem. I couldn’t go back to my home because my partner was a former felon (there is restricted contact between people with felony convictions) even though we had been together for 15 years, and she was doing fine.... When I was released, they put me in a hotel downtown in the middle of drug activity. I had a support system I couldn’t use and felt almost like I was set up to go back to prison.”

The release practices of state prisons and county jails vary greatly, but one theme is clear: many release practices are far from conducive to success.

A frequent problem is the practice of requiring people to be released to (and stay in) the county where they were convicted, which may not be the county where they have family, a support network, and the best prospects for finding housing and employment.

The time of day of release from county jail was a consistent problem identified by survey participants. There are plenty of stories of people released at midnight or later, after bus service had stopped. This situation adds an additional challenge of having to explain to police what they are doing on the street late at night.

CONCLUSION

Ninety-five percent of all prisoners will be released from prison and will once again rejoin the community.^{ix} We have very clear choices about how to approach public safety and how to deal with the ever-increasing prison population, a population that does come home. By doing nothing, we will continue to see more and more tax dollars go to supporting our growing prison system as too many people fail to make it on the outside. Or, we can take a different approach.

We can begin to shift more of our resources to crime prevention and rehabilitation rather than simply incarceration. We can work to end the cycle of recidivism. This shift has to include a stronger and better coordinated system of support for the successful transition and re-entry of former prisoners. It also demands that we eliminate many of the unnecessary social and civil barriers that people with felony records consistently face.

Many people can and do change their lives for the better when given a chance. This benefits all of us as formerly incarcerated people become productive neighbors and citizens. Shifting public safety resources toward rehabilitation and increased support systems for re-entry is an effective use of taxpayer dollars. Simply put, incarceration is often the most expensive and least effective approach to maintaining public safety.

The Washington State Institute for Public Policy, a legislatively funded, non-partisan research group, reviewed over 400 studies of programs across the country designed to reduce crime. They determined whether the program benefits outweighed the costs, by measuring the value to taxpayers and crime victims from a program's expected effect on crime. The startling results show that many of the very programs that are being cut here in Oregon actually save money. Here are some examples:

- For every dollar invested in Adult Basic Education in prison, \$5.65 of public benefits is gained.^x
- For every dollar invested in Vocational Education in prison, \$7.13 of public benefits is gained.^{xi}
- For every dollar invested in community-based therapeutic addiction treatment, \$8.87 of public benefits is gained.^{xii}

Whether you take a principle-based approach or simply want the state to better use taxpayer dollars in maintaining public safety, it is in the public interest to develop a strong commitment to dismantling the negative attitudes, policies, and laws that prevent former prisoners from successfully transforming their lives. We offer the following recommendations as broad areas where reform and change are needed. These suggestions are not meant as detailed policy proposals, nor as a comprehensive map of needed change, but rather as a starting point for consideration by people truly interested in living in a state that places a high value on

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reducing recidivism and supporting the successful transition of formerly incarcerated people.

POLICY RECOMMENDATIONS:

Change Prison Release Practices:

The common practice of releasing state prisoners back to the county in which they were convicted should be re-examined. Release location should be based on an assessment of where someone has the strongest community of support and the best chances of finding stable housing and employment.

Remove Employment Barriers:

Establishing stable employment is one of the most important factors in successful re-entry. The state should examine ways to encourage employers to provide fair opportunities to people with felony convictions. The wholesale dismissal of employment applications that show any previous felony arrest or conviction is unnecessary and unfair. The state should consider anti-discrimination legislation that prevents employers from refusing consideration to job applicants solely on the basis of arrest or conviction history (except where required by statute), while also offering a set of standards and practices that encourage employers to make individualized decisions about people with a criminal record.

Protect Arrest Records:

Arrest records that never lead to a conviction should not be publicly available or used to make employment, housing, and other critical decisions about an individual. We must preserve the presumption of innocence inherent in our justice system. Legislation should be considered that bars the use of arrest records outside of legitimate law enforcement purposes. Additionally, legislation that makes it easier to seal or expunge arrest records that did not lead to a conviction would be a step in the right direction.^{xiii}

Increase Support in Acquiring Identification:

Having access to a valid driver's license or official state identification is often a requirement for acquiring a job, a checking account, housing, and services. Therefore, valid identification is a critical resource for successful re-entry. The Department of Corrections should better assist prisoners in acquiring the official documentation and identification necessary for their success when released.

Limit License Revocations:

The practice of suspending or revoking driver's licenses for non-driving related infractions has a severe impact on people's ability to survive upon release. Legislation that restricts this practice would help people maintain access to essential identification and mobility when released, factors that

support people's ability to find housing, employment, and stay connected to their families.^{xv}

Increase Housing Availability:

There is simply not enough housing available for formerly incarcerated people returning to the community. Much of this is a funding issue, and we encourage county and state governments to increase funding to expand transition and re-entry housing. Investing in successful re-entry is unquestionably cheaper than paying for incarceration.

The Legal Action Center, based in Washington, D.C., has created model legislation designed to remove the roadblocks for formerly incarcerated people. We encourage you to examine their resources at www.lac.org/toolkits.

ACKNOWLEDGEMENTS:

We would like to thank all of the 384 people who participated in our survey. Each person gave us their valuable time and shared sensitive information with us in the hope for change. We would also like to thank all of our focus group participants who shared their stories. Brent Canode provided valuable research for this project, and we deeply appreciate his expertise and commitment. Paul Solomon at Sponsors Inc. provided critical information and feedback. We would also like to thank the range of organizations that provided assistance in connecting us to people we could survey: Better People, Central City Concern, DePaul Treatment Center, Multnomah County Department of Community Justice, Oregon Action, Oxford Houses of America, Volunteers of America, Women in Community Service (WICS). Additionally, several people spent time with us providing their experience and perspectives on the issues in this report, including Sue Eastman from SE Works, Terry Leckron from Central City Wocern, and Frank Omier from Oregon Fair Housing Council.

ABOUT PARTNERSHIP FOR SAFETY AND JUSTICE:

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We have the following programs:

The Safety and Sentencing Program: This program promotes approaches to public safety that help foster safe communities, are fiscally responsible, and reduce our reliance on prisons.

Ninety five percent of all prisoners will be released from prison, and will once again rejoin the community

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The program promotes safe and sensible sentencing reform as well as alternatives to incarceration and diversion programs.

Crime Survivors for Community Safety (CSCS): CSCS is dedicated to building the voice of survivors of crime and violence to promote progressive responses to the needs of survivors and to support criminal justice reform that reduces future violence without increasing our reliance on prosecution and incarceration.

Beyond Barriers: Beyond Barriers focuses on eliminating the civil and social barriers formerly incarcerated people experience. The program helps create a society that better supports the successful re-entry and transition of people returning to the community from prison and jail.

The Prison Program: The program advocates for increasing access to quality programs within prisons that strengthen rehabilitation, insures that prisoners and their families have access to information on issues directly affecting the incarcerated, and works to prevent the implementation of policies or legislation that further erode the constitutional and human rights of incarcerated people.

END NOTES

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- x. Washington State Institute for Public Policy. May 2001 "The Comparative Costs and Benefits of Programs to Reduce Crime." p7
- xi. Ibid
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- xiii. The Legal Action Center. www.lac.org/toolkits
- xi. Ibid
- xi. Ibid

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